

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

Coram: Buteera, DCJ, Kiryabwire, Mulyagonja, Mugenyi & Luswata, JJCC

CONSTITUTIONAL PETITION NO. 16 OF 2015

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1. JOSHUA T. TUHUMWIRE

2. ELLIAB W. BERA

3. PAUL KASOZI KAZENGA

4. MASIKO JAMES

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5. DR. BAKAMUTUMAHU BARNABAS

6. DR. CHRIS S. RUTEBARIKA

.....PETITIONERS

VERSUS

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**1. THE REGISTERED TRUSTEES OF
ENTEbbe CLUB**

2. DR. DAVID KIHUMURO APUULI
(Registered Trustee of Entebbe Club)

3. VALENTINE WANDAH
(Registered Trustee of Entebbe Club)

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4. PODI KASSAMI
(Registered Trustee of Entebbe Club)

5. INNOCENT KIHKA

6. DR. TWINEMANZI TUMUBWEINEE

7. THE REGISTRAR OF TITLES

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8. WAKISO DISTRICT COUNCIL

9. ATTORNEY GENERAL

..... RESPONDENTS

JUDGMENT OF IRENE MULYAGOJA, JCC

Introduction

30 This petition was brought under the provisions of Article 137 of the Constitution of the Republic of Uganda, 1995 and the Constitutional Court (Petitions and References) Rules. The petitioners who are all members of Entebbe Club claimed that the respondents interfered with their rights as

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members and conveyed land belonging to the Club without the petitioners' involvement, and that the said acts and omissions were contrary to certain provisions of the Constitution of Uganda.

Background

5 The facts as deduced from the court record are about internal disputes in a private members' Club known as Entebbe Club (herein after also referred to as "*the Club*"). The Club is registered under the Trustees Incorporation Act, Cap. 165 ("the Act"). It was established with the main objective of promoting the game of golf and has since its incorporation been governed
10 by the provisions of the Act and the Club's Constitution. Under the Act and the Club's Constitution, the executive authority of the Club is vested in the Registered Trustees.

However, in 2008 the Club amended its Constitution and it directly and by implication arrogated authority for the Acts reserved for trustees to its
15 General Meeting and the Management Committee. Aggrieved by the respondents' actions and omissions, including the alleged conveyancing, demising and disposal of land of the Club without their involvement and the amendment of the Club's Constitution, the petitioners sued the respondents or some of them in the High Court. The court granted an
20 interim order of an injunction on 20th March 2015 in which the respondents were restrained from evicting the petitioners from the Club House and the Golf Course. It was further ordered that the General and/or Extraordinary Meetings of the Club, intended for the development of the Club House and Golf Course, must go on in order to iron out the
25 suspicions which had been termed as lack of transparency. Further, that all members must be brought on board for the good and development of the Club and its property.



It was alleged that in spite of the injunction, the respondents continued with the very actions that were prohibited by the interim order. The petitioners thus brought this petition in which they contend that the acts and omissions of the respondents are inconsistent with provisions of the

5 Constitution of Uganda as follows:

- a. The act of unilaterally changing a court suit file pending before a trial judge of the High Court and reallocating it to another judge on the machinations of the 1st, 2nd and 4th respondent's lawyer without the trial judge's consent sapped and usurped her unlimited jurisdiction and is inconsistent with and or in contravention of Article 2 (2), 20
10 (2), 21 (1), (2) and (3), 42, 43 (1) and 2 (a), (c), 44 (c), 45, 28 (1), 29 (1) (d), (e), 50 (1) and (2), 126 (1) and (2), 138 (1) (b), 139 (1) and 129 of the Constitution of Uganda, 1995.
- b. That the act of by-passing and discriminating a registered trustee of
15 a body corporate by the respondents is in breach of the collective responsibility under s. 1 91) and (3) of the Trustees Incorporation Act and is inconsistent with and/or in contravention of Articles 2 (2), 20 (1) (2), 21 (1) and 29 of the Constitution of Uganda, 1995.
- c. The act of the 5th and 6th respondents conducting the business of the
20 1st respondent discreetly is neglect and/or default in breach of s. 3 of the Trustees Incorporation Act and is inconsistent with/or in contravention of Articles 2 (2), 21 (1), 26 (1), 43 (2) (c) and 45 of the Constitution.
- d. The act of creating inconsistent land users, was usurping the
25 statutory roles of the Registered Trustees to demise or lease for 99 years interest in land of 1st respondent's Golf Course and hoarding the land title is breach of the Trustees Incorporation Act and is



inconsistent with and/or in contravention of Articles 2 (2), 21 (1), 26 (1) and 45 of the Constitution.

- 5 e. Article 19.11 of the Entebbe Club Amended Constitution Revised Edition 2008 which provides for termination of services of a Statutory Registered Trustee By the 1st Respondent's General Meeting at any time strips them of their statutory immunity and breaches section 1 (2) of the Trustees Incorporation Act Cap. 165 and is inconsistent with and/or in contravention of Articles 2 (2), 20 (2), 21 (1), 36, 43 (1) and (2) (c), 45 and 79 (2) of the Constitution.
- 10 f. Article 19.01 of the Entebbe Club Constitution to the extent that it provides for consent of the Trustees to the Executive Committee impliedly allows neglect or default of Trustees Statutory power contrary to the Trustees Incorporation Act, Cap 147 Laws of Uganda and this is inconsistent with and/or in contravention of Articles 2 (2), 20 (1), 21 (1) and 26 (1) of the Constitution of Uganda, 1995.
- 15 g. Article 15:01: Property of the Entebbe Club Amended Constitution Revised Edition 2008 which vests the property of the club in the members violates sections 1 (2) (e) and (f), (3) and (2) of the Trustees Incorporation Act and this is inconsistent with and/or in contravention of Articles 2 (2) and 26 (1) of the Constitution.
- 20 h. Article 8:01 creates a fusion of powers by making elected members to double as ex-officio members of all subcommittees when they are constituted themselves (sic) into a Steering Committee to sell the Entebbe Club land without authority in breach of s. 2 of the Trustees Incorporation Act and this is inconsistent with and/or in contravention of Articles 2 (2) and 26 (1) of the Constitution of Uganda, 1995.
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- i. Article 7:07 of the Entebbe Club Amended Constitution Revised Edition 2008 that denies the right of appeal to a member being disciplined due to alleged contravention of either the etiquette of Golf or any rules or regulations of the game of golf and non-payment is denial of a hearing which is inconsistent with and/or in contravention of Articles 20 (1) (2), 21 (1), 28 (1), 29 (1) (d), 42, 44 (c) and 50 (2) of the Constitution of Uganda, 1995.
- j. Articles 4.04 (c), 7.04.1 (v) 7.07 (b) (1) of the Entebbe Club Constitution Amended Revised Edition 2008 is inconsistent with and/or in contravention of Articles 20 (1) (2), 21 (1) (2) (3), 42, 43 (1), 44 (c), 45, 50 (1) (2) of the Constitution of Uganda, 1995.
- k. The Act of Amending 1st respondent's Constitution without the required (30) days prior display on Noticeboard breached Article 20 of the Entebbe Club Constitution and this is inconsistent with and/or in contravention of Articles 2 (2), 45, 79 (2) of the Constitution.
- l. The act of humiliating and degrading the petitioners who are paid up members depicting them as not having duly paid membership dues and without following due process and procedures of the 1st respondent and forcing the 6th petitioner to pay Guest Green fees for him to play the game of golf is inconsistent with and/or in contravention of Articles 2 (2), 21 (1), 24, 28 (1), 29 (1) (e), 42, 43 (1) (2) (c), 44 (c) and 45 of the Constitution.
- m. The act of disobeying court orders and proceeding to do actions inconsistent with orders issued by the court to the prejudice of the petitioners and subjecting them to an administrative process parallel to the court was a gross violation of the independence of the judiciary, oppressive of petitioners and is inconsistent with and/or

in contravention of Articles 20 (1) (2), 21 (1) (2) (3), 24, 28 (1) (12), 128 (1), (2), (3), and (4); 126 (1), (2) (a) (b) (c) (d) (e), 50 (1), 43 (1) and 2 (a) (c), 44 (c), 1 (3), 42, 129 (1) and 45 of the Constitution of Uganda 1995.

- 5 n. The act of blocking the petitioners from the Entebbe Club and playing the Game of Golf and continuously subjecting a member to payment of Guest Green Fees to access the Golf Course in disregard of the court order of injunction is inconsistent with and/or in contravention of Articles 2 (2), 20 (1) (2), 21 (1) (2) (3), 26, 27, 28 (1)
- 10 (1), 42, 43 (1) and 2 (a) (c), 44 (c), 45, 29 (1) (d) (e), 126, 128 (3), 257 (1) (d) (q), and (4); 126 (1), 2 (a)(b) (c) (d) and (e), 50 (1), 129 and 25 (1) and (2) of the Constitution of Uganda, 1995.
- 15 o. The act of the 1st - 6th respondents expelling the 6th petitioner under the guise of cessation of membership as punishment for the sole reason of having petitioned the High Court against the respondent's actions of violation of the rights to membership of the Entebbe Club to protect their interest in the land without a hearing was imposing the Draconian penalty is inconsistent with and/or in contravention of Articles 2 (2), 20 (2), 21 (1) (2) (3), 28 (1) (12), 29 (1) (d) (e), 42, 43
- 20 (1) and 2 (a) (c), 42, 44 (c), 45, 50 (1) (2), 126, 128 (3), 129, 138 (1) and 139 (1), 257 (1) of the Constitution, 1995.

The petitioners sought declarations in the same terms as the grounds above and the following orders:

- 25 1. An order quashing the purported expulsion of the 6th petitioner from the membership of the 1st Respondent under the guise of cessation and reinstating him to the membership of the 1st respondent.



2. An order directing the 9th respondent on behalf of the Ministry of Lands, Housing and Urban Development to take all necessary action to protect the fundamental rights of the petitioners and the adherence to the rule of law by the 1st to 8th respondents.

3. An order of mandamus directing the 1st respondent to reinstate the 6th petitioner, Dr. Chris Rutebarika, to full membership of the Club with all attendant benefits and privileges.

4. An order of an injunction restraining all the threatened unconstitutional actions by the respondents.

5. General damages

6. Cost of the Petition.

The Petition was supported by affidavits sworn by each of the petitioners.

The respondents filed answers to oppose the petition and affidavits in support thereof, to which the 1st, 2nd, 3rd, 4th, 5th, 6th, 8th and 9th petitioners filed affidavits in rejoinder.

In their answer to the petition, the 1st, 2nd, 4th, 5th and 6th respondents raised preliminary objections that the petition is frivolous, misconceived and an abuse of court process and ought to be dismissed for, among others, the following reasons:

- a) This Honourable Court has no jurisdiction in the matter as the issues raised in the petition will not require interpretation of any provision of the Constitution of the Republic of Uganda;
- b) There are remedies and forums available under the law for the petitioners to pursue, and therefore an action for constitutional interpretation is not tenable in the circumstances;



c) There is no act or omission of the 1st respondent as alleged by the petitioners that requires interpretation of the Constitution of the Republic of Uganda;

d) The matters in this petition are subject to process in the High Court in Civil Suit No 43 of 2015 brought by the petitioners against the 1st, 2nd, 3rd, 7th, and 8th respondents.

The 3rd respondent, Valentine Wandah, a registered trustee of the Club filed an answer to the petition in which he conceded that the petition has merit, in so far as it highlights both the illegal and unconstitutional acts of his colleagues. He agreed with the petitioners that the amendment of the Club's Constitution and relying on the said amendment to implement their actions, such as demising the Club's interest in its land, violated the Trustee's Incorporation Act and the right of the corporation to hold property. Further that the vesting of Club property in the Executive Committee also violated the Act. That the amendment of the Club's Constitution denied aggrieved parties of the right to appeal against decisions and violated provisions of the Constitution of Uganda. That for those reasons, the petition should succeed. The answer was supported by his own affidavit.

There is no evidence on record that the petition was served upon the 7th respondent. The 7th respondent therefore filed no answer and did not appear at any of the hearings when the petition was called. It is implied that the petition against her was abandoned because the petitioners made no effort to serve her. The petition against the 7th respondent is therefore dismissed under Order 9 rule 19 of the Civil Procedure Rules.

In its answer, the 8th respondent raised a preliminary objection that the petition did not raise any question as to interpretation of the



Constitution. Further, that it disclosed no cause of action against the 8th respondent and for those reasons, it ought to be dismissed with costs.

The 9th respondent also raised a preliminary objection in his answer
5 that the petition does not raise any question as to the interpretation of the Constitution and is therefore misconceived, prolix, vexatious and devoid of any merit and a classic abuse of court process. Further that the petition raises no cause of action against the 9th respondent and for those reasons it ought to be dismissed.

10 **Representation**

At the hearing of the petition on 4th September 2023, all of the petitioners were present in court, but reported that their Advocate was indisposed and could not attend court. The 1st, 2nd, 4th, 5th and 6th respondents were represented by Mr Anthony Bazira while Mr David Nambale appeared for
15 the 8th respondent. Mr Richard Adrole and Mr Sam Tusubira represented the 9th respondent. The 3rd respondent's Advocate did not attend court and neither did the respondent himself appear in court. However, on the 29th April 2021, he was represented by Mr Derrick Kahima.

All parties prayed that their written submissions that were already on
20 record before the previous panel of the Court that sat on 29th April 2021 be adopted by the court as their final arguments in the matter. Their prayers were granted and it is those submissions that were considered before rendering judgment. The 3rd respondent filed submissions on 18th February 2022 as it was directed by court on 29th April 2021 and though
25 he and his advocate did not appear for the subsequent hearing, his written submissions were considered by court as his final arguments in the matter.

Order 6 rule 28 of the Civil Procedure Rules, which is brought into operation by rule 23 of the Constitutional Court (Petitions and References) Rules, provides that:

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

10 I will therefore first dispose of the points of law that were raised by the respondents since all of the parties filed submissions in that regard together with the submissions on the substantive issues in the pleadings. I do so because if the preliminary objections are resolved, they would dispose of the whole petition.

Preliminary Objections

15 Counsel for the 1st, 2nd, 4th, 5th and 6th respondents framed issues in his submissions of which the first issue was whether the petition was properly filed in this court. The 9th respondent raised a similar issue, that is, whether this court has the jurisdiction to conduct an inquiry into the affairs of a private members' club. It is within that issue that counsel
20 substantively addressed the jurisdiction of this court as it relates to the complaints raised in the petition.

Submissions of Counsel

25 In his submissions, Mr Bazira for the 1st, 2nd, 4th, 5th and 6th respondent stated that not every alleged violation of a right gives rise to constitutional interpretation. He relied on Black's Law Dictionary (8th Edition) for the definition of the word *“interpretation”* as *“the process of determining what*

something, especially the law or legal document, means; the ascertainment of meaning to be given to words (and) other manifestations of intention." He asserted that this petition does not raise matters for constitutional interpretation and it is misconceived and an abuse of court process.

5 He relied on Article 137(1) of the Constitution which provides that any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court. He referred to **Engineer Edward Turyomurugyendo K. & 2 Others v Attorney General & Others, Constitutional Petition No. 25 of 2009**, in which the court
10 cited with approval the decision in **Jude Mbabaali v Hon Edward Kiwanuka Ssekandi, Constitutional Petition No 28 of 2012**, where it was held that the only jurisdiction that this court has under Article 137 of the Constitution is to interpret the Constitution; it is not concerned with and has no jurisdiction to entertain matters relating to the violation of
15 rights under the Constitution for which parties seek redress alone, and such matters ought to be brought before a competent court under Article 50.

Counsel further relied on the decisions on the jurisdiction of this court in **Ismail Serugo v Kampala City Council & Attorney General,**
20 **Constitutional Appeal No 2 of 1998; [1999] UGSC 23** and **Attorney General v Major General David Tinyefuza, Supreme Court Constitutional Appeal No 001 of 1997**, in which the court exhaustively dealt with the interpretation of the Article 137 of the Constitution.

He then submitted that this petition does not raise any matter that
25 requires constitutional interpretation and is mostly hinged on the fact that the petitioners were discriminated against by the Registered Trustees when they made a decision to sell/lease the land belonging to the Club,



without the requisite authority. Further that it was not enough for the petitioners to demonstrate that the Constitution is applicable or needs to be enforced under Article 50, but there must be a question for interpretation for this court to have jurisdiction and where a petition does
5 not raise such a question it should be dismissed.

He added that the petitioners' complaint includes their grievances about the enactment of the Constitution of Entebbe Club and the conduct and administrative affairs of the respondents alleged to be in violation of the petitioners' rights. He then asserted that it would be descending into the
10 arena for this court to pronounce itself on questions arising out of administrative misunderstandings which could easily be resolved by another competent court.

He went on to explain that the petitioners seek to obtain two judgments over the same issues since the matters that have been raised in **Joshua**
15 **T. Tuhumwire & 5 Others v. The Registered Trustees of Entebbe Club & 6 Others, High Court Civil Suit No. 43 of 2015** are similar to those raised in this petition. Counsel invited this court to compare the plaint and the petition and concluded that the petition is an abuse of court process.

20 Counsel further submitted that if there was a violation of a court order as it is alleged by the petitioners, the petitioners' redress would be to file an action in the High Court for contempt of court under section 98 Civil Procedure Act. He asserted that inviting this court to adjudicate over a court order alleged to have been violated is a disguised appeal. He
25 contended that the petitioners' evidence that the 1st, 2nd and 4th respondents connived and transferred **Civil Suit No 43 of 2015** to another



judge is an administrative matter which could have been addressed by the Principal Judge.

He relied on the decisions in **Dr. Maurice Alex Muhwezi v. Busitema University & Another, Constitutional Petition No. 50 of 2011**, and
5 **Mbabali Jude v Edward Kiwanuka Ssekandi, Constitutional Petition No 28 of 2012**, and argued that there is no requirement to interpret the Constitution before a party can seek remedies from another court. That the declarations sought by the petitioners would have to be proved through a trial. Counsel further relied on the decision in **Engineer Edward**
10 **Turyomurugyendo** (supra).

Mr Bazira then concluded that interpretation of the Constitution of Entebbe Club is not a matter for the jurisdiction of this court but rather a matter of administrative process. That because the petition seeks to enforce constitutional rights the petitioners ought to have pursued their
15 remedies under Article 50 of the Constitution in the High Court. He prayed that court upholds this preliminary objection and dismisses the petition with costs to the respondents.

In his submissions, Mr Derrick Kahima, counsel for the 3rd respondent, proceeded from the perspective that this court had the jurisdiction to
20 entertain the petition. He therefore did not address the preliminary objections raised by the other respondents about the jurisdiction of the court but only submitted on the substantive issues in the petition, according to the 3rd respondent's reply and affidavit in support.

Mr David Nambale, counsel for the 8th respondent, agreed with Mr Bazira's
25 submissions that this court has no jurisdiction to entertain the petition for the reasons that he stated. He added that the 8th respondent is a wrong

party in this suit. That the petitioners ought to have sued the District Land Board which made the impugned grant in respect of the Club's land, because the Board is an independent body under section 56 of the Land Act. He explained that none of the remedies sought in the petition
5 concerned or were against the 8th respondent and no answer was required from it. That therefore, the petition against the 8th respondent ought to be dismissed with costs.

With regard to the issue that this court has no jurisdiction to conduct an inquiry into the affairs of a private members' club, counsel for the 9th
10 respondent associated himself with the submissions of the 1st, 2nd, 4th, 5th and 6th respondents. He added that the petition only raises allegations about the violation of the petitioners' individual rights and none of them requires interpretation of the Constitution of Uganda.

Counsel drew it to the attention of the court that in paragraph 5 of the
15 petition, the petitioners contend that the orders and actions of the respondents were unconstitutional because they were not given a hearing before the respondents reached their unfair decision; that they did so in utter contempt of court. He agreed that the matters in the petition ought to have been brought before a competent court under Article 50 of the
20 Constitution, not this court. He referred to **Attorney General v. Major General David Tinyefuza and Ismail Serugo v KCC** (supra) to support his submissions. He concluded that for those reasons, the petition is wrongly before this court and ought to be dismissed with costs.

Resolution of the Preliminary Objections

25 The preliminary objections that were raised by the respondents are basically two: (i) that the petition raises no questions as to interpretation

of the Constitution of Uganda, including that this court has no jurisdiction to entertain a petition in respect of the issues of the constitution of a private members' club said to be in contravention of the Constitution of Uganda; and (ii) that the petition discloses no cause of action against the 8th and 9th respondents. The issue about the jurisdiction of this court is paramount; I will therefore address it first.

Issue 1

Since almost all of the respondents challenge the petition on the basis of the same objection, it is pertinent that I set down the relevant part of Article 137 of the Constitution before I consider whether any of the grievances' in the petition falls under it. It provides in part as follows:

137. Questions as to the interpretation of the Constitution.

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

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

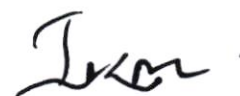
(3) A person who alleges that—

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

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

(4) ...

In **Ismail Serugo** (supra) the court was divided on the interpretation of the provision above. Kanyeihamba, JSC agreed with Wambuzi, CJ, Karokora and Kikonyogo, JJSC on the interpretation of the provision that was



rendered in **Attorney General v David Tinyefuza, Constitutional Appeal No. 001 of 1997**, where it was opined that:

5 "... as far as the case of General D. Tinyefunza v. Attorney-General Constitutional, Appeal No.1 of 1997 [Unreported] is concerned. There is a
10 number of facets to the decision of the Supreme Court in that case. Nevertheless, when it comes to that Court's view of the jurisdiction of the Court of Appeal as a Constitutional Court, its decision in that case is that the Constitutional Court has no original jurisdiction merely to enforce rights and freedoms enshrined in the Constitution in isolation to interpreting the
15 Constitution and resolving any dispute as to the meaning of its provisions. The judgment of the majority in that case, [Wambuzi, C.J., Tsekooko J.S.C., Karokora J.S.C., and Kanyeihamba J.S.C], is that to be clothed with jurisdiction at all, the Constitutional Court must be petitioned to determine the meaning of any part of the Constitution in addition to whatever remedies are sought from it in the same petition. It is therefore erroneous for any
20 petition to rely solely on the provisions of Article 50 or any other Article of the Constitution without reference to the provisions of Article 137 which is the sole Article that breathes life in the jurisdiction of the Court of Appeal as a Constitutional Court."

20 In the same case Wambuzi, CJ explained the jurisdiction of this court succinctly in the following passage, at page 24 of his opinion:

25 "In my view, jurisdiction of the Constitutional Court is limited in Article 137 (1) of the Constitution to interpretation of the Constitution. Put in a different way no other jurisdiction apart from interpretation of the Constitution is given. In these circumstances, I would hold that unless the question before the Constitutional Court depends for its determination on the interpretation of the Constitution or construction of a provision of the Constitution, the Constitutional Court has no jurisdiction."

30 I observed that in paragraphs 9 (e) to (h) of the petition, the petitioners complained that certain articles of the Clubs' Constitution are contrary to provisions of the Trustees Incorporation Act and therefore inconsistent with provisions of the Constitution of the Republic of Uganda. For instance, in paragraph 9 (f) the petitioners allege that Article 19:01 of the



Entebbe Club Constitution, Revised Edition (2008), to the extent that it provides for the consent of the Trustees to the Executive Committee, impliedly allows neglect or default of the Trustees' statutory powers contrary to the Trustees Incorporation Act, and is therefore inconsistent
5 with or in contravention of Articles 2 (2), 20 (1), 21 (1) and 26 (1) of the Constitution of Uganda.

Article 2 (2) of the Constitution of Uganda provides that if any law or custom is inconsistent with any of the provisions of the Constitution, the Constitution shall prevail and that other law or custom shall to the extent
10 of the inconsistency, be void; while Article 20 (2) provides that the rights and freedoms of the individual and groups enshrined in Chapter 4 of the Constitution shall be respected and promoted by all organs and agencies of government and all persons. Article 26 (1) guarantees the right to own property individually or in association with others.

15 Article 19:01 of the Entebbe Club Constitution (**Annex B2**) to the petition provides that:

*"For purposes of the Trustees Incorporation Act, the property of the Club shall be vested in three trustees who shall be elected from among members at the General Meeting and shall be "THE REGISTERED TRUSTEES OF
20 ENTEBBE CLUB." Such elected trustees shall give consent in writing to the Management Committee."*

The Constitution of the Club is the basis of the incorporation of the trustees thereby appointed under sections 1 and 2 of the Act. In Article 1 thereof, it states that it was enacted, solemnly adopted and promulgated
25 by resolution of the members at a General Meeting on the 28th day of March 2009. If the impugned provision is one of those that were agreed upon and it complies with the enabling law, the Trustees Incorporation



Act, I do not see how it can be challenged as one that is in contravention of the Constitution of Uganda for it was included in the Club's Constitution pursuant to the law.

5 With regard to the complaint in paragraph 9 (g) of the petition that the vesting of the property of the Club in the members violates sections 1 (2) (e) and (f), (3) and (2) of the Act and is thus in contravention of Articles 2 (2) and 26 (1) of the Constitution, the statement is inconsistent within itself. If the Trustees hold the property as representatives of the members as is required by the Trustees Incorporation Act, the provision in Article 10 15:01 cannot be in contravention of Article 26 (1) of the Constitution for it simply reinforces the rights of the members to hold property in association with each other. The complaint in paragraph 9 (h) is also related to and contradicts what is stated in the preceding paragraph of the petition.

15 The complaints in paragraphs 9 (i) and (j), in my opinion, relate to the right to be heard and to appeal, as well as the order in which certain complaints may be considered by the Executive Committee of the Club. The petitioners further contend that provisions of the Club's Constitution stated therein contravene Article 50 (2) of the Constitution of Uganda, among others. However, Article 50 (2) of the Constitution of Uganda is a provision that 20 enables one to bring an action against another for the violation of their rights or those of another. It provides for the consideration of the petitioners' complaints stated in the provisions referred to in paragraphs 9(f) to (j) by a competent court, not this court for they are not about the interpretation of the Constitution of the Republic of Uganda.

25 The complaints in paragraphs 9 (b) to (d), and (k) to (o) are clearly about the enforcement of the petitioner's rights that are protected by the Constitution of the Republic of Uganda. The Supreme Court in **Attorney**



General v. Tinyefuza (supra) in the various opinions of the judges, agreed with the opinion of Kanyeihamba, JSC, at page 25 of his judgment, that:

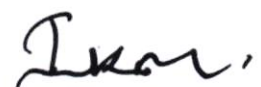
5 *"The marginal note to Article 137 states that it is an Article which deals with questions relating to the interpretation of the Constitution. In my opinion, there is a big difference between applying and enforcing the provisions of the Constitution and interpreting it. Whereas any court of law and tribunals with the competent jurisdiction may be moved by litigants in ordinary suits, applications or motions to hear complaints and determine the rights and freedoms enshrined in the Constitution and other laws, under Article 137, only*
10 *the Court of Appeal sitting as the Constitutional Court may be petitioned to interpret the Constitution with a right of appeal to this Court as the appellate court of last resort."*

Kanyeihamba, JSC concluded that because this court is also the Court of Appeal with many competing interests, it could not have been the intention
15 of the framers of the Constitution that it should be saddled with each and every matter that relates to the Constitution, as follows:

20 *"... the Court of Appeal should not be put in a position of deciding whether or not to abandon appeals involving death sentences, treason and gross violation of other human rights originating from the High Court and entering the Court of Appeal by way of ordinary procedures in order first to resolve trivial matters arising from allegations that they were inconsistent with provisions of the Constitution under Article 137 (3) and (7)."*

Indeed, as their first option, the petitioners filed **Civil Suit No 43 of 2015** in the Land Division of the High Court against the 1st, 2nd, 3rd, 4th, 7th and
25 8th respondents in this petition, on 21st January 2015. The claims in the complaint, **Annexure T12** to the 1st petitioner's affidavit in support of this petition, were the exact claims in this petition. In paragraphs 7 (a) – (c) thereof the petitioners stated thus:

30 a. *The Defendants are illegally selling the Trust Land of Entebbe Club by lease of 99 years which is in perpetuity and removes the Golf Club ownership of*



that land forever and bringing people to trespass on the Golf Club and enter into illegal transactions to the detriment and prejudice of the plaintiffs.

- 5 *b. The plaintiffs bring this action to enforce their rights violated by the Executive Committee in the manner in which the Executive Committee of Entebbe Club please them as if they are nonmembers and nonentities in respect of the Entebbe club affairs and the petition the High Court decide the question whether they as person members of the club as a corporate body as per s.14 of the Trustees Incorporation Act.*
- 10 *c. The plaintiffs also bring this action up for determination of the rights in the Entebbe club affairs, management role-play and safeguarding and preserving the property of the trust to which they are the direct beneficiaries.*

The petitioners obtained an interim court order for an injunction in the same suit to restrain the respondents, or some of them, from perpetrating the illegalities alleged in the plaint. Their complaint in this petition is that

15 the respondents in breach of the court order continued to carry out the exact same actions that were prohibited. I do not think that there was need for the petitioners to complain about a matter that is still pending in a Civil suit before the High Court to this court. That they did so when there are other remedies available to them in the same suit amounts to forum

20 shopping. I therefore accept the submission of counsel for the respondents that the remedies that they seek from this court could have been obtained in the pending suit before the High Court.

It is pertinent to point out that the route through which the petitioners could have validly come to this court while there was a suit pending before

25 the High Court based on the same facts as those in this petition would have been under Article 137 (5). It provides for references to this court where a question as to interpretation of the Constitution arises in any proceedings before a court of law. Such reference would have been framed by the trial court at the instance of the petitioners. In the absence of such

30 a reference the petitioners are wrongly before this court.

Lean.

I would therefore find that the petition now before court raises no questions at all as to the interpretation of the Constitution of the Republic of Uganda. It ought to be dismissed for that reason.

5 However, for completeness, it also ought to be determined whether this court has the jurisdiction to entertain complaints about the constitution of a private members' club, as being inconsistent with the Constitution of the Republic of Uganda. It is pertinent to note that the jurisdiction of this court under Article 137 (1) and (3) (a) is very broad; it includes interpretation of the Constitution as it relates to "*an act of Parliament or*
10 *any other law or anything in or done under the authority of any law.*"

Article 20 (2) of the Constitution provides that the rights and freedoms of the individual and groups enshrined in Chapter 4 thereof shall be respected, upheld and promoted by all organs and agencies of government and by all persons. This implies that in the interpretation of the
15 Constitution by this court there is no discrimination between petitions that are brought in respect of instruments or laws enacted by Parliament and other rule making agencies, including associations.

For that reason, in **Aboneka Michael v Watoto Church, Constitutional Petition No. 019 of 2018; [2023] UGCC 17**, this court entertained a
20 petition brought by an individual who complained that the guidelines issued by the church in respect of the formal requirements before the celebration of a marriage, among others, contravened Articles 31(1) and (3) of the Constitution of Uganda. After hearing the petition court found that the impugned guidelines were not inconsistent with any of the stated
25 provisions of the Constitution. I therefore find that had there been a question as to the interpretation of the Constitution of Uganda raised in

Ikem.

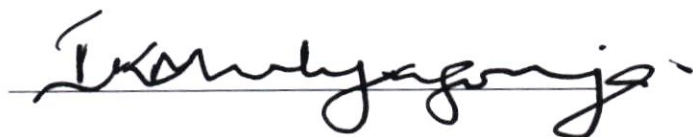
the petition about the Constitution of Entebbe Club, this court would have properly entertained it.

In view of the finding that there was no question as to the interpretation of the Constitution of Uganda in the petition, I see no need to address the
5 issue whether the petition discloses causes of action against the 8th and 9th respondents.

In conclusion, the petition had no merit and I would dismiss it with no order as to costs.

Dated at Kampala this 20TH day of FEB 2024.

10



Irene Mulyagonja

JUSTICE OF THE CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Buteera-DCJ, Kiryabwire, Mulyagonja, Mugenyi & Luswata JJCC)

CONSTITUTIONAL PETITION NO. 16 OF 2015

1. JOSHUA T. TUHUMWIRE
2. ELLIAB W. BERA
3. PAUL KASOZI KAZENGA
4. MASIKO JAMES
5. DR. BAKAMUTUMAHO BARNABAS
6. DR. CHRIS S. RUTEBARIKA ===== PETITIONERS

VERSUS

1. THE REGISTERED TRUSTEES OF ENTEBBE CLUB
2. DR. DAVID KIHUMURO APUULI
(Registered Trustee of Entebbe Club)
3. VALENTINE WANDAH
(Registered Trustee of Entebbe Club)
4. PODI KASSAMI
(Registered Trustee of Entebbe Club)
5. INNOCENT KIHKA
6. DR. TWINEMANZI TUMUBWEINE
7. THE REGISTRAR OF TITLES
8. WAKISO DISTRICT COUNCIL
9. ATTORNEY GENERAL ===== RESPONDENTS

JUDGMENT OF RICHARD BUTEERA, DCJ

I have had the opportunity of reading in draft the Judgment of Lady Justice Irene Mulyagonja, JCC.

I agree with her reasoning, decision and declarations she proposed.

As Kiryabwire, Mugenyi and Luswata, JJCC members of this Coram also agree that, the Petition has no question as to the interpretation of the Constitution and discloses no cause of action against 8th and 9th respondents. It is hereby dismissed for having no merit with no orders to costs.

Dated this^{20TH} day of^{FEB} 2024.


Richard Buteera

DEPUTY CHIEF JUSTICE

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 16 OF 2015

<ul style="list-style-type: none">1. JOSHUA TUHUMWIRE2. ELIAB W. BERA3. MASIKO JAMES4. DR. BAKAMUTUMAHU BARNABAS5. DR. CHARLES S. RUTEBARIKA	}	=====PETITIONERS
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VERSUS

<ul style="list-style-type: none">1. THE REGISTERED TRUSTEES OF ENTEBBE CLUB2. DR. DAVID KIHUMURO APUULI3. VALENTINE WANDAH4. PODI KASSAMI5. INNOCENT KIHKA6. DR. TWINEMANZI TIMUBWEINE7. THE REGISTRAR OF TITLES8. WAKISO DISTRICT COUNCIL9. ATTORNEY GENERAL	}	=====RESPONDENTS
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CORAM: Hon. Mr. Justice Richard Buteera, DCJ

Hon. Mr. Justice Geoffrey Kiryabwire, JA/JCC

Hon. Lady. Justice Irene Mulyagonja, JA/JCC

Hon. Lady. Justice Monica Mugenyi, JA/JCC

Hon. Lady. Justice Eva K. Luswata, JA/JCC

JUDGMENT OF MR. JUSTICE GEOFFREY KIRYABWIRE, JA/JCC

I have had the opportunity of reading the lead Judgment of the Hon. Lady. Justice Irene Mulyagonja, JA/JCC in draft.

I agree with it and I have nothing more useful to add.

Dated at Kampala this.....^{20TH}..... day of^{FEB}.....2024.



.....
HON. MR. JUSTICE GEOFFREY KIRYABWIRE
JUSTICE OF THE CONSTITUTIONAL COURT



THE REPUBLIC OF UGANDA

**THE CONSTITUTIONAL COURT OF UGANDA
AT KAMPALA**

(Coram: Buteera, DCJ; Kiryabwire, Mulyagonja, Mugenyi & Luswata, JJCC)

CONSTITUTIONAL PETITION NO. 16 OF 2015

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PETITIONERS

VERSUS

1. THE REGISTERED TRUSTEES OF
ENTEbbe CLUB
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(Registered Trustee of Entebbe Club)
3. VALENTINE WANDAH
(Registered Trustee of Entebbe Club)
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5. INNOCENT KIHKA
6. DR. TWINEMANZI TUMUBWEINE
7. THE REGISTRAR OF TITLES
8. WAKISO DISTRICT COUNCIL
9. ATTORNEY GENERAL

RESPONDENTS

JUDGMENT OF MONICA K. MUGENYI, JCC

I have had the benefit of reading in draft the lead Judgment of my sister, Irene Mulyagonja, JCC in this matter.

I agree with the decision therein that the Petition be dismissed for the reasons advanced.

Dated and delivered at Kampala this 20TH day of FEB, 2024.



Monica K. Mugenyi

Justice of the Constitutional Court

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

Coram: Buteera, DCJ, Kiryabwire, Mulyagonja, Mugenyi & Luswata. JJCC

CONSTITUTIONAL PETITION NO. 16 OF 2015

- | | | |
|------------------------------|---|-------------------|
| 1. JOSHUA T. TUHUMWIRE | } | :.....PETITIONERS |
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| 3. PAUL KASOZI KAZENGA | | |
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VERSUS

- | | | |
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(Registered Trustee of Entebbe Club) | | |
| 5. INNOCENT KIHKA | | |
| 6. DR. TWINEMANZI TUMUBWEINEE | | |
| 7. THE REGISTRAR OF TITLES | | |
| 8. WAKISO DISTRICT COUNCIL | | |
| 9. ATTORNEY GENERAL | | |

JUDGMENT OF EVA K. LUSWATA, JCC

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

I agree with her and have nothing useful to add.

Dated, signed and delivered at Kampala this ^{20th} day of ^{FEB} 2024.

.....
EVA K. LUSWATA
JUSTICE OF APPEAL/CONSTITUTIONAL COURT