

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA
(COMMERCIAL DIVISION)

MISCELLANEOUS CAUSE No. 0086 OF 2023

5 **KICONCO PATRICK** **APPLICANT**

VERSUS

1. **ATTORNEY GENERAL** }
2. **COMMITTEE ON PUBLIC ACCOUNTS** }
10 **(COMMISSIONS, STATUTORY AUTHORITIES** }
RESPONDENTS
AND STATE ENTERPRISES) OF PARLIAMENT }
3. **O/C CID PARLIAMENTARY POLICE DIVISION** }

Before: Hon Justice Stephen Mubiru.

15 **RULING**

a. Background.

The National Agriculture Advisory Services (NAADS) is one of the statutory semi-autonomous bodies in the Ministry of Agriculture, Animal Industry and Fisheries, established in 2001 by an Act of Parliament (*The National Agricultural Advisory Services Act, 2001*) to specifically facilitate efficient and effective delivery of agricultural advisory services for enhanced production and productivity by, among other things, offering extension services to farmers and help lift them from subsistence farming to modern commercial farming. The UPDF (Uganda Peoples Defence Forces) took over NAADS seed distribution programmes during the year 2014 with a new government programme, “Operation Wealth Creation.”

Since sometime before the Financial Year 2014/15, the Ministry of Agriculture, Animal Industry and Fisheries (MAAIF), through NAADS with District Local Governments and later Operation Wealth Creation (OWC) has been implementing a tea replanting programme. The objective of the programme is to raise tea production, by facilitating the increased distribution and planting of tea saplings, thereby contributing to attainment of the targets envisioned in the tea roadmap. During its management of the programme, NAADS had an arrangement with tea nursery bed operators for the purchase of tea saplings from them, for distribution to tea farmers in the

districts of Kabale, Kisoro, Kanungu, Rukungiri, Mitooma, Ntungamo, Kamwenge, Mbarara, Rubanda and Rukiga, as part of eight others in the tea growing belt (the others being Buhweju, Bushenyi, Kyenjojo, Zombo, Sheema, Kikuube, Rwampara, and Kabarole), as part of its tea extension services for the production, procurement and distribution of tea saplings within those districts. The NAADS programme is the major buyer of the saplings from the nursery bed operators, and was responsible for distributing them to farmers until recently during the year 2022, when Government took a decision to stop the distribution of coffee, tea, and other seedlings through NAADS and UCDA to allow farmers to directly access funds through the Parish SACCOs under the Parish Development Model (PDM) and buy their own seedlings.

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During or around the December, 2018, tea nursery bed operators in Kabale District under their umbrella organisation were reported to have rejected shs. 1,000,000,000/= that had been released by the National Agriculture and Advisory Services (NAADS), arguing that it was too little compared to the shs. 48 billion they were demanding (see “Tea nursery bed operators reject Shs. 1 billion from NAADS” at <https://witnessradio.org/tea-nursery-bed-operators-reject-shs1-billion-from-naads/>). The seven hundred and eleven (711) or so tea nursery bed operators in the South Western region claimed that NAADS owed them a total of Shs.132.4 billion for supplying tea seedlings to farmers in the districts of Kabale, Kisoro, Kanungu, Rubanda, Rukiga, Rukungiri, Ntungamo, Isingiro and Mitooma since the year 2015.

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Upon NAADS stating that there was no money for tea seedlings in that year’s financial budget, the disgruntled tea nursery bed operators sought the services of the applicant, to recover the overdue payments for the tea saplings supplied to NAADS. On 1st July, 2019 the applicant obtained a representative order from Court authorising eight applicants, on behalf of the over seven hundred (700) others, to sue the National Agriculture Advisory Services (NAADS), the Attorney General, and the stated ten (10) District Local Governments. Subsequently The applicant duly filed *High Court (Commercial Division) Civil Suit No. 889 of 2019; Bvaruhanga Frank & 7 others v. National Agricultural Advisory Services (NAADS) and 11 others* claiming shs. 143,621,201,500/= being the value of the saplings which the plaintiffs and the people whom they represented in representative capacity supplied to Government but were not paid, and the associated compensation for the attendant loss. The parties eventually reached a Consent

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Judgment which was filed on the Court record on 8th January, 2021. By that judgment, it was agreed as follows;

- 5 1. That the parties acknowledge that the number of tea saplings estimated to have been planted in the acreage verified by GPS in the districts of Rubanda, Rukiga, Rukungiri, Ntungamo, Kisoro, Kabale, Mitooma and Kanungu districts is 106,640,606 tea saplings valued at UGX 42,656,242,400 (Forty-Two billion, Six Hundred Fifty-Six Million; Two Hundred Forty Two Thousand, Four Hundred Shillings).
- 10 2. That of the above amount in paragraph 1, UGX 8,237,098,116 (Eight billion, Two Hundred Thirty-Seven Million; Ninety Eight Thousand, One Hundred Sixteen Shillings) has been duly paid to eligible Nursery Bed Operators and UGX 7,118,326,249 (Seven billion, One Hundred Eighteen Million; Three Hundred Twenty-Six Thousand, Two Hundred Forty-Nine Shillings) has been committed for payment by the 1st defendant.
- 15 3. That the parties acknowledge that the outstanding balance is UGX 27,300,818,035 (Twenty Seven Billion, Three Hundred Million, Eight Hundred Eighteen Thousand, Thirty-Five Shillings) and agree that this amount will be paid in an agreed phased manner.
- 20 4. That the parties further agree that an interest of 20% of the claim in paragraph 1 per annum for a period of 3 years shall be paid to cater for the time factor and the inconvenience that was caused to the Plaintiffs amounting to UGX 25,593,745,440 (Twenty-Five Billion, Five Hundred Ninety-Three Million, Seven Hundred Forty-Five Thousand, Four Hundred Forty Shillings).
- 25 5. It is agreed that 40% of the total value of Tea saplings that the Government was unable to procure shall be paid after a joint verification exercise by the parties as per the terms of reference to ascertain the quantum of the saplings that were not evacuated from the nursery beds.
- 30 6. That term of reference in 5 above shall be developed by the parties and the said exercise in paragraph 5 shall be commenced within one month from the date of signing of this consent.
7. That the parties agree that all the outstanding payments will be paid to the bank account provided by the Plaintiffs starting with UGX 27 billion shillings in financial year 2020/2021 and the balance in the financial year 2021/2022.
8. That the taxed costs of this matter be awarded to the plaintiffs.
- 35 9. That the plaintiffs withdraw the suit against all the defendants.

The judgment debtors have during the period running from June, 2021 to November, 2022, paid two additional instalments in further part payment of the decretal sum, raising the total sum paid so far to a sum in the region of shs. 39,000,000,000/=

In the meantime, while scrutinizing the report of the Auditor General on the financial statements of NAADS for the financial year 2021/2022, and amidst an undertone of complaints from farmers, mainly coffee and tea farmers, who had prepared their gardens but did not have access to the seedlings, and those from nursery bed operators who are stuck with seedlings and have no people to buy them, the Committee on Commissions, Statutory Authorities and State Enterprises (COSASE), found it necessary to summon and meet the Executive Director of the National Agricultural Advisory Services (NAADS) a one Mr. Samuel Mugasi on 8th to 10th August 2023. Following that meeting, the committee summoned the applicant Mr. Patrick Kiconco Katabaazi, a partner with M/s Pathways Advocates, requiring him to produce specified documents relating to the suit, at that meeting.

On the 10th August, 2023, the applicant appeared before the 2nd respondent and made a statement in which he explained that he was prevented by the Advocate–client privileged relationship from submitting the documents which were required of him. Being dissatisfied with that statement the Chairperson of the 2nd respondent handed the applicant over to the 3rd respondent to record a police statement and commence investigations into the matter.

b. The application.

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The application is by Notice of motion made under the provisions of sections 33, 36 and 38 of *The Judicature Act*; section 98 of *The Civil Procedure Act* and Rules 3 and 6 of *The Judicature (Judicial Review) Rules*). The applicant seeks a total of seven orders, namely; - (i) a declaration that the respondents’ investigations and inquiries into payments made under Orders of Court and / or in execution of Orders of Court in *High Court (Commercial Division) Civil Suit No. 889 of 2019; Bvaruhanga Frank & 7 others v. National Agricultural Advisory Services (NAADS) and 11 others* and the actions of the 2nd and 3rd respondents as agents of the 1st respondent are *ultra vires*, illegal and an affront to the Advocate-client privileged information and the independence of the Judiciary; (ii) a declaration that orders of 2nd and 3rd respondents to produce generic and personal information regarding transactions on the client account, general lists of payments and client bank account details, sums paid on such accounts, Advocate-client service agreements are

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ultra vires, illegal and an affront the Advocate-client privileged information; (iii) an order of prohibition restraining the respondents, their agents or servants from demanding or forcing the applicant to release to the Committee, law firm account details, client payment lists, Client's bank account numbers, advocate-client agreement from the applicant; (iv) a permanent
5 injunction prohibiting the respondents, their agents or anyone operating under their authority from investigating, inquiring, auditing or interfering in any way whatsoever with subsisting orders of Court in *High Court (Commercial Division) Civil Suit No. 889 of 2019; Bvaruhanga Frank & 7 others v. National Agricultural Advisory Services (NAADS) and 11 others*, and any payments therefrom; (v) a permanent injunction prohibiting the respondents, their agents or
10 servants from demanding for and or compelling the applicant to release to them, law firm account details, client payment lists, Client's bank account numbers, advocate-client agreement from the applicant; (vi) an award of general damages; and (vii) the costs of the application.

It is the applicant's case that his law firm represented eight plaintiffs in a representative suit
15 against Government vide *High Court (Commercial Division) Civil Suit No. 889 of 2019; Bvaruhanga Frank & 7 others v. National Agricultural Advisory Services (NAADS) and 11 others*. That suit was concluded through a consent judgment in favour of the plaintiffs and part payment was made by the Government to the applicant for onward transmission to the plaintiffs. The 2nd respondent on 9th August, 2023, issued a letter to the applicant by which he was required
20 to appear before 2nd respondent to interact with them on payments made in compliance with that consent judgment.

The applicant did not appear for the meeting with 2nd respondent but sent a letter informing the Committee that he had a court matter to attend to the same day and time. The 2nd respondent
25 through the clerk to the committee responded to the letter and invited the applicant to appear on 9th August, 2023 and take the following documents; (i) the representative order that allowed the plaintiffs to sue in a representative capacity; (ii) evidence indicating that NAADS paid funds through the law firm account; (iii) evidence indicating that the law firm has paid the above funds to the nursery bed operators; (iv) the list of beneficiaries indicating acknowledgements of the
30 said funds; (v) agreement with nursery bed operators giving authority to represent them; and (vi) evidence that the said agreement was registered with Law Council.

The applicant contends that the Plaintiffs put in place a mechanism for resolving complaints related to payment and no complaints of any nature have come up. The issue which the 2nd respondent is scrutinizing, i.e. the payments made to claimants and beneficiaries of a Court Judgment was not amongst those issues that were flagged by the Auditor General in his report to Parliament. The respondents are in effect questioning how the consent judgment / decree was reached at and how the payments were made thereunder. The investigations by the respondents exceed their constitutional mandate and are *ultra vires*, illegal and an affront to the Advocate-client privileged information and the independence of the judiciary. The manner in which the investigations and inquiries are being conducted by the respondents has the potential of threatening the implementation of the consent judgment / decree. The demand for documents which contain privileged information under the advocate-client relationship is *ultra vires* and illegal. The demand for documents which contain privileged information under the advocate-client relationship is *ultra vires* and illegal, having the potential of exposing the applicant to liability as against the clients of the firm, whose consent is needed before personal information obtained from them by the firm can be released to the respondents.

c. The respondents' affidavit in reply;

In their affidavit in reply sworn by the Deputy Clerk to Parliament, the respondents aver that Parliament is vested with the mandate to exercise oversight over the utilization of public funds. In exercising that oversight the Parliament can examine, debate and consider the report of the Auditor General including financial statements, submitted to Parliament of the accounts audited by him. Parliament is empowered through its Committees to call any, person holding public office and private individuals to submit memoranda or appear before them to give evidence. The Public Accounts Committee on (Commissions, Statutory Authorities and State Enterprises) also known as PAC-COSASE is established by law to exercise the oversight function on behalf of Parliament in respect to reports and audited accounts of statutory authorities, corporations and public enterprises. That Committee in exercise of its mandate reviewed the report of the Auditor General on the Financial Statements of the National Agricultural Advisory Services (NAADS) for the year 2021/2022 and discovered that there were outstanding obligations/arrears to various

service providers and / or beneficiaries. Parliament is duty bound, as the peoples' representative to ensure good governance and proper accountability of public funds.

On 8th August, 2023 the PAC-COSASE invited the Accounting Officer of NAADS to explain the
5 outstanding obligations identified in the Auditor General Report. In his interaction with the PAC-COSASE, the Accounting Officer of NAADS revealed that part of the outstanding arrears were arising from a Consent Judgment vide *High Court (Commercial Division) Civil Suit No. 889 of 2019; Byaruhanga Frank & 7 Others vs. National Agricultural Advisory Services (NAADS) and 11 Others*. He also informed the committee that payment under the consent judgment was made
10 through the plaintiffs' lawyers, M/s Pathways Advocates. The Committee then invited the applicant in his capacity as the managing partner of M/s Pathways Advocates to provide proof that NAADS paid the decretal sum through the law firm and evidence that the law firm paid the funds from the decretal sum to Nursery Bed Operators.

15 The applicant appeared before PAC-COSASE and revealed that he had indeed received the decretal sum from NAADS and paid the same to the intended beneficiaries, but declined to furnish the committee with proof that his law firm paid the decretal sum to the Nursery Bed Operators and the list of beneficiaries indicating acknowledgement of the said funds. The Committee in no way inquired into the judgement or order of court but only interrogated issues
20 about disbursement of funds to the beneficiaries. Indeed, it has no intention of testing the validity or veracity of any order of court. Once the applicant offered himself as a witness, the Committee had powers to compel him to provide any other information necessary to explain the accountability of the funds he paid to the beneficiaries in line with the Constitution and the Rules of Procedure of Parliament of Uganda. The Committee forwarded the matter to the Parliamentary
25 Police Division for further management.

PAC-COSASE has not in any manner exceeded or acted outside its mandate in respect to the conduct and management of its inquiry into the report of the Auditor General on the Financial Statements of the National Agricultural Advisory Services (NAADS) for the year 2021/2022.
30 Payments of the decretal sum vide *High Court (Commercial Division) Civil Suit No. 889 of 2019; Byaruhanga Frank & 7 Others vs. National Agricultural Advisory Services (NAADS) and*

11 others, were contained in the financial statements of NAADS which form part of the Auditor General's Report. The Committee only sought proof of whether the payments under the consent judgment were duly made to the intended beneficiaries, upon complaint of the intended beneficiaries and the Auditor General, which does not threaten or infringe on the Advocate-client privileged relationship. The Committee does not in any way intend to jeopardize the implementation of the consent judgment but is only interested in ensuring proper accountability of the funds already disbursed in satisfaction the consent judgment.

d. Submissions of counsel for the applicants:

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M/s Pathways Advocates on behalf of the applicants submitted that the Parliamentary Committee is investigating the execution of High Court order arising from Civil Suit 889 of 2019 and its exaction process which is out of their mandate. Separation of powers bars Parliament from investigating into how a court order was issued, its execution, and the processes of Court. Annexure C on the application the 2nd last paragraph the committee saying it wishes to interact regarding circumstances under the consent judgment. By summoning an advocate who participated in the proceedings, the Committee engaged in activities which would be an investigation of the execution of a Court judgment. *Hon. Mr. Justice Joseph Murangira v. Attorney General, Constitutional Petition No. 7 of 2014* regarding civil suit No. 3 of 2009 at page 24 of the judgment, it was held that PAC's purported observations and recommendations which sought to question how a Judicial Officer arrived at his decision was an attempt to control, direct and interfere with the independence of a Judicial Officer in the exercise of his Judicial function. In that case a Judge had been summoned to PAC regarding a consent judgment that he had enters in suit over which he presided.

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In the instant case, execution of the consent order of 7th January, 2021 has not yet ended and the decree has not been fully executed. Execution is still on by way of reference No. 3 of 2023. Therefore an investigation by Parliament into the processes of court is a total abuse of the doctrine of separation of powers. In *Bashaha Alex T/a Bashasha and Co. Advocates Attorney General and Three others, H.C. Miscellaneous Cause No.223 of 2016*, arising from Nakawa Misc. Cause No. 65 of 2014 at page 7, 8 and 9, it was held that any police investigations into the

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circumstances/facts of the consent Judgment amounted to interference with the decision of court and consequently the execution of the decree of court. To do so without following the due process of challenging such consent judgment would be out rightly illegal. The investigations that were being carried on by the police into the execution of the decrees, even when the
5 Ministry of Justice had advised the police to restrain from investigations of court orders, were found to be a direct interference in the execution of a court order and undermining of judicial powers. In that case, decrees and orders for payment, had been issued by court in multiple suits and part payment has been made in the matters through the applicants for onward transmission to their clients. The Court held that the police force does not have the mandate to investigate
10 matters of administration of an estate of a deceased or mismanagement of the same where court has issued and/or granted letters of administration.

The affidavit in reply from Parliament by Mr. Waisswa. Paragraph 23 and 24 what they are doing is to investigate how the Court order was obtained. The entire affidavit in reply does not
15 show any suspected fraud on the part of the applicant to mandate Parliament to investigate into the Court Order. Annexure “E” Parliament asked the applicant to produce the agreement that he was authorised to represent the said beneficiaries. The pleadings in the matter were filed by the applicant. It is inquiring into the proceedings of Court by asking for the instrument of instructions.

20 Paragraph 8 of the affidavit in support is privileged information. Regulation 7 of *The Advocates (professional conduct) Regulations* provides for non-disclosure of client’s information. Annexure “E” attached to the affidavit in support shows that Parliament requested the Parliament in the matter to produce a representative order, bank accounts of the clients, instruction agreements.
25 Bank accounts are private information, the exceptions to accessing private data do not apply. The affidavit in reply does not disclose any exceptions. Under Section 51 (c) of *The Advocates Act* it is the certificate of a notary that is sent to the Law Council. The agreements are privileged. Paragraph 25 of the affidavit in reply, shows that they are acting based on complaint of intended beneficiaries. Rule 30 of the Parliamentary rules of 2022 provides that citizens approach
30 Parliament through a petition. The committee cannot do it on its own motion. They prayed that the application is allowed.

e. Submissions of Counsel for the 1st and 3rd respondents.

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Counsel from the Attorney General’s Chambers on behalf of the 1st and 3rd respondents submitted that Article 90 (4) (c) is a general power of production of documents which is not limited. Paragraph 10 of the respondent’s affidavit, the Committee is examining the books and accounts of NAADS. Paragraph 11 of the affidavit o Henry Yoweri Waisswa. They are pursuing
10 outstanding obligations. Para 12 the Accounting officer was called to explain the domestic arrears on 8th August, 2023. He informed the committee that it arose from a judgment. The Committee is pursuing proper accountability of the funds due under the consent judgment. Article 164 Parliament is monitoring expenditure of public. The last paragraph of the letter of 2nd August, 2023; he was summoned for purposes of finding answers to the audit queries. Annexure
15 “K” part 2 of the Auditor General Report. The Auditor General did not identify it as an area of interest specifically but in general terms. The applicant was invited as a witness for the Committee to satisfy itself that the public funds were paid. The 3rd respondent should not have been joined. The Audit report mentioned domestic arrears which required to be inquired into before appropriation. The consent judgment has only apart payment hence more funds need to be
20 appropriated. The Committee had to satisfy itself that the payments are in accordance with the law. It is an oversight function being exercised.

f. Submissions by Counsel for the 2nd respondent.

25 Legal Counsel from Parliament on behalf of the 2nd respondent submitted that the Advocate-client privilege does not arise because what is going on is oversight to ensure proper accountability for public funds. The summons protect the advocate from accusations of violating confidentiality but the client can assert the privilege. Parliament has not sought bank accounts. They need a list of names and proof of acknowledgement. They are recipients of public funds.
30 The public has a right to know where their money is going. This payment does not attract confidentiality of that nature. The information needed is that which will enable it perform its

oversight role. Reliance is placed on *Yo Uganda Limited and 2 others v. URA Civil Appeal No. 9 of 2023*. Rule 159 and 181 of *The Rules of Procedure of Parliament* a Committee has power to examine the report of public bodies. What is going on are accountability processes. It was sparked off by the Auditor General's Report and under article 164 of *The Constitution* as well as
5 section 45 (5) of *The Public Finance Management Act* where the accounting officer is accountable to Parliament for public funds.

g. The decision.

10 Judicial review is a process through which the High Court exercises its supervisory jurisdiction over proceedings and decisions of inferior courts, tribunals and other public bodies or persons. In deciding a Judicial Review application, the court is not concerned with the merits of the decision in respect of which the application is made. It is concerned with the lawfulness of the decision making process; whether the decision constituting the subject matter of the application for
15 judicial review was made through error of law, procedural impropriety, irrationality or outright abuse of
Jurisdiction generally. The grounds upon which a grievance for Judicial Review is based are illegality, irrationality and procedural impropriety.

20 For one to succeed in an application for judicial review, the applicant must prove that the decision or the act complained of is illegal, irrational or procedurally improper. Rule 3 of *The Judicature (Judicial Review) Rules, 2009* classifies as appropriate for judicial review, applications for; an order of mandamus, prohibition or certiorari; or an injunction under section
25 38 (2) of *The Judicature Act* restraining a person from acting in any office in which the person is not entitled to act. The Parliament of Uganda and its Committees are public bodies whose decisions are subject to the court's power of judicial review (see *Master Links Uganda Limited and another v, The Attorney General, H.C. Miscellaneous Cause No. I67 of 2022*).

The contention in this case is that in summoning the applicant to appear before it and produce
30 documents relating to an ongoing execution of a Court decree, the Public Accounts Committee on (Commissions, Statutory Authorities and State Enterprises) also known as PAC-COSASE,

has exceeded its mandate, threatens to violate the Advocate-client privilege, undermines judicial independence and is therefore acting illegally. The respondents refute this and contend that the Committee is within its powers and has not violated the Advocate-client privilege.

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1. The oversight mandate of Parliament.

It is essential to understand that all the three branches of government; the Executive, the Legislature and the Judiciary, are bound by and work within the confines of the Constitution. Each of the three arms of government has its own field of operation with different characteristics and exclusivity and is meant by the Constitution to exercise its powers independently (see *Major General David Tinyefuza v. Attorney General, Constitutional Petition Appeal No. 1 of 1997*). Parliament cannot step outside the bounds of authority prescribed to it by the Constitution. It has only those powers vested in it by the Constitution expressly or by necessary implication or by other statutes, which are not in conflict with the Constitution. It follows, therefore, that Parliament may not confer on itself or on any of its constituent parts, any powers not conferred on them by the Constitution expressly or by necessary implication.

Under Article 164 (c) of *The Constitution of the Republic of Uganda, 1995*, Parliament has the mandate to “monitor all expenditure of public funds.” This oversight is part of the means by which Parliament holds the executive accountable for its actions and for ensuring that it implements policies in accordance with the laws and budget passed by the Parliament. Among the tools and mechanisms of Parliamentary oversight are; interpellations (requiring the justification of a certain policy by a cabinet Minister), question time (intended to clarify or discuss government policies), hearings (either in plenary or committee meetings), budget oversight (to ensure financial accountability), and committee inquiries (ad-hoc or standing Parliamentary Committees). Through those mechanisms, Parliament approves and scrutinises government spending by highlighting waste within publicly funded services. Its aim is to improve the economy, efficiency and effectiveness of government expenditure.

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The Auditor General is required by article 163 (4) of *The Constitution of the Republic of Uganda, 1995*, and section of *The National Audit Act, 2008*. to submit to Parliament annually a report of the accounts audited by him or her under clause (3) of the article (and section 13 (1) of *The National Audit Act, 2008*, requiring him or her to audit and report on the public accounts of
5 Uganda and of all public offices, including the courts, the central and local government administrations, universities and public institutions of like nature, and any public corporation or other bodies or organisations established by an Act of Parliament; and financial and value for money audits in respect of any project involving public funds) for the financial year immediately preceding.

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Statutory audits are conducted for Government ministries, departments and agencies in accordance with the International Standards of Supreme Audit Institutions (ISSAIs) and relevant ethical requirements. The objectives of the statutory audits include: - a) to obtain reasonable assurance whether the financial statements as a whole are free from material misstatements due
15 to fraud or error, thereby enabling the auditor to express an opinion on whether the financial statements are prepared, in all material respects, in accordance with applicable financial reporting framework; b) to report on the financial statements, and communicate as required by the ISSAIs in accordance with the auditor's findings; and c) to communicate to the users, management, those charged with management, those charged with governance, or parties outside
20 the entity in relation to matters arising from the audit as required by the standard or by legislation.

An adverse opinion means the Auditor General has concluded that the audited financial statements do not fairly represent the entity's financial position or financial performance, and / or
25 that there are significant departures from accounting practices. According to section 20 of *The National Audit Act, 2008*, where the Auditor General becomes aware of; - (a) any payment made without due authority; (b) any deficiency or loss occasioned by negligence or misconduct; (c) any failure to observe a policy of economy; or (d) any sum which ought to have been, but was not brought to account, he or she is required, in the case of expenditure, disallow the sum as a
30 charge on public funds and in all other cases, call in question the sum concerned and make a

report on the sum to the Speaker of Parliament who in turn is required to refer the report to the appropriate committee of Parliament.

5 Regulation 181 of *The Rules of Procedure of the Parliament of Uganda, SI 30 of 2021* spells out the functions of the Committee on Public Accounts (Commissions, Statutory Authorities and State Enterprises), as being; - the examination of the reports and audited accounts of Statutory Authorities, Corporations and Public Enterprises after the Clerk has received the Auditor General's report submitted in accordance with clause (4) of article 163 of the Constitution relating to Commissions, Statutory Authorities and State Enterprises, and the Speaker has caused
10 the report to be laid before the House by a Commissioner, and the report and referred it to the Committee for consideration and examination of the recommendations of the Auditor General on the audited accounts of the Commissions, Statutory Authorities and State Enterprises. The Chairperson of the Committee is required to present the report of the Committee before the House for purposes of debate, within six months of the referral of the report of the Auditor
15 General to the Committee.

It is in that context that the Auditor General's report for the 2021/2022 financial year was referred to the Public Accounts (Commissions, Statutory Authorities and State Enterprises) Committee. That report indicated that NAADS had diverted shs. 172 million towards
20 procurement of farm inputs without approval, and had spent substantial sums of money (about Shs7 billion) on domestic arrears that had not been budgeted for. The following extract is taken from the "Report of the Auditor General on the Financial Statements of National Agricultural Advisory Services for the Year Ended 30th June, 2022"

25 2.0 Outstanding domestic arrears: UGX.14,353,976,164
Section 21(2) of the Public Finance Management Act, 2015 states that a vote shall not take any credit from any local company or body unless it has no un paid domestic arrears from a debt in the previous financial year; and it has capacity to pay the expenditure from the approved estimates as appropriated by Parliament for that
30 financial year.

On the contrary, I noted that the entity had unsettled domestic arrears as at 30th June 2022 to the tune of UGX.14,353,976,164. Although the figure reduced by 41.5%

from the prior year balance; I noted that the arrears balance remained substantial. Out of this balance, UGX.1,234,379,525 were new arrears accumulated during the current year under review. The table below refers;

5 Table 5 showing the trend of accumulated arrears

No	Year End	Amount (UGX)	% increase/decrease
1.	30th June 2020	13,228,441,399	-
2.	30th June 2021	20,313,148,061	34.9%
3.	30th June 2022	14,353,976,164	(41.5%)

10 Continued accumulation of domestic arrears adversely hampers budget performance in the subsequent year as outputs anticipated in the appropriated budget cannot be attained due to settlement of the arrears. Further, long outstanding arrears could incur interest charges which lead to wasteful expenditure.

15 The Accounting Officer promised to ensure that all outstanding arrears are settled within the available funds and that the entity would endeavour to avoid occurrence of new arrears.

20 I advised the Accounting Officer to ensure that the entity does not accumulate more arrears by strictly adhering to the Government Commitment Control system and to engage the PS/ST for resources to settle the arrears.

The Public Accounts (Commissions, Statutory Authorities and State Enterprises) Committee is one of the standing committees of the 11th Parliament. The Committee reviews and reports on the Auditor General's report relating to the Central Government, including ministries and departments, as well as Commissions, Statutory Authorities and State Enterprises. The
25 *Constitution of the Republic of Uganda, 1995*, in Article 90 (4), provides that in the exercise of their functions, committees of Parliament;

- (a) May call any Minister or any person holding public office and private individuals to submit memoranda or appear before them to give evidence;
- 30 (b) May co-opt any Member of Parliament or employ qualified persons to assist them in the discharge of their functions;
- (c) Shall have the powers of the High Court for—
 - (i) Enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
 - 35 (ii) Compelling the production of documents; and

- (iii) Issuing a commission or request to examine witnesses abroad.

Furthermore, according to article 94 (1) of *The Constitution of the Republic of Uganda, 1995* subject to the provisions of this Constitution, Parliament may make rules to regulate its own
5 procedure, including the procedure of its committees. In performing those functions, Rule 208 of
The Rules of Procedure of the Parliament of Uganda, SI 30 of 2021 provides for the
Committee’s special powers of summoning witnesses, as follows;

208. Special powers of Committees;

10 In the exercise of its functions, a Committee—

- (a) May call any Minister or any person holding public office and private individuals to submit memoranda or appear before them to give evidence;
- (b) May employ qualified persons to assist it in the discharge of its functions;
- (c) May call or invite any person to take part in the proceedings of the
15 Committee without the right to vote;
- (d) Shall have the powers of the High Court for—
 - (i) Enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
 - (ii) Compelling the production of documents; and
 - (iii) Issuing a commission or request to examine witnesses abroad.
- (e) Order for the arrest and confinement of a recalcitrant witness for purposes of investigation by a competent authority; or
- (f) Cite any person for contempt of Parliament.

25 This power is extremely broad, and for good reason: it is fundamental to Parliament’s ability to conduct all of its other constitutional responsibilities. No distinctions are made between different types of documents or categories of witnesses. The Committee can therefore technically summon anyone as a witness including Ministers, Government department officials, Government service providers and private individuals. All types of public servants, political leaders, including the
30 Prime Minister, technical and lay witnesses, may be called before an accountability committee, though it is most commonly Accounting Officers from the respective government agencies or local Governments. Witnesses are key to determining why irregularities occurred, which may include: procurement weaknesses, poor financial management, fraud, inadequate internal controls, inadequate information collected, recorded and reported to management, inadequate
35 training of staff, inadequate monitoring by senior management, and insufficient transparency and

accountability; what has been done about them, and what will prevent them from happening again.

It is in exercise of those powers that by its letter dated 9th August, 2023 written by the Clerk to
5 Parliament, inviting the applicant to appear before the 2nd defendant, which letter reads as follows;

10 RE: INVITATION FOR A MEETING WITH THE COMMITTEE ON PUBLIC ACCOUNTS (COMMISSIONS, STATUTORY AUTHORITIES AND STATE ENTERPRISES).

The Parliamentary Standing Committee on Public Accounts, Commissions, Statutory Authorities and State Enterprises (PAC-COSASE) is mandated by Articles 90 and 163 of the Constitution of Uganda, 1995 and Rule 181 (4) of the Rules of Procedure of Parliament, to consider and examine the recommendations of the Auditor General
15 on the audited accounts of Commissions, Statutory Authorities and State Enterprises.

The Report of the Auditor General for FY ended 30th June, 2022 was submitted to Parliament on 19th January, 2023 and the Committee is considering it in accordance with the law. The Committee is currently interfacing with the management of the
20 National Agricultural Advisory Services (NAADS).

It has come to the attention of the Committee that NAADS made a payment of UGX 27,000,000 (Twenty-seven billion Shillings) sometime in 2021 as provided for in the consent judgment / decree in Byaruhanga Frank & 7 Ors. V. NAADS & 11 Ors. Civil Suit No.889 of 2019 meant for Nursery Bed Operators, your clients. The Committee
25 wishes to interact with you regarding the circumstances regarding the consent judgment, and payment of the said amount to your clients.

The Committee has consequently instructed me to invite you for a meeting over the same tomorrow, Thursday 10th August, 2023 in South Committee Room, 2nd Floor, South Wing, Parliament Building at 10:00 am.
30

The applicant's formal statement in response thereto dated 15th August, 2023 reads as follows;

35 RE: STATEMENT REGARDING PAYMENTS TO TEA NURSERY BED OPERATORS UNDER HCCS No. 889 OF 2019: J3YARUUNGA FRANK & 7

OTHERS vs. NATIONAL AGRICULTURAL ADVISORY SERVICES & 11
OTHERS.

5 Pathways Advocates is a private law firm, legally authorized to provide legal services in Uganda. As a law firm, we are mainly engaged in handling Commercial disputes, civil and criminal matters, offering representation, public policy advocacy and advisory services to our clients.

10 In May, 2019, we were approached by Mr. Byaruhanga Frank, Dr. Francis Runumi, Mr. George Owakukiroru, Mr. Tumwesimira Caleb Kipande, Mr. Arinaitwe Sam Kajojo, Mr. Tumushabe JuJius, Mr. Kanyamunyu Fidelis and Rev. Byamugisha Bernard (our clients) who sought our assistance in obtaining for them a Representative Order in a matter in which they wanted to institute a suit on behalf of and in the interest of 711 other beneficiary Nursery Bed Operators against the
15 National Agricultural Advisory Services (NAA.DS), the Attorney General and other District Local Governments in South Western Uganda. The Application for a Representative Order had hitherto been filed before Commercial Court on the 12th of February, 2019 by another law firm. On 14th of May, 2019, we filed a Notice of Change of Advocates in the Commercial Division of the High Court and later
20 successfully secured this Representative Order on the 1st of July, 2019. (A copy of this Representative order is attached hereto as “A”)

25 After securing the Representative Order, the Plaintiffs approached us to conclude the negotiations regarding the taking up of further instructions to file the Civil Suit. However, our clients had financial challenges at the time and were not in position to raise money for implementing the Representative Order that is: filing fees and other costs that were associated with assembling the evidence and other legal processes that were needed to found the case which prompted them to come up with a proposal to hold fundraising drives culminating in a major fundraising drive that happened in
30 Kanungu and was attended by political, religious, opinion leaders and well-wishers. Notable among them was the then District Chairperson of Kabale District, the late Patrick Keihwa; the then Hon. Karungi Elizabeth, the woman M.P for Kanungu District and Hon. James Kaberuka, the then Member of Parliament for Kinkiizi West, among others. According to our clients, the proceeds from this fundraising drive was
35 only able to cover costs related to implementation of the Representative Order, that is; publication of the Representative Order Notice in New Vision, Daily Monitor – and Orumuri Newspapers and limited expenses for the Representatives to prepare the suit.

40 Financial challenges on the side of the Plaintiffs account for the time lag between the date of the grant of the Representative Order and the date of the filing of the Civil

Suit. Ultimately, documentation of claims got underway and at the end of this process, the entire claim was found to amount to UGX 143,621,201,500= (One Hundred Forty-Three Billion, Six Hundred Twenty-One Million, Two Hundred One Thousand, Five Hundred Shillings). On the 28th of October, 2019, the suit was filed and registered as High Court (Commercial Division Civil Suit No. 889 of 2019: Byaruhanga Frank & 7 Ors vs. National Agricultural Advisory Services & 11 Ors.

The suit was referred for mediation before the then Registrar Elias Kisawuzi. After several mediation meetings, the mediator formed an opinion that in the absence of the senior government officials and the direct involvement of the Attorney General, the amicable resolution of that matter was going to be difficult and formally invited the Attorney General to assist the Government side to assist parties in coming to some common understanding because of the complexity of the case, the sums involved and the nature of the parties. Correspondingly, because of the numerous complaints and the media attention the matter had generated at the time, Cabinet set up a subcommittee to intervene and have the matter amicably resolved. This committee was headed by Rt: Hon. Dr. Ruhakana Rugunda, the then Prime Minister of the Republic of Uganda assisted by the Minister of Finance, Planning and Economic Development, Minister of Agriculture, Animal Industry and Fisheries. This Cabinet Sub Committee was assisted by the technical committee headed by the Solicitor General, the Executive Director, NAADS, Staff from Ministry of Agriculture, Operation Wealth Creation, among others. On the other side, the Represented by themselves, all the 8 Plaintiffs, supported by Mr. Kiconco Katabaazi Frank as their legal advisor. These meetings started on 22nd of September, 2020 and lasted for four (4) months resulting into a consent judgment/ decree which was signed and filed on the Court record on the 7th of January, 2021.

This consent settlement has been subjected to various Cabinet meetings and after about five months of back and forth discussion, the first payment of UGX 27,000,000,000/= (Twenty-Seven Billion Shillings) was indicated to be available to implement of the terms of the consent. Acting on the instructions of the Plaintiffs (Mr. Byaruhanga Frank, Dr. Francis Runumi, Mr. George Qwakukiroru, Mr. Tumwesimira Caleb Kipande, Mr. Arinaitwe Sam Kajojo, Mr. Tumushabe Julius, Mr. Kanyamunyu Fidelis and Rev. Byamugisha Bernard), the law firm demanded for the money and the money was secured on the 15th of June, 2021 and a further payment of UGX 12,000,000,000 (Twelve Billion Shillings) was secured on the 17th of November, 2022, both payments totalling to UGX 39,000,000,000 (Thirty-Nine Billion Shillings). We are aware that Plaintiffs have acknowledged receipt of this money in numerous, correspondences that they have made to the National Agricultural Advisory Services (NAADS). Upon the receipt of this money, the Plaintiffs instructed the law firm to pay the people they (the Plaintiffs) represent in

accordance with terms and conditions they had agreed upon prior to the commencement of the legal proceedings. Part of the instruction was that payments were to be processed directly to people's accounts save for exceptional circumstances where cash payments would be permitted.

5

These payments are still ongoing and so far, UGX 39,000,000,000 (111i1ty-Nine Billion Shillings) has been sent directly to the beneficiaries forwarded to us by the Plaintiffs covering both Beneficiary Claims, legal and administrative expenses. We still have payments to make to a few Nursery Bed Operators amounting to UGX 1,086,030,692 (One Billion, Eighty-Six Million, Thirty Thousand, Six Hundred Ninety-Two Shielings) which funds have not yet been sent by the National Agricultural Advisory Services (NAADS). NAADS has communicated to us and the Plaintiff that UGX 2,113,551,103 (Two Billion, One Hundred Thirteen Million, Five Hundred fifty One Thousand, One Hundred Three Shillings) currently owed to complete the first cycle of payment is already earmarked as arrears which is expected to be paid very soon.

10

15

The Plaintiffs and the beneficiaries they represent have received money and arc appreciative of our services and support. From these payments, we have been able to resolve problems relating to simple mistakes in computing, recording of account numbers and to date, we do not have any complaints from the Plaintiffs regarding the exercise so far,

20

However, it is important to highlight key challenges that we have faced while executing our responsibility. Political interference, particularly from leaders in Kisoro district, Rukiga district and Kanungu district largely driven by malice and ill-will that some of these people have against stakeholders in this Civil Suit. Additionally, closely related to the above, seen situations where alleged and real beneficiaries of the Plaintiffs have been mobilized to discredit the good work of the Plaintiffs and ourselves as lawyers in this matter. We want to assure this committee that we remain, committed to fulfilling our duties in a professorial manner and we remain fully accountable to our employers, the Plaintiffs.

25

30

We want to use this opportunity to inform you that the consent settlement is only 40%

35

Implemented. Our clients are still demanding for UGX 75,932,763,894= (Seventy-Five Billion, Nine Hundred Thirty-Two Million, Seven Hundred Sixty-Three Thousand; Eight Hundred Thirty-four Shillings) to cater for the balance of the outstanding payments and economic loss. We humbly request this committee to remind NAADS and Government at large of these obligations.

40

5 Lastly, we have taken note of the contents of your letter dated 10th of August, 2023 and we have supplied a copy of the representative Order sought above. We however, note that information required, i.e. evidence indicating funds to the law firm bank account and also evidence indicating that the law firm has paid funds to Nursery Bed Operators and the acknowledgement thereof. As we have indicated, the Plaintiffs instructed us to pay the beneficiaries through bank accounts in which case, the only viable evidence required can only involve presenting our client bank account details. We also note that we are required to submit to you service agreement made between us and our clients. The information sought by your committee falls under the Advocate-client privileged information that would require such disclosure to be unequivocally authorized by our clients. See Regulation 7 of The Advocates (Professional Conduct) Regulations, SI 267-2. We are of the view that a similar question was determined by Courts of law in similar matters as held in High Court (Civil Division) Miscellaneous Cause No. 223 of 2016: Bashasha Alex T/a Bashasha & Co. Advocates vs. Attorney General & 3 Others.

10 Our position is that if there is a Plaintiff who has a complaint or any of the beneficiaries represented by the Plaintiffs, the same should be forwarded to us for redress. We have a strong complaint resolution mechanism that has enabled us to handle this matter successfully so far. We thank you for the opportunity and-we pray that our position is found reasonable and acceptable to your committee.

15 Yours sincerely,
Kiconco Katabazi Patrick
M/s Pathways Advocates.

20 It emerges from the invitation and the above response that the 2nd respondent acted within its mandate and that the applicant understood it to be doing so, save for the reservation concerning the Advocate-client relationship. Provided the committee's inquiry is related to a subject-matter within Parliament's competence and is also within the committee's own orders of reference, it has virtually unlimited powers to compel the attendance of witnesses and to order the production of documents. That the payments made to claimants and beneficiaries of the consent judgment was not amongst those issues that were flagged by the Auditor General in his report to Parliament, is immaterial; it arose during the review as one of the explanations advanced as justification for the domestic arrears of NAADS. The applicant was summoned to attend a review meeting of the Auditor General's report, which is a legitimate function of the Committee.

In order for the accountability chain to be complete: - a) the Committee report must be finalised within five months (as the Parliament has a total of six months for the respective accountability committee to finalise, table on the floor, debate and adopt the reports); b) the Parliament must consider and vote within one month of the report being submitted, as per the above; c) the
5 Government must respond with the Treasury Memoranda (mandated six months, from the time the Parliament adopts the report); d) Parliament must submit the Treasury Memorandum to the Auditor General for audit. An informative treasury memorandum would include: i) a line clearly addressing and highlighting each topic raised by the reports; ii) indication whether the government agrees with each recommendation; iii) indication whether the recommendation has
10 been implemented (and how); or iv) explanation of the action government intends to take; and v) approximate timelines for addressing each issue.

According to “*A Handbook Parliament of the Republic of Uganda; a Handbook for Financial Accountability Committees*” (April 2017) at page 23 -24 para 5.3.7, the Criminal Intelligence and
15 Investigations Directorate (CIID) of Parliament is one of the Police Directorates that is responsible for among others to prevent, detect and investigate crimes. The CIID/Detectives attached to the Public Accounts Committees play the following roles on respective committees: a) provide protection to the Chairperson and Members of the Committee during the Committees’ business; b) investigate cases referred to them by the Committee; c) serve witness summons to
20 witnesses who have failed to appear before the Committees with witness summons signed by the Chairperson; d) execute warrants of arrest issued by the chairperson of the Committee; e) interrogate/ interview witnesses who appear hostile or give suspicious information to the committee and inform the Chairperson of the findings; f) collect documents required by the committee from accounting officers, institutions, organisations and individuals; g) go on field
25 investigation trips to gather evidence and information on the matter referred to them by the Chairperson/ committee; h) accompany the committee on field visits/trips; and i) furnish Chairperson/ committee with written reports on the findings on the matters/ cases referred to them.

30 It would seem that when the applicant appeared before the Committee on 10th August, 2023 the Committee in its discretion formed the view that he was “hostile” or seemed to be giving

“suspicious information to the committee,” hence his being handed over to the 3rd respondent to help in developing the Committee’s findings by interviewing him. The applicant denied the Committee access to documents that go to the heart of the issues most critical to its review.

5 The Committee uses the Auditor General’s findings to undertake inquiries, pinpoint cases of financial mismanagement and propose recommendations for the executive to improve moving forward. The dominant purpose of the process is to obtain information to guide the Committee report upon its review of the Auditor General’s report. The expression “dominant purpose” in this context is used to mean the ruling, prevailing, paramount or most influential purpose. Where
10 the proceedings have more than one purpose, the court will assess its purpose objectively, taking into account all the relevant circumstances. That there are undertones of disgruntled beneficiaries taking advantage the Committee’s review process is irrelevant. I therefore find that both the 1st and 3rd respondents acted within their oversight mandate and did not act *ultra vires* or illegally.

2. Interference with judicial independence.

15

It was Counsel for the applicant’s contention that when the Committee expressed the view that it needed to “interact with [the applicant] regarding the circumstances regarding the consent judgment, and payment of the said amount to your clients, the Committee exceeded its mandate and undermined the independence of the Judiciary.

20

It is trite that a functioning constitutional democracy is premised on sound principles enshrining the separation of powers and a state of comity between and among the three arms of the state. Thus, as long as all the arms are operating within the confines of powers allocated to them, conflict between the arms is limited. The tenets of the doctrine of the separation of powers demand that each of the three arms of state must respect the constitutional sovereignty of the other two. On the one hand, judicial independence as a principle is recognised at the national and international levels (see *Gladys Nakibuule Kisekka v. Attorney General, Constitutional Petition No. 55 of 2013*). On the other hand, orders of Court of the nature sought by the applicant could as well constitute unwarranted interference in the internal processes of the legislative arm of
25 government and could seriously undermine the authority and integrity of the legislative arm of
30 government and compromise the doctrine of the separation of powers. Judiciaries that encroach

on the roles of the executive and legislative branches of government are often accused of “juristocracy.”

There are instances when activities of Parliament are a clear affront on the independence of the judiciary, such as where Parliament summons judges to give evidence and question them about judicial decisions. For example in *Hon. Mr. Justice Joseph Murangira v. Attorney General, Constitutional Petition No.7 of 2014*, the petitioner was a Judge of the High Court before whom a consent judgment was proffered by the parties in a suit he was presiding over. By that consent judgment, the parties agreed that the National Forest Authority (the defendant) was to issue a licence in Kyewaga Central Forest Reserve (near “Missed Call Beach” located along Entebbe Road, off Abaita-ababiri in Katabi Sub-county, Wakiso District), to M/s Beachside Development Services Limited (the plaintiff) for land measuring 2.6 hectares, in accordance with the NFA Eco-Tourism Guidelines, with access to lake Victoria shoreline, within two months. The defendant was to hand-over vacant possession of the said land to the plaintiff as soon as the licence was issued. The defendant was also to pay the plaintiff damages of US \$ 1,612,171 with interest. Each party was to bear its own costs. The consent judgment was entered and sealed by Court on 16th September, 2009.

While considering the Auditor Generals’ report in respect of National Forest Authority for the relevant financial year, the Public Accounts Committee of Parliament invited the petitioner as the Judge who entered the consent judgment, to appear before it on the 7th September, 2012 which invitation the Judge declined. The PAC went ahead and made its report which was subsequently presented to and adopted by the plenary. In item (29) of that report dated 12th November, 2013, it was observed that the petitioner had not delivered a ruling on the objection concerning existence of a cause of action but had subsequently entered the consent judgment in the terms agreed by the parties. The petitioner sought to have the report quashed in so far as it was; - made contrary to the doctrines of separation of powers, the independence of the Judiciary and the finality of Court judgments, and that the petitioner was denied a right and a fair hearing prior to the passing of the impugned resolutions in contravention of “*audi alteram partem*” rule. The petitioner sought an order expunging the impugned report from the Public records of Parliament and the Republic of Uganda and the resolutions of Parliament arising therefrom, among other relief.

The Constitutional Court held that Article 128 of the Constitution was contravened by Parliament when it adopted and passed item (29) of the impugned report of PAC and the observations and recommendations therein into resolutions of Parliament and when it summoned
5 the petitioner to appear before PAC in respect of a decision he made in the exercise of judicial power. Parliament contravened the very fundamental principles that underpin democratic governance, namely; the doctrines of separation of powers and the independence of the judiciary. In that regard, Article 79 (3) of the Constitution was contravened by the impugned action. PAC's purported observations and recommendations that sought to question how a Judicial Officer
10 arrived at his decision was an attempt to control, direct and interfere with the independence of a Judicial Officer in the exercise of his judicial function. Proceedings that took place in the absence of the petitioner, the resolutions and recommendations made therein were declared null and void for being unconstitutional. The petitioner's right to a fair hearing as enshrined in Articles 28 (1) and the related Articles 42 and 44 (c) was contravened.

15 A Judicial Officer is required to exercise the judicial function independently on the basis of his or her assessment of the facts, and in accordance with conscientious understanding of the law, free of any direct or indirect extraneous influences, inducements, pressures, threats or interference, from any quarter or for any reason (see Principle 1.1 of *The Uganda Code of Judicial Conduct, 2003*). Although advocates are officers of Court, summoning them to appear
20 before a Committee of Parliament regarding a matter that was adjudicated by Court, does not have a similar effect on the Judiciary, in so far as it is most unlikely to influence the outcome of a trial, nor is it likely to intimidate, hinder, harass or constitute improper interference in their role as officers of Court. Ideally independent advocates freely decide which clients and causes they will represent, how to divide their time between paying clients and other commitments, what
25 strategies and tactics to follow in pursuit of the clients' ends, and so forth. It has not been demonstrated that the advocate's interaction with the Committee of Parliament, will have an adverse effect on the advocate's strategic or tactical presentation of any issues pending before Court, peculiarly within the advocate's area of professional competence.

30 The boundary between the parliamentary oversight power of Parliament and judicial independence is enshrined in the *sub judice* rule which proscribes conduct likely to influence the

outcome of a trial. By virtue of that rule, matters awaiting or under adjudication in all courts exercising competent jurisdiction and in courts martial, should not be referred to, debated, reviewed or inquired into by Parliament in plenary or in committees; active criminal or civil proceedings cannot be subject to proceedings in Parliament. Rule 73 of *The Rules of Procedure of the Parliament of Uganda, SI 30 of 2021* provides as follows;

73. *Sub-judice* Rule

- (1) Subject to sub rule (5) of this rule, a Member shall not refer to any particular matter which is *sub-judice*.
- 10 (2) A matter shall be considered *sub-judice* if it refers to active criminal or civil proceedings and in the opinion of the Speaker, the discussion of such matter is likely to prejudice its fair determination.
- (3) In determining whether a criminal or civil proceeding is active, the following shall apply—
 - 15 (a) Criminal proceedings shall be deemed to be active when a charge has been made or a summons to appear has been issued by court;
 - (b) Criminal proceedings shall be deemed to have ceased to be active when they are concluded by verdict and sentence or charges have been withdrawn;
 - 20 (c) Civil proceedings shall be deemed to be active when arrangements for hearing, such as setting down matters for hearing have been made, until the proceedings are ended by judgment or settlement or withdrawal; or
 - 25 (d) Appellate proceedings whether criminal or civil shall be deemed to be active from the time when they are commenced by application for leave to appeal or by notice of appeal until the proceedings are ended by judgment or withdrawn.
- (4) A Member alleging that a matter is *sub-judice* shall provide justification to show that sub rules (2) and (3) are applicable.
- 30 (5) The Speaker shall make a ruling as to whether a matter is *sub-judice* or not before debate or investigations can continue.

The principle of separation of powers makes it imperative for Parliament, in plenary or in committees, to satisfy itself that the matter to be debated, reviewed or inquired into is not *sub*
35 *judice*. The *sub judice* rule obliges Parliament to fully comply with its own rules and similar constitutional provisions. In view of the operation of the doctrine of separation of powers which takes cognizance of separate but coordinate roles that the three arms of state, i.e. the Judiciary,

the Executive and the Legislature, play in the governance matrix, the question which arises is to what extent can the Executive and Parliament refer to or deal with matters that are pending before the courts without the Legislature encroaching into the sphere of the Judiciary? In some cases, any violation not only calls the integrity of Parliament into question but will inevitably invite intervention by the court resulting in the nullification of its resolution (s). For example, Parliament may not undo or re-write what the courts have decided by judgment or ruling. Any action or step taken by Parliament that has the effect of substituting, reversing or disregarding, or disobeying a Court decision will be declared illegal, null and void *ab initio* (see *Mohamed Allibhai v. Attorney General, H.C. Miscellaneous Cause No. 217 2021*).

10

Just as it is inappropriate for members of the executive to communicate to the Judiciary their legal opinions on matters that are pending before the courts, it is equally inappropriate for Parliament, in plenary or committee, to deliberate on matters that are pending before the courts and are yet to be determined. Parliamentary convention and practice dictates and demands that Parliament respects its own procedures to avoid intervention by the courts. Compliance with the *sub judice* rule does not in any way compromise the independence of Parliament as a separate arm of the state. Instead, it is guaranteed that no arm of the state encroaches into the jurisdiction of other arms.

15

For the rule to apply the matter alleged to be pending before the Court or other legal body must be active and there must be a likelihood of prejudice to the fair determination of the issue under consideration if the House or its Committees refer to it in debate. The matter must have been filed prior to commencement of the parliamentary inquiry (see *Mohammed Allibhai and Two others v. Attorney General, H. C. Miscellaneous Causes No. 70 of 2020; 117 of 2020 and 119 of 2020*). The *sub judice* rule bars debate on “active matters” i.e. ones in respect of which a date has been fixed for a hearing or in relation to which a judicial decision is pending. According to Rule 73 (3) (c) of *The Rules of Procedure of the Parliament of Uganda*, a civil matter ceases to be active when the “proceedings are ended by judgment or settlement or withdrawal.”

20

Aspects of a matter that are not for determination by the courts are not *sub judice*, since they are not in issue. In such cases, there is no conflict between the principle and operation of the

independence of the judiciary, the sovereignty of Parliament and the rule of law; but rather, to the contrary, the two are mutually reinforcing. The respect of the courts for the sovereignty of Parliament is integral to their role as guardians of the rule of law. So, too, Parliament's respect for the courts as interpreter of the law is essential to its legitimacy as a supreme legislator.

5 Parliamentary financial oversight is performed in two ways. First, *ex ante* oversight: overseeing the formulation of the budget and scrutiny of the budget estimates. Second, *ex post* oversight: scrutinizing the executive government's implementation of public resources, financial management and reporting. Parliamentary financial oversight has generally been linked to the achievement of various policy objectives, including democracy, good governance and anti-
10 corruption, economic and human development, gender equality and the business environment.

The financial oversight processes of Parliament assess the impact of government action on society; help ensure that appropriate resources are provided to implement government programmes; identify unintended or negative effects of government policy and actions; and
15 monitor the meeting of national and international commitments. Effective oversight underpins progress towards the Sustainable Development Goals through strengthened legislation and policy, which lead to economic and human development. The impact of effective oversight is felt throughout society, as resources are distributed more fairly and services such as education and healthcare are delivered more effectively. Parliamentary oversight is also crucial in checking
20 excesses on the part of the government. There can be no democratic system of government without transparency and accountability. It is therefore permissible for Parliament, for purposes of undertaking its oversight function, to refer to, debate, review or inquire into a matter before the courts, to the extent that the Parliamentary proceedings are limited to aspects that are not for determination by the courts.

25

3. Violation of the advocate-client privilege.

According to section 8 of *The Parliament (Powers and Privileges) Act*, Parliament or any sessional committee may, subject to sections 13 and 15, order any person to attend before
30 Parliament or before a Committee and to give evidence or to produce any paper, book, record or document in the possession or under the control of that person. Section 13 thereof provides that

every person summoned to attend to give evidence or to produce any paper, book, record or document before Parliament or a committee of Parliament is entitled, in respect of the evidence or the disclosure of any communication or the production of any such paper, book, record or document, to the same right or privilege as before a court of law.

5

As one of the oldest privileges based in common law, the advocate-client privilege has been developed by courts to serve the widely shared policy goal of promoting trust and confidentiality in advocate-client relationships, the client may not be compelled to testify regarding matters communicated to the lawyer for the purpose of seeking legal counsel. Likewise, the advocate
10 may neither be compelled to nor may he or she voluntarily disclose matters conveyed in confidence to him or her by the client for the purpose of seeking legal counsel, yet on the other hand access to information is critical to the Committee's capacity to demand documentation and conduct inquiries that reach the heart of the government.

15 The right to confidentiality is based on an expectation of privacy. An advocate's client is entitled to have all communications made with a view to obtaining legal advice kept confidential. By virtue of Regulation 7 of *The Parliaments (Professional Conduct) Regulations*, all information which a person must provide to an advocate in order to obtain legal advice and which is given in confidence for that purpose enjoys the privileges attached to confidentiality. This confidentiality
20 attaches to all communications made within the framework of the advocate-client relationship, which arises as soon as the potential client takes the steps, and consequently even before the formal retainer is established. The fundamental right to communicate with one's legal adviser in confidence has given rise to a rule of evidence and a substantive rule. Principle 22 of the 1990 UN "*Basic Principles on the Role of Lawyers*" and the IBA "*Standards for the Independence of the Legal Profession*"
25 require governments to recognise and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

Although confidentiality is a fundamental component of privilege, the duty of confidentiality is
30 broader than the advocate-client privilege. Both concepts involve information that the advocate must keep private and are both protective of the client's ability to confide freely in his or her

lawyer. However, the advocate-client confidentiality is primarily an ethical issue in that, in the absence of the client's informed consent, the advocate must not reveal information relating to the representation. This protection not only extends to an advocate giving professional advice, but to general advice and any information that pertains to obtaining legal representation. This confidentiality remains intact throughout the entire course of the client's representation, and even extends to after the client's death.

On the other hand, the advocate-client privilege derives from an evidentiary standpoint, rooted in common law jurisprudence. It prevents advocates from testifying or being forced to testify at trial or in similar proceedings, and disclose statements made to or by their clients. It arises under the following circumstances: the advocate must be acting in their professional capacity, the client must intend for the communication with the lawyer to be a secret; and the client must have subsequently acted in a manner that suggests he or she intends to keep the information secret. The privilege therefore attaches to communications when; (i) legal advice of any kind is sought (ii) from a professional legal adviser in his or her capacity as such, (iii) the communications relating to that purpose, (iv) made in confidence (v) by the client, (vi) at his or her instance is permanently protected (vii) from disclosure by the client or by the legal adviser, (viii) except the protection be waived by law or conduct.

There are two aspects of this advocate-client privilege; the "legal advice privilege" which protects communications, documents and information between an advocate and client made for the sole or dominant purposes of giving or receiving legal advice; and the "litigation privilege" which protects: communications between an advocate/client and a third party; and documents created by, or on behalf of, the advocate/client, when litigation is contemplated or commenced, and the dominant purpose of the communication or document is for that litigation. Legal advice privilege arises in the context of giving or receiving legal advice. It covers advice given in "a relevant legal context," which includes advice on how to present a case to an inquiry but may not cover situations where the advocate is acting as general business adviser and advising on, for example, investment or finance policy or other business matters. Litigation privilege on the other hand protects confidential written or oral communications between client or advocate (on the one hand) and third parties (on the other), or other documents created by or on behalf of the client or

his advocate, which come into existence once litigation is in contemplation or has commenced and which is for the dominant purpose of use in the litigation.

Neither privilege is absolute; there are certain exceptions. Dishonest advocates or clients may intentionally misuse the privilege to further their criminal goals. In other situations, some advocates may be willing to turn a “blind eye” to their clients’ suspicious activities, allowing clients to take advantage of the protection. Thus communications that are in themselves criminal or that are made with a view to obtaining legal advice to facilitate the commission of a crime will not be privileged, *inter alia*. The protection does not apply when an advocate is knowingly assisting, aiding or abetting the unlawful conduct of his or her clients. Speculation of a future crime is not enough to get confidential communications disclosed. Instead, the evidence must demonstrate a basis to suspect an actual perpetration of a crime and that the communications being sought furthered the crime’s perpetration.

The advocate-client privilege can also be waived through a variety of conduct, such as voluntarily or inadvertently disclosing to a third party the communication with the advocate. Since the client, and not the advocate, holds the privilege, the client holds the ultimate authority to assert it or waive it. If information may be gathered from another source besides the privileged communication, then the underlying information itself is not privileged. There is a general obligation placed on advocates to keep information relating to the representation of their clients confidential, unless clearly mandated by exception, including a court order, law or the express and informed consent of the client to do otherwise. For example as a consequence of section 9 of *The Anti-Money Laundering Act, 2013*, advocates, as well as notaries and other independent legal professionals, have an obligation to report suspicious cash and monetary transactions. Similarly, *The Data Protection and Privacy Act, 9 of 2019* allows for collection of personal data from another person, source or public body; for the conduct of proceedings before any court or tribunal that have commenced or are reasonably contemplated (see sections 11 (2) (e) (iv) and 17 (3) (c) (iv); or when compelled by a court order (see section 24 (4) (c)).

In the instant case, the letter dated 10th August, 2023 written by the Clerk to Parliament inviting the applicant to appear before the 2nd defendant reads as follows;

RE: INVITATION FOR A MEETING TO CONSIDER THE REPORT OF THE AUDITOR GENERAL FOR FINANCIAL YEAR ENDED 30TH JUNE, 2022.

Reference is made to your letter dated 10th August, 2023 in response to ours dated 09th August, 2023 on the above matter.

The Committee has considered your request and accordingly re-scheduled the meeting to Tuesday 18th August, 2023 in Conference Hall B Basement, South Wing Parliament Building at 10:00 am.

The Committee has further instructed me to request you to come along with the following documentary evidence to the meeting:

- i. The representative order that allowed the plaintiffs to sue in representative capacity and on-behalf of all the nursery bed operators;
- ii. Evidence indicating that NMDS paid funds amounting to 39,000,000,000 (Uganda Shillings thirty-nine billion) to your /your law firm's bank account;
- iii. Evidence indicating that you/the law firm has paid the above funds to the nursery bed operators;
- iv. A list of all beneficiaries indicating acknowledgement of the said funds from you to them;
- v. The agreement with the nursery bed operators giving you authority to represent them in matters pertaining to the payment from NAADS, and authorizing you to take part of that payment;
- vi. Evidence that the agreement in (v) above was registered with the Law Council;

By a letter dated 15th August, 2023, applicant's reply to that invitation was that; "as we have indicated, the Plaintiffs instructed us to pay the beneficiaries through bank accounts in which case, the only viable evidence required can only involve presenting our client bank account details. We also note that we are required to submit to you service agreement made between us and our clients. The information sought by your committee falls under the advocate-client privileged information that would require such disclosure to be unequivocally authorized by our clients." The applicant in effect asserted both the "legal advice privilege" and the "litigation privilege."

The applicant thus sought to assert the advocate-client privilege in respect of only two categories of documents; the fee agreement and his clients' bank account details. Fee agreements do not

reflect a client's request for legal advice or the advocate's provision of legal advice. Most courts (see for example *In re Grand Jury Proceedings*, 517 F.2d 666, 671 (5th Cir. 1975); *Armor Screen Corp. v. Storm Catcher, Inc.*, No. 07-81091-Civ, 2009 WL 2767664 and *United States v. Davis*, 636 F.2d 1028 at 1044) hold that advocates' fee agreements will not be protected by the
5 advocate-client privilege, except to the extent that they reveal confidential information (such as a description of the work performed). Financial transactions between the advocate and client, including the compensation paid by or on behalf of the client, are not within the privilege. The communication of factual information, such as fee agreements, and retainer agreements is generally not protected by the advocate-client privilege.

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As regards bank account details, the advocate-client privilege is that of the client, not the advocate. A client has the privilege to refuse to disclose, and to prevent the advocate from disclosing, a confidential communication, whether oral, written, or otherwise, made for the purpose of facilitating the rendition of professional legal services to the client. A communication
15 is confidential if it is not intended to be disclosed except in furtherance of obtaining or rendering professional legal services for the client. It is axiomatic that the advocate-client privilege only protects disclosure of confidential communications between the client and advocate; it does not protect disclosure of underlying facts.

20 To qualify for protection, whether on account of "legal advice privilege" or the "litigation privilege," the communications must be shown to have; - (i) originated in a confidence that it will not be disclosed (ii) this element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties; (iii) the relationship must be one that, in society's opinion, ought to be sedulously fostered; and (iv) the injury to the relationship
25 that disclosure of the communications would cause must be greater than the benefit gained for the correct disposal of the ongoing Parliamentary proceedings. The court must always balance the importance of disclosure to proceedings in Parliament against the public interest in maintaining confidentiality. If it is determined that such a disclosure is essential to the Committee's mission to establish the facts and to fully exercise its oversight mandate in a
30 particular instance, then the privilege must be waived in whole or in part.

There is no doubt that the advocate-client relationship is one characterised by trust, an element of which is confidentiality. It is a relationship in which the client has a reasonable expectation of privacy in information and records shared with the advocate for purposes of obtaining legal advice, or in contemplation, or pursuit of litigation. There is certainly public interest in encouraging persons to freely share information when seeking legal advice and assistance, to be assured of the confidentiality of that communication and that it will not be revealed without their permission.

However in the instant case, there is no evidence to show that there was a specific expectation of confidentiality at the time of the disclosure of the bank account details, yet there are compelling reasons to allow it as evidence before the Committee. Not only is the information sought to be provided in the instant case unessential to the full and satisfactory maintenance of the relation between the applicant and his clients, but it is also unlikely to cause injury to that relationship that is greater than the benefit gained for the correct disposal of the ongoing Parliamentary financial oversight proceedings. The Committee was justified in not according the documents, privilege. In conclusion, the application fails on all grounds. Consequently, the application is hereby dismissed with costs to the respondents.

Delivered electronically this 13th day of September, 2023**Stephen**
20 **Mubiru**.....

Stephen Mubiru
Judge,
13th September, 2023.