5 **THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(CIVIL DIVISION)**

**MISCELLANEOUS CAUSE No. 261 OF 2019**

10 **SEGUYA HILLARY INNOCENT TAYLOR**
**(ACTING THROUGH HIS RECOGNISED AGENT**
**MALE H. MABIRIZI K. KIWANUKA) :::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

15 **ATTORNEY GENERAL OF UGANDA:::::::::::::::::::::::: RESPONDENT**

***BEFORE HON. MR. JUSTICE BASHAIJA K. ANDREW***

***RULING:***

Seguya Hillary Innocent Taylor *(hereinafter referred to as the*
20 *"Applicant")* acting through his recognised agent, Male H. Mabirizi K. Kiwanuka, brought this omnibus application against the Attorney General of Uganda *(hereinafter referred to as the "Respondent");* citing a plethora of provisions as the enabling law, under paragraphs I, I(i), X, XXVI, XXX(a),(c),(f)(g) of National Objectives and Directive Principles of
25 State Policy; Art. 8A, 17(1)0, 20, 21(1), 28(1) 29(1)(a), 38, 41(1), 42, 43(2), 44(c), 50, 139(1) of the Constitution; Section 36(1), 38(1) and (2), Section 39 of the Judicature Act Cap 13; Rules 3 and 6, Judicature

5 (Judicial Review) Rules 2009 as amended; and Rule 7(1) of the Judicature (Fundamental and Other Human Rights and Freedoms)(Enforcement Procedure) Rules 2019; seeking the following remedies;

1. A declaration that the decisions/actions of the President of the
10 Republic of Uganda, Yoweri Kaguta Museveni, the Government of Uganda Spokesperson, Ofwono Opondo, and the Uganda Police Force Director of Political Commissariat, Assistant Inspector General of Police Asan Kasingye, to block the Applicant through his twitter social media platform handle, @hillarytaylorvi, from
15 following, viewing, contacting, replying, Iiking, tagging and retweeting the tweets on their twitter social media platform handles @KagutaMuneveni, @OfwonoOpondo and @AKasingye, respectively, which handles are used as public forums to disseminate information relating to the activities of their public
20 offices in their official capacities and to get feedback from citizens, are illegal, procedurally improper, unreasonable and irrational.
2. An order of certiorari quashing the impugned decisions/actions of the said public officials.

3. An order of prohibition prohibiting the said public officials from any further blocking of the Applicant, through his said twitter social media platform.
4. General damages.
5. Costs of this application.

***In the alternative to the above;***

6. A declarations that the impugned decisions/actions of the said public officials, infringe on the Applicant's right against discrimination, guaranteed under Article 21, freedom of speech and expression, freedom of thought, conscience and belief guaranteed under Article 29, the Applicant's right to participate in the affairs of Government and in peaceful activities to influence the policies of Government guaranteed under Article 38, the Applicant's right to access to information possession of the state/Government guaranteed under Article 9, the Applicant's right to just and fair treatment in administrative decisions guaranteed under Article 42; amount to political persecution of the Applicant and beyond what is acceptable and demonstrably justifiable in a free and democratic society, prohibited by Article 43(2) of the Constitution of the Republic of Uganda.

5 7. A permanent injunction restraining said public officials from further committing the impugned acts, general damages for inconveniences caused and costs of this application.

The grounds of the application are set out in the affidavits of the Applicant and in the supplementary affidavit in support, by Male H. 10 Mabirizi K. Kiwanuka, the Applicant's recognised agent. As far as is relevant to this application, they are briefly that the Applicant is a holder of twitter social media platform handle in the names of @HillaryTaylorVl and a Ugandan citizen who is living abroad. That he is only able to get information relating to his country's governance and 15 to communicate to the respective officers through their above stated twitter handles. That he was blocked from accessing the respective twitter social media platform handles by the said public officials.

That the President of the Republic of Uganda, Yoweri Kaguta Museveni, is a public officer and a holder of a twitter social media platform handle 20 in the name of @KagutaMuseveni and there is no other official handle for his office. That he opened the twitter handle when he was holding the office of President and he has since then been using it in an official and not in private capacity, and uses the said handle as a public forum

to disseminate information relating to the activities of his office in his official capacity and to get feedback from citizens. That on 30/07/2019, he blocked the Applicant's twitter handle in the aforesaid manner, without notice and/or affording the Applicant a hearing.

Similarly, that the Government of Uganda Spokesperson, Ofwono Opondo, is a public officer and holder of a twitter social media platform handle in the name of @OfwonoOpondo, which he opened while holding the office, which he still holds, and there is no other official handle for the office he holds. That he uses the said handle as a public forum to disseminate information relating to the activities of his office as the Uganda Government Spokesperson, in his official capacity and to get feedback from citizens. That on 08/08/2019, he blocked the Applicant's twitter handle in the like manner foretasted, without notice and/or
affording the Applicant a hearing.

Also, that the Uganda Police Force Director of Political Commissariat, AIGP Asan Kasingye, is a public officer and a holder of a twitter social media platform handle in the name of @AKasingye, which he opened while he was a senior Police officer, which he still is, and there is no

5 other official handle for the office he holds, and he uses the said handle as a public forum to disseminate information relating to the activities of his office in his official capacity and to get feedback from citizens. That on 20/07/2019, he blocked the Applicant's twitter handle in the manner after the other two above, and without notice 10 and/or affording the Applicant a hearing.

The Applicant contends that the respective impugned decisions/actions of the said public officers are illegal, procedurally improper, unreasonable, irrational and infringe on his above stated rights and freedoms guaranteed under the Constitution. That it is fair, 15 equitable, and in line with promotion of accountability in public offices, transparency and protection of the right to fair hearing and other fundamental freedoms, that this application should be allowed. The Applicant filed a supplementary affidavit and a rejoinder, mainly restating his case, and also that on 25/01/2020, he got a notification 20 from twitter that AIGP Asan Kasingye had unblocked the Applicant on his twitter handle. Mr. Male H. Mabirizi K. Kiwanuka, the recognized agent of the Applicant, also filed an affidavit primarily for purpose of

5 proving his authority to represent the Applicant by a Power of Attorney filed with this application.

AIGP Asan Kasingye opposed the application. In his affidavit in reply he avers that this application is bad in law, fatally defective and the same should be struck out with costs. Further, that the application is 10 misconceived, frivolous, devoid of any merit and amounts to an abuse of court process. That he opened his twitter handle @AKasingye in April 2015, as a personal account for his own personal/private interest and on his own volition for private/personal interest such as family, football, religion, sharing jokes and at times police related matters but 15 at a personal level, like any other Ugandan citizen. He denies using his twitter handle to disseminate information relating to the activities of his office in his official capacity. That even his profile stresses the fact that his views are not necessarily those of, and are not the official position of the Uganda Police Force. He insists that the Applicant's 20 rights have not been violated or infringed upon as alleged. Further, that there is an official handle for the Uganda Police Force know as @policeUg, and the Applicant can access information regarding the UPF from other official channels, for instance, through the Public

5 Relations Officer on twitter account known as @metpoliceug, facebook account for Kampala Metropolitan Police and the Police website. That in addition, the Applicant can get information regarding Media Centre from its twitter handle known as @ugandamediacent as well as its website *www.mediacentre.go.ug;* and information relating to the 10 President of Republic of Uganda from the official twitter account @stateHouseUg, different newspaper handles on twitter, television (live streaming), radio and other social media platforms. That the twitter handles @KagutaMuseveni, @OfwonoOpondo and @AKasingye, are private twitter handles and not official handles for the offices they hold, 15 and as holders of a private/personal twitter account, they enjoy the constitutional right to decide who to associate with. That they choose to activate or deactivate my account, log on and out, select who to follow or to be followed, comment on any topic or not, for as long as it is done within the ambit of the law. He maintained that his twitter 20 handle is not a source of official information on matters happening in the country. Regarding the right to be heard, he stated that there is no law in Uganda that requires him to give notice and a hearing before blocking the Applicant from viewing his personal twitter account. That

5 his decision to block the Applicant from his private twitter handle does not amount to political persecution.

At the hearing, the Applicant was represented by his said recognized agent. Ms. Adongo Imelda, State Attorney, represented the Respondent. Both made their respective submissions which court has taken into 10 account in this ruling. In her submissions, counsel for Respondent took the occasion to raise a preliminary objection pertaining to the competency of the application in its entirety. It is counsel's view that the resolution of the preliminary objection would have the effect of ultimately determining the whole application, and as such, it ought to 15 be considered first. The issues for resolution are therefore as follows;

1. ***Whether the application is properly before court.***
2. ***Whether the Applicant's rights were infringed and /or violated by the Respondent's officials.***

***Resolution of the issues:***

20 ***Issue No.1: Whether the application is properly before court.***

The application is brought in an omnibus manner seeking for prerogative orders under judicial review, pursuant to Section36 of the Judicature Act Cap 13; at the same time as an application for

5 enforcement of human rights pursuant to Article 50 of the Constitution, as operationalized by the Human Rights (Enforcement) Act No.18 of 2019. From the outset, it is clear that the convoluted manner of the application is such that the Applicant is pursuing judicial review and enforcement his private rights at the same time, but seeks remedies in
10 the alternative, just in the event that he does not succeed on one.

To my mind, the above is akin to a fishing and game hunting expeditions, undertaken at the same time by one fisherman cum hunter. Logic ought to inform him that he can only be in one place at a time; either in the lake fishing or in the forest hunting. Similar logic ought to
15 inform him that he needs not to carry fishing gear when on hunting expedition or a hunting gear when on a fishing expedition. To insists on being in both places at the same time, would be ridiculous and rather futile. This analogy is pertinent to this application as the ruling will show.

20 Under Rule 7A of the Judicature (Judicial Review) (Amendment) Rules 2019, it is incumbent upon the court seized with the matter to first ascertain whether the application is amenable for judicial review. For ease of reference, it is quoted below;

***"7A. Factors to consider in handling applications for judicial review.***

> ***(1) The court shall, in considering an application for judicial review, satisfy itself of the following –***
>
> ***(a) That the application is amenable for judicial review;***
>
> ***(b) That the aggrieved person has exhausted the existing remedies available within a public body or under the law; and***
>
> ***(c) The matter involves an administrative public or official."***

Therefore, the Applicant herein must pass the above test before being entertained, or at all, under judicial review.

The gist of the Respondent's objection is that the application is incompetent before court, having been brought under no any known law. That it purports to be brought under the provisions of the Constitution, and various other laws as set out in the motion. Counsel submitted that, however, to seek for remedies for the enforcement of private rights in the same application with remedies for prerogative orders under judicial review, which is the domain of public law, renders such an application fatally defective, as it is incapable of proper adjudication by the court. Counsel argued that each of the reliefs being sought, apart from being governed by different rules, are also subject to

long established and different rules and judicial principles, which render the application incapable of being properly adjudicated upon. For this proposition counsel relied on ***Murithiwanjao (ta Wanjiro & Wanjan Advocates) and Dr. Samuel Mudati Gutabaki and Wamja Gutabaki Misc. Civil Suit Application No. 42 of 2014,*** where the High Court of Kenya, citing with approval, the case of ***Pyaralalmhandbheru Rajput vs. Barclays Bank & O'rs Civil Case No. 38 of 2004,*** found that an omnibus application of the nature cannot be sustained and is fatally defective.

Further citing the case of ***Male Mabirizi Kiwanuka vs. Attorney General MC No. 237 of 2019,*** counsel submitted that an Applicant cannot be permitted to bring matters to court in the manner he wishes, and that a court cannot be called upon interfere where there is no necessity for doing so. For these reasons, counsel submitted that this application should be struck out with costs.

In reply, the Applicant's Attorney, Mr. Male Mabirizi Kiwanuka, cited Section 33 of the Judicature Act Cap 13, and contended that the particular provisions empower the court to deal with all matters which can be in controversy as between the parties at once. That what is in

5 controversy in the present case is a judicial review matter, but in the alternative, it can be a human rights enforcement matter, and hence the omnibus pleadings in the alternative to avoid multiplicity of suit. Mr. Mabirizi further cited Order 7 Rule 7 of the Civil Procedure Rules to fortify his argument, and argued that there is nothing abnormal about 10 praying for judicial review remedies in the main, and praying for human rights enforcement remedies in the alternative. Mr. Mabirizi sought to distinguish the case of ***Murithiwanjao*** (supra) on basis that prayers therein were not in the alternative as in the present case. He argued that if court satisfactorily deals with the main prayers, there is no need 15 to deal with alternative prayers. That similarly, in the ***Male Mabirizi Kiwanuka case*** (supra) there was no alternative pleading as in the present case. That even then, the case is on appeal.

To resolve this issue, careful regard must to be had to the pleadings, and in particular the remedies/prayers being sought therein. The 20 perusal of the same easily reveals that the Applicant essentially seeks prerogative orders which ordinarily issue as remedies under judicial review, pursuant to Section 36 (1) of the Judicature Act (supra) and the relevant Rules for judicial review. At the same time in the same

5 application, he seeks for remedies for the enforcement of human rights pursuant to Article 50(supra) as operationalized under the Human Rights (Enforcement) Act (supra).

In appropriate cases for judicial review, which fall within the domain of public law, the center of focus is on securing specific remedies of 10 prerogative orders provided under Rule 3 Judicature (Judicial Review) Rules 2009, vide; mandamus, prohibition, certiorari and injunction. Under Rule 3(2) (supra). A declaration may also be issued in judicial review. Court is empowered to grant such orders pursuant to Section 36(1) of the Judicature Act (supra) which providers as follows;

15 ***"36. Prerogative orders.***

***(1) The High Court may make an order, as the case may be, of—***

***(a) mandamus, requiring any act to be done;***

***(b) prohibition, prohibiting any proceedings or matter; or***

***(c) certiorari, removing any proceedings or matter to the*** 20 ***High Court"***

It means that by judicial review, the Applicant is typically seeking quite distinctive orders from those ordinarily issued in the enforcement of rights pursuant to Article 50(supra) and Act No.18 of 2019(supra).

Worthy of note also, is that judicial review is a specialized procedure purposely designed purely for remedies pertaining to prerogative orders stated above. It is thus governed by long established rules and principles quite distinctive and separate from those for the enforcement of rights. For instance, judicial review applications are time bound. This is clear in Rule 5(1) of the Judicature (Judicial Review) Rules (supra) which provides as follows;

> ***"(1) An application for judicial review shall be made promptly and <u>in any event within three months from the date when the grounds of the application first arose</u>, unless the Court considers that there is good reason for extending the period within which the application shall be made."*** [emphasis added].

In addition, owing to the urgent nature of judicial review applications, the law provides for a specific time frame within which they should be heard and disposed of by court. Rule 7B of the Judicature (Judicial Review) (Amendment) Rules 2019, provides as follows;

> ***"An application for judicial review shall be disposed of within ninety days from the date of filing the application."***

The other noticeable distinctive feature of judicial review is that the courts do not interrogate the merits of the impugned acts and/or decisions of the public body or official. Its concern is restricted to procedural propriety, legality and or rationality of the impugned decisions or acts. This position is well articulated in ***Adam Mustafa Mubiru & Irene Walubiri vs. Law Development Centre HCMA No. 279 Of 2013,*** that the concern for judicial review is always whether the decision constituting the subject matter of the application was made through an error of law, procedural impropriety or outright lack of jurisdiction generally. Similar stance was taken by the Court of Appeal of Kenya, in ***Commissioner of Lands vs. Kunste Hotel Limited Civil Appeal No.234 of 1995***, which held that;

> ***"...judicial review is concerned not with the private rights or merits of the decision being challenged but with the decision making process. Its purpose is to ensure that the individual is given fair treatment by the authority to which he has been subjected."*** [underlined for emphasis].

5 Most importantly, in judicial review the court is called upon to ensure that even within jurisdiction, public powers are exercised prudently, reasonably, fairly, in good faith and in full accord with the legitimate expectations of those affected. In so doing, the court accords due consideration to factors relevant to the exercise of power and the
10 procedures prescribed for the exercise of such power and ensures that the rules of natural justice are fully adhered to. These are essentially the long established rules, legal and judicial principles which court must look out for in judicial review before granting any remedy. The case of ***Shah Vershi Dershi and Co. Ltd vs. transport Licensing***
15 ***Board [1970] EA 631*** is quite instructive regarding the principle that while exercising judicial review jurisdiction, court ensures that the executive authorities do not exceed their lawful jurisdictions or authority.

Also to note, under judicial review, is that courts are usually reluctant
20 to issue orders where there is an alternative remedy at law which is equally convenient. Broadly speaking, prerogative writs are only available in public law matters and thus, the creation of a specialized procedure was designed to deal with public law issues in which all the

necessary remedies are available. As was held in ***O'Reilly vs. Macknan (1992) AC 237,*** it would be an abuse of court process to seek these remedies by way of ordinary process of making a claim.

As can be discerned, the above is quite different from principles applicable in the enforcement of rights. In the main, these would require hearing of a matter fully on merits regarding the impugned actions or decisions of persons alleged to have infringed or violated the rights. Court is concerned with the question of right or wrong, whereas in judicial review, the question is lawful or unlawful? See: ***Grain Bulk Handlers Ltd. vs. JB Maina & Co. Ltd & Others Misc. Appl. No.479 of 2003*** *reported in [2006] eKLR,http://www.kenyalaw.org.*

Regarding limitation of time, Section 19 (1) of the Human Rights(Enforcement) Act (supra) gives a wide latitude to the Applicant, and provides that save for freedoms granted under Article 44, an action for enforcement of human rights shall be instituted within ten years of the occurrence of the human rights violation. This is a rather relaxed time to initiate an action than the limited time in judicial review.

The other observable feature, in the enforcement of private rights, is that the person against whom the enforcement is sought, need not necessarily to be a public body or official in the exercise or performance of such functions, but could as well be a private person. This is in the clear and unambiguous wording of Article 50(1) (supra) which provides as follows;

> ***"50. Enforcement of rights and freedoms by courts.***
> ***(1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation."***

The provisions of Article 50(supra) are thus, readily and directly triggered for as long as a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened, regardless of whether the violator is a private person or public official or body. Even at that level, it would mean that no application seeking prerogative orders under juridical review, can be entertained within the same application seeking for the enforcement of human rights. They are both governed by different laws and principles, and the remedies are usually based on totally different grounds, and cannot be properly adjudicated by court.

5 The Applicant herein seeks, in the alternative to prerogative orders, remedies for the enforcement of his private rights as against the Respondent's officials for the alleged infringement of his Constitutional rights. Article 50(1) (supra) which provides for the enforcement of rights and freedoms, is operationalized by the Human Rights Enforcement) 10 Act (supra) and rules made thereunder. The long title to the Act is quite instructive on the position taken by this court. It reads as follows;

> ***"An Act to give effect to article 50(4) of the Constitution by providing for the procedure of enforcing human rights under Chapter Four of the Constitution; and for related matters."***

15 Therefore, a specifically provided procedure does exist under the law for the enforcement of rights guaranteed under the Constitution. This is what ought to have been separately pursued by the Applicant, if he was desirous of enforcing his rights and obtaining such remedies.

Further reading of Section 4 of the Human Rights Enforcement) Act 20 (supra) will also show that the rights and freedoms the Applicant seeks to enforce, are purely private rights within the exclusive domain of private law. These are provided for under Section 9(supra) thereof. Again, the reading of the entire section shows that the remedies

5 provided thereunder, are concerned with purely the private rights and freedoms of an individual which cannot be interchanged with remedies ordinarily issued under the public law domain of judicial review. Chapter Four of the Constitution, which the Act refers to in the long title, concerns the protection and promotion of fundamental and other 10 human rights and freedoms. Therefore, much as the enforcement of public law rights under judicial review is rooted in Article 42, accessing courts for remedies thereunder is provided for quite differently from accessing the court for the enforcement of private rights and freedoms under Article 50 and Chapter Four of the Constitution.

15 Having thus established the fundamental dichotomy between judicial review and the enforcement of human rights applications, it is needless to emphasis that the two cannot be properly brought or adjudicated upon by court in the same and/ or one application. Even when the remedies being sought are in the alternative, as was in the instant case, 20 still it would not afford a proper adjudication and granting of any of the remedies being sought. Such application is inherently embarrassing as the opposite party would not ascertain the precise nature of the case or particular the claim he or she is to meet at the trial. It is trite law that

5 pleadings that have the effect of embarrassing any of the parties thereto ought to be disallowed. The ***Murithiwanjao (ta Wanjro & Wanjan Advocates) and Dr. Samuel Mudati Gutabaki and Wamja Gutabaki case*** (supra) is quite persuasive and relevant on the point such an omnibus application is fatally bdefective. It was held as follows;

10 > ***"There is no doubt that the application is an all cure, omnibus application. It is a wide net cast over a large body of water, out of all lake or sea, creatures caught in it, there will be one or two edible crabs or fish. It is not quite so... An omnibus application is incapable of proper adjudication by***
15 > ***the Court for each relief sought, apart from being governed by different rules, is also subject to long established and different judicial principles which counsel need to bring to the attention of, and the court needs to consider them before granting the entire reliefs sought. This alone makes the***
20 > ***Plaintiff's application incurably defective and a candidate for striking out."***

It is emphasized, that the notion of mixing up in the same application claims based on separate causes of action, governed by different laws and principles, is an alien feature to our jurisprudence. Where the law
25 clearly prescribes the manner of accessing justice, suitors and lawyers alike, cannot be permitted to ingeniously seek convenience to

circumvent the prescribed manner of access; no matter the justification. This position echoes the holding in ***Male Mabirizi Kiwanuka vs. Attorney General*** (supra) where it was held that;

> ***"No litigant has a right to unlimited drought on the court time and public money <u>in order to get his affairs settled in the manner he wishes.</u> Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions....It is the responsibility of the High Court as custodian of justice and the Constitution and rule of law to maintain the social balance by interfering where necessary for the sake of justice and refusing to interfere where it is against the social interest and public good***."[emphasis added].

It is noted that in an attempt to justify the inherently vain and convoluted manner of the application, the Applicant's agent advanced the argument that there is nothing abnormal about bringing an omnibus application seeking remedies under judicial review and in the alternative remedies for enforcement of rights. He reasoned that in the event he fails on one, then court should pronounce itself on the alternative remedies sought. The Applicant relied on Order 7 Rule 7 CPR and Section 33 of the Judicature Act (supra). These provisions,

5 however, appear to have been misconstrued by Applicant in relation to the application. Starting with Order 7 Rule 7 CPR, it provides as follows;

> ***"Every plaint shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief***
> 10 ***which may always be given as the court may think just to the same extent as if it had been asked for; and the same rule shall apply to any relief claimed by the defendant in his or her written statement."***

The reliefs which can be claimed in the alternative in a pleading,
15 referred to in the above Rule, are those reliefs that arise from the same or similar causes of action. Even when the causes of action are different, they must be capable of being properly joined and tried together under joinder of causes of action. It is the established principle of the law that entirely separate and/ or different causes of action cannot be joined in
20 the alternative. Therefore, a separate cause of action under judicial review founded on public law, cannot be properly joined and tried with a cause of action founded on the enforcement of human rights and freedoms founded in private law. This court was seized with similar scenario in ***Uganda Journalist Association & 2 O'rs vs. Waninda***
25 ***Fred HCMA No. 121 of 2019.*** The applicants had sought remedies

under public law against the respondent in an action to enforce the alleged violation of their private rights under in a tort of assault by the respondent in his private capacity. Court was reluctant to grant application and found that remedies in a separate causes of action rooted in private law cannot be enforced in a different cause of action as a public law right.

Regarding the oft cited Section 33 (supra) it provides as follows;

> "***The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided."*** [ [underlined for emphasis].

The section provides for the general provisions as to remedies, and only permits the court to grant the remedies based on the Constitution or any other written law, in a cause or matter properly brought before it by the parties. The grant of remedies by the court, therefore, is conditional

5 upon the cause or matter being properly brought before the court. As already found, the instant application is improperly before court. It is a hybrid quite alien to our laws and jurisprudence. It is neither amenable for judicial review nor for the enforcement of rights. It is improperly before court and thus incurably defective. On that account alone, it 10 would be dismissed.

***Issue No.2: Whether the Applicant's rights were infringed and/ or violated by the Respondent's officials.***

The findings in issue No.1 notwithstanding, for the purpose of completeness, court will proceed to resolve the would -be - merits of the 15 case, under *Issue No.2*. The subject matter of the dispute stems from the actions of Respondent's said officials of blocking the Applicant from viewing, replying, liking and retweeting posts of the said Respondent's officials' respective twitter handles. The Applicant, in paragraph 8 of his affidavit in support, states that the said persons are all public officials, 20 and that by so blocking him, they infringed and/or violated his rights guaranteed under the Constitution. He relied on a USA case of ***Knight First Amendment Institute at Columbia University and & O'rs vs. Donald J. Trump President of the United States & 2 Other Appeal***

***from US District Court for Southern District of New York No.17 Civ. 5203 (NRB) July 2019.*** In that case, the US Appeals Court upheld the decision that President Donald J. Trump of USA, violated the First Amendment of the US Constitution, when he blocked persons whose responses he did not like on his twitter handle. Court further found, among others things, that the twitter handle was opened when he was President and used it for official communication and dissemination of official information to the public, and hence it was an official twitter handle; to which he ought not to have blocked persons whose responses he did not like.

After carefully reading and appreciating the ***Trump case*** (supra), firstly, it is recognized that a number of enabling US legislations are cited in therein, as governing the matter. They include the First Amendment and the Presidential Records Act, where the US National Achieves and Records Administration advised the White House that the Presidential tweets are official records for preservation under the said Act. Several other case law authorities and principles therein are quoted and relied upon. Such legislations and case law principles espoused, do not obtain

in our jurisdiction, which is founded on common law jurisdiction, unlike the USA.

Secondly, the ***Trump case*** (supra) was concerned with issues as to constitutional interpretation in relation to the First Amendment of the US Constitution, among other issues. In the instant application, however, the Applicant does not seek the interpretation of the Constitution, but simply the enforcement of the provisions under Article 50(supra). Also, the cited US court case does not show that the court referred, for its decision, to any finding of the existence of alternative official twitter handles of the White House, used exclusively for official communication on public/official matters by President Trump. Court thus, found the twitter handle of President Trump fused in functions, and the White House officials confirmed so in evidence. Therefore, given the different legal regime in the USA, the basis of their jurisprudence and the specific considerations, the ***Trump case*** (supra) is distinguishable from the instant application, and is neither persuasive nor binding, and it shall be disregarded as such altogether.

Important to note, in this issue, is that while the named persons herein, are indeed public officials, it is quite evident on record, that the twitter

5 accounts held by them are all held in their personal, individual/private capacities. This was satisfactorily demonstrated by AIGP Asan Kasingye, in his affidavit in reply. He showed that that the respective institutions which the particular officials head, have separate official twitter accounts which they use to communicate official/public matters for the 10 very official/ public purposes, vide; State House known as @stateHouseUg; Government of Uganda @ugandamediacent; and Uganda Police Force @policeUg. These twitter handles are quite separate in their use and ownership from @KagutaMuseveni, @OfwonoOpondo and @AKasingye, respectively, which are private 15 twitter handles and not the official handles by virtue of the offices the said Respondent's officials hold. Being private twitter handles, therefore, they are as it were, personal to holder, and the respective persons have the latitude to choose on whom to allow, associate with or block on those twitter handles. Equally, there is nothing illegal or which 20 precludes a public official from using his/her private twitter handle to communicate or comment on a private matter or on issue of public concern, so far as it is done within the law. That would not in itself transform a private twitter handle public. Whether communications by a public official on a twitter handle renders such dissemination

5 public/official or private, would depend on circumstances and particular facts of each case. There are no hard and fast rules, until a specific legislation is made to that effect. The net finding is that no right of the Applicant, whatsoever, was infringed or violated by the said officials. The application is dismissed in its entirety, with costs to the
10 Respondent.

***BASHAIJA K. ANDREW***

***JUDGE***

***20/05/2020.***