THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 217 2021

IN THE MATTER OF ARTICLES 42 AND 50 OF THE CONSTITUTION AND SECTIONS 36 AND 38 OF THE JUDICATURE ACT CAP 13 (AS AMENDED) AND THE JUDICATURE (JUDICIAL REVIEW) RULES, 2009 AS AMENDED.

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

MOHAMED ALLIBHAI :: APPLICANT

VERSUS

ATTORNEY GENERAL :: RESPONDENT

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] This application was brought by Notice of Motion under Articles 28, 42, 44 (c) and 50 of the Constitution; Sections 36 and 38 of the Judicature Act Cap 13; and Rules 3, 6, 7 and 8 of the Judicature (Judicial Reviews) Rules, S.I. No. 11 of 2009 as amended, for reliefs/orders that;

a) A Declaration that the Parliamentary Sub- Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) acted illegally and ultra vires when it held out to act as a court of law, examine and investigate properties that have been a subject of either ongoing or concluded court decisions.

b) A Declaration that the Parliamentary Sub-Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) acted irrationally, illegally and ultra vires when it proceeded to investigate and hear private disputes involving private individuals, outside the purview of Parliament's dealings with Government Parastatals or the Auditor

General's Report and the terms of reference of its investigation into the operations of the Departed Asians Property Custodian Board (DAPCB).

c) A Declaration that the Parliamentary Sub-Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) acted, illegally and ultra vires when it made recommendations which seek to overturn court judgments.

d) A Declaration that the Parliamentary Sub-Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) acted with bias, illegally, ultra vires and in abuse of the principles of natural justice when it unjustifiably issued a warrant of arrest against the Applicant.

e) A Declaration that the decision of the Parliamentary Sub-Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) to conduct hearings in Canada wherein it called witnesses to testify against the Applicant, in his absence and without according him the opportunity to attend these proceedings and/ or cross examine the said witnesses was/ is in violation of the principles of natural justice, biased, unfair, ultra vires, null and void.

f) A Declaration that the Parliamentary Sub-Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) through its Chairperson and other members generally conducted investigations in a biased manner.

g) A Declaration that the Parliamentary Sub-Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) acted irrationally and ultra vires when it made recommendations of cancellation of repossession certificates on the assumption that the former owners did not return to Uganda physically, basing and relying on a document from the Ministry of Internal Affairs which clearly contained a disclaimer that in the absence of proper particulars being provided by the sub-committee, no proper search of travel records could be done by the Ministry.

h) An Order of Certiorari doth issue to call for and quash the Parliamentary Sub-Committee on Commissions, Statutory Authorities and State Enterprises (COSASE)'s report on investigations into the operations of Departed Asians Property Custodian Board and have the same expunged from the Hansards of Parliament in so far as it relates to the Applicant.
i) An Order of Certiorari doth issue quashing and expunging from all official records, the warrant of arrest issued against the Applicant.
j) An Order of Prohibition barring the Respondent, their servants, agents or any other person acting under them from enforcing the recommendations made in investigation into the operations of the Departed Asians Property Custodian Board (DAPCB) in as far as it relates to the Applicant.
k) An Order that the Respondent pays Punitive and Exemplary damages for the Respondents' arbitrary, highhanded and oppressive treatment of the Applicant.
l) General damages.
m) Costs.

[2] The grounds of the application were summarized in the Notice of Motion and also contained in an affidavit affirmed by the Applicant, Muhamed Allibhai, in support of the application. The Applicant also affirmed to a supplementary affidavit in support of the application filed in Court on 4th November, 2021. The grounds of the application are that;

a) The Applicant was one of the private individuals subjected to investigations by the Respondent's Parliamentary Sub-Committee on Commissions, Statutory Authorities and State Enterprises (COSASE), in its investigations into the operations of the Departed Asian's Property Custodian Board (DAPCB).
b) Following the investigations into the operations of the Departed Asian's Property Custodian Board, the COSASE Sub-Committee made a report in April 2021, which report was adopted by Parliament on 5th of May 2021.

c) The Applicant was summoned through a Newspaper Advert in the New Vision edition of August 30th 2019 to appear before the Committee on the 11th September, 2019, without giving any specific queries against him.

d) The Applicant requested for the particulars of issues that the Committee needed him to respond to for preparations for the hearing but he was never granted the same.

e) This procedure was strange and differed from the mandatory statutory requirement under Rule 211 of Rules for Procedure for the 10th Parliament which required that summons be issued and served personally and clearly stating the reason for the summon. The Applicant still appeared before the Committee despite the faulty summons.

f) During the hearing on the 11th September 2019, the Applicant was denied a fair hearing, harassed and the COSASE Sub-Committee Chairperson continuously forced him to admit his biased, baseless and premediated conclusions.

g) Without notifying the Applicant as a concerned party, the COSASE Sub-Committee made trips to Canada and the United Kingdom (UK) claiming that they were investigating whether the Applicant was complying with the powers of management of repossessed properties given to him by the owners thereof. The Applicant states that these were private and confidential matters between him and his clients/principals.

h) While in Canada, the Sub-Committee Chairperson when appearing on a radio talk show, with clear bias and malicious intent, labelled the Applicant a fraud who was holding various repossessed properties for his personal benefit and who had threatened the owners of the said properties not to come back to Uganda.

i) The COSASE Sub-Committee acted in bad faith and unfairly when it co-opted George William Bizibu, the Executive Secretary of the Departed Asian's Property Custodian Board, the very body it was required to investigate, as a permanent member of the Sub-Committee. The said George William Bizibu had already made accusations against the

Applicant and pre-judged him as a fraud through a document labelled confidential dated 4th July 2019 which he had sent to the Clerk to Parliament.

j) The Applicant, in addition to appearing once before the Sub-Committee and writing to the Sub-Committee through his lawyers, petitioned the Speaker of Parliament under Section 12 of the Parliament (Powers & Privilege) Act Cap 258, to exercise her powers and excuse the Applicant from producing documents of private nature. The Applicant's petition was supposed to be treated as a preliminary point of law and the Committee was supposed to halt any proceedings against the Applicant until the Speaker had made her ruling on the matter. However, the Sub-Committee defiantly continued with proceedings against the Applicant.

k) The Sub-Committee proceeded to issue a warrant of arrest against the Applicant on an allegation that he had refused to appear before the Committee and that he was on the run. The warrant of arrest issued against the Applicant was illegal, ultra vires and unreasonable and should be expunged from the public records.

l) The Speaker of Parliament made a ruling on the petition by the Applicant belatedly on 9th July 2020 after the Sub-Committee had proceeded with the hearings against the Applicant, issued a warrant of arrest against him and ran a media campaign against him.

m) The COSASE Sub-Committee investigated the Applicant's alleged personal involvement in expropriated properties some of which were subject of either concluded or ongoing court matters.

n) The Applicant sent a written memorandum to the Sub-Committee clearly showing the properties that he had participated in and in respect of which the Minister had issued certificates of repossession after following the due process. In reply, the Sub-Committee Chairperson responded that the explanation was satisfactory. Surprisingly, shortly after the said letter expressing satisfaction, the Sub-Committee wrote another letter asking for further explanations regarding properties to which the

Applicant had allegedly not responded to. The Applicant replied to the Sub-Committee but did not receive any further communication over the same.

o) The Sub-Committee made recommendations which seek to overturn court judgments and to invoke inquiry into expropriated properties after a period of over 20 years after the repossession was effectively done and concluded. The Sub-Committee has thus irrationally and illegally made recommendations for cancellation of repossession certificates on the misrepresentation that former owners did not return to Uganda physically in absence of any such proof to that effect.

p) The entire COSASE Sub-Committee investigation which led to the impugned report was conducted in violation of the principles of natural justice, with procedural impropriety, irrationality, illegality, bias, and ultra vires.

q) The impugned report and its recommendations threaten to deprive the Applicant and/or his respective principals the right to own private property and a source of livelihood.

r) That the Applicant has been subjected to a lot of humiliation, mental torture, anguish and that his reputation has been greatly damaged and impaired for which he seeks general damages of UGX 500,000,000/=, exemplary damages of UGX 500,000,000/= and punitive damages of UGX 500,000,000/=.

s) It is in the interest of justice that the application is granted.

[3] The Respondent opposed the application through an affidavit in reply deposed by Adolf Mwesige Kasaija, the Clerk to the Parliament of Uganda, in which he stated that;

a) The inquiry into the activities of the Departed Asians Property Custodian Board (DAPCB) with respect to the properties of the departed Asians was premised on Rule 178(1)(a) of the then Rules of Procedure which permits PAC-COSASE to examine the reports and audited accounts of statutory

authorities, corporations and Public Enterprises and in the context of their autonomy and efficiency, to ascertain whether their operations are being managed in accordance with the required competence and where applicable, in accordance with sound business principles and prudent commercial practices.

b) The Sub-Committee of COSASE investigated the handling of the property of the departed Asians by the Departed Asians Property Custodian Board (DAPCB) upon specific terms of reference which are clearly stated in the report of the Sub-Committee and repeated in the affidavit in reply.
c) The Applicant together with 3 others have previously instituted suits against the Attorney General vide Miscellaneous Causes No. 70, 117 and 119 of 2020 wherein it was alleged that the proceedings of the Sub-Committee of COSASE were marred with irregularities, illegalities, procedural impropriety and irrationality; which matter was adjudicated upon by the Court and is accordingly res judicata.
d) The Applicant was never harassed nor was the committee biased against him.
e) The Applicant is not entitled the remedies sought.

[4] The Applicant filed an affidavit in rejoinder deposed by the Applicant himself whose contents I have also taken into consideration.

Brief Background

[5] The Applicant who is the Managing Director of M/S Tight Security Limited and M/S Alderbridge Real Estate and Management Limited, by Powers of Attorney or other delegated authority, represented some former owners of expropriated properties in the repossession process and/or management of the respective expropriated properties. The Parliamentary Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) constituted a Sub-Committee, under the direction of the 10th Parliament, to inquire into and/or investigate the activities of the Departed Asians' Property

Custodian Board (DAPCB) regarding expropriated properties. On 6th November 2019, the Rt. Hon. Speaker of the 10th Parliament guided that a Sub-Committee of the Commissions, Authorities and State Enterprises (COSASE) Parliamentary Committee conducts the investigation in light of the findings of two reports by the Auditor Generals' Office on the operation of the Departed Asians Property Custodian Board for the period 1st February 2011 – 31st March 2016 and 1st April 2016 – 31st March 2017; and accordingly report back to the House. The investigation was undertaken and on 5th May 2021, a report of the investigations of the COSASE Sub-Committee was tabled before Parliament and was approved and adopted by Parliament. This is what prompted the Applicant to bring the present application.

Representation and Hearing

[6] At the hearing, the Applicant was represented by Mr. Tebyasa Ambrose while the Respondent was represented by Ms. Nabasa Charity, State Attorney from the Chambers of the Attorney General. It was agreed that the hearing be conducted by way of written submissions which both Counsel duly filed and the same have been reviewed and adopted by the Court.

Issues for Determination by the Court

[7] Two issues were agreed upon for determination by the Court, namely;

(a) Whether the application discloses sufficient grounds for judicial review.

(b) Whether the Applicant is entitled to the remedies prayed for.

Resolutions of the Issues

<u>Issue 1</u>: Whether the application discloses sufficient grounds for judicial review.

[8] I have reviewed the pleadings, the evidence and submissions of both parties on this issue. Both Counsel made studious submissions and I will refer to

them in the course of resolution of this issue as and when they are pertinent to the Court's determination of the matters in issue.

[9] I find it pertinent to first deal with a matter that was raised by the Respondent's Counsel as a preliminary objection; though not expressly stated so. It was submitted by Counsel for the Respondent that the declarations sought by the Applicant in this application have already been litigated in Miscellaneous Causes No. 70, 117 and 119 of 2020 and are therefore res judicata. Counsel relied on the provision under Section 7 of the Civil Procedure Act and on decided cases regarding the applicability of the doctrine of res judicata to the present case. In reply, contained in the Applicant's submissions in rejoinder, it was submitted by the Applicant's Counsel that the matters raised in the present application have never been adjudicated upon on their merit, the former suit having been categorically dismissed for being premature, thereby making any issues therein premature for resolution by the Court.

[10] The doctrine of *res judicata* is codified in the provision under *Section 7 of the Civil Procedure Act* which provides as follows:

> *"No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by that Court."*

[11] According to decided cases, the essential elements of the doctrine of res judicata are that:

a) There was a former suit between the same parties or their privies;
b) The matter was heard and finally determined by the court on its merits;
c) The matter was heard and determined by a court of competent jurisdiction; and

d) The fresh suit concerns the same subject as the previous suit.

(See: *Bithum Charles Vs Adoge Sally, HCCS No. 20 of 2015* which relied on ***Ganatra v. Ganatra [2007] 1 EA 76; Karia & Another v. Attorney General & Others [2005] 1 EA 83 at 93 -994;*** and ***Attorney General & Anor vs. Charles Mark Kamoga MA 1018 of 2015*****).**

[12] I have perused the decision of the Court in the consolidated Miscellaneous Causes No. 70, 117 and 119 of 2020. The main thrust of that decision is that the application was found premature and unmeritorious because it was speculative and the matters raised by the Applicants were based on fears that were yet to come into existence. To bring this home, I will reproduce excerpts from the trial Judge's decision taken from pages 13, 14 and 15 of the Ruling. The Court noted that the Applicants were being summoned as witnesses to clarify on a few facts of the investigation that was being undertaken by the Sub-Committee of COSASE. The Learned Judge then stated at page 13 as follows:

> ***"The vastness of the power of judicial review has, however, induced the courts to introduce self-limitations. One such limitation is that a court would not pronounce itself merely on hypothetical questions, or entertain an application for judicial review without any damage having been caused to the applicant, or without any likelihood thereof. ... It would appear the court is invited to determine abstract questions of law and is highly speculative and presumptuous since it is filed in anticipation of wrongdoing against the applicants which had not yet been done."***

[13] At Page 14 of the Ruling, the Learned Judge stated:

> ***"It is clear the Parliamentary Committee will issue a report after the whole exercise of the probe or inquiry. It would be highly speculative to stop and muzzle the investigation before conclusively dealing with the issues under investigation."***

[14] Then, at page 15 the learned Judge concluded that the court should act with restraint in cases intended to restrain or stop investigations in any wrongdoing and the same may be challenged afterward with the final decision or report or recommendation but not prematurely before conclusion of the whole process.

[15] In light of the foregoing, the submission by Counsel for the Respondent that the Applicant has brought, before the Court, the same dispute in simply a different way is not made out. The present suit is quite different from the earlier one. The present dispute is challenging a finalized investigation and a report containing the Committee's findings and recommendations, in addition to a resolution of Parliament adopting the report. None of these was in existence when the former suits were filed. As already shown above, the absence of those aspects was the main reason for the failure of the former suits. It cannot be said, therefore, at this moment that the said suits determined the dispute between the parties finally. As such, none of the elements of res judicata have been established by the Respondent. The preliminary objection by Counsel for the Respondent is, therefore, overruled.

[16] Turning to the issue before the Court, it is not in dispute that the actions or decisions being challenged by the Applicant are those of a public body, that is, the Sub-Committee of the Parliamentary Committee on Commissions, Statutory Authorities and State Enterprises (hereinafter called "COSASE). The amenability of the present matter for judicial review was therefore not seriously contested by the Respondent except for one matter. It was argued by Counsel for the Respondent that because the Sub-Committee made recommendations, the matter was not properly before the court in judicial review since recommendations cannot be challenged.

[17] In my view, this argument by the Respondent's Counsel is untenable both in law and fact going by the circumstances of the present case. There is evidence that the Sub-Committee undertook inquiries, made findings and recommendations in form of a report. In that instance, it acted as a quasi-judicial body. Its actions and decisions amount to conduct of a public body that is subject to the court's supervisory power by way of judicial review. Secondly, after producing the report, the same was placed before the Committee of the whole House and was passed by Parliament. As it is, therefore, the resolution of Parliament passing the report is binding on all persons and authorities in Uganda unless otherwise set aside or modified through a lawful process. The argument by the Respondent's Counsel in that regard therefore bears no merit. I find that the present dispute is fully amenable for judicial review.

[18] On the merits of the case, *Rule 7A (2) of the Judicature (Judicial Review) (Amendment) Rules, 2019* provides as follows:

> *"The court shall grant an order for judicial review where it is satisfied that the decision making body or officer did not follow due process in reaching a decision and that, as a result, there was unfair and unjust treatment".*

[19] In that regard, the duty of the Applicant in an application such as this is to satisfy the Court on a balance of probabilities that the decision making body or officers subject of his challenge did not follow due process in making the respective decisions or acts and that, as a result, there was unfair and unjust treatment of the Applicant and which is likely to have an effect on other members of the public.

[20] Under the law, the court may provide specific remedies under judicial review where it is satisfied that the named authority has acted unlawfully. A public authority will be found to have acted unlawfully if it has made a decision or done something: without the legal power to do so (unlawful on the grounds

of illegality); or so unreasonable that no reasonable decision-maker could have come to the same decision or done the same thing (unlawful on the grounds of unreasonableness or irrationality); or without observing the rules of natural justice (unlawful on grounds of procedural impropriety or unfairness). See: ***ACP Bakaleke Siraji vs Attorney General, HC MC No. 212 of 2018***.

[21] In the instant case, the Applicant alleges that the impugned actions or decisions of the COSASE Sub-Committee were made illegally, irrationally, and/or with procedural impropriety or unfairness. I will consider each ground under a separate head.

Allegations based on the Ground of Illegality

[22] Illegality has been described as the instance when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or *ultra vires* or contrary to the provisions of the law or its principles are instances of illegality. In the famous case of ***Council of Civil Service Unions v. Minister for the Civil Service (1985) AC 375***, **Lord Diplock** made the following statement, that has often been quoted, on the subject:

> ***"By 'Illegality' as a ground for judicial review, I mean that the decision maker must understand correctly the law that regulated his decision-making power and must give effect to it. Whether he has or not is par excellence a justifiable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercised."***

[23] A public authority will be found to have acted unlawfully if it has made a decision or done something without the legal power to do so. Decisions made without the legal power are said to be made *ultra vires*; which is expressed through two requirements: one is that a public authority may not act beyond its statutory power; the second covers abuse of power and defects in its

exercise. In ***Dr. Lam – Lagoro James vs Muni University, HC M.C No. 007 of 2016***, **Mubiru J.** held that decisions classified as illegal include the following;

(i) decisions which are not authorized;

(ii) decisions taken with no substantive power or where there has been a failure to comply with procedure;

(iii) decisions taken in abuse of power including, bad faith (where the power has been exercised for an ulterior purpose, that is, for a purpose other than a purpose for which the power was conferred);

(iv) where power is not exercised for purpose given (the purpose of the discretion may be determined from the terms and subject matter of the legislation or the scope of the instrument conferring it);

(v) taking into account irrelevant considerations in the exercise of a discretion or failing to take account of relevant considerations.

(vi) failure to exercise discretion, including acting under dictation (where an official exercises a discretionary power on direction or at the behest of some other person or body. An official may have regard to government policy but must apply their mind to the question and the decision must be their decision).

[24] It is also the position of the law that where discretionary power is conferred upon legal authorities, it is not absolute, even within its apparent boundaries, but is subject to general legal limitations. As such, discretion must be exercised in the manner intended by the empowering Act or legislation. The limitations to the exercise of discretion are usually expressed in different ways, such as the requirement that discretion has to be exercised reasonably and in good faith, or that relevant considerations only must be taken into account, or that the decision must not be arbitrary or capricious. See ***Smart Protus Magara & 138 Others vs Financial Intelligence Authority, HC M.C No. 215 of 2018***.

[25] In the case of ***R v Commission for Racial Equality ex p Hillingdon LBC [1982] QB 276***, Griffiths LJ stated;

> *"Now it goes without saying that Parliament can never be taken to have intended to give any statutory body a power to act in bad faith or a power to abuse its powers. When the court says it will intervene if the particular body acted in bad faith, it is but another way of saying that the power was not being exercised within the scope of the statutory authority given by Parliament. Of course it is often a difficult matter to determine the precise extent of the power given by the statute particularly where it is a discretionary power and it is with this consideration that the courts have been much occupied in the many decisions that have developed our administrative law …"*

[26] In another decision of ***Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd [1981] 2 All ER 93 at 107,*** Lord Diplock noted that; *"government officers and departments 'are accountable to Parliament for what they do as regards efficiency and policy, and of that Parliament is the only judge; they are responsible to a court of justice for the lawfulness of what they do and of that the court is the only judge."*

[27] On the case before me, the Applicant raised several allegations pointing to alleged illegality of the process undertaken by the COSASE Sub-Committee. Let me examine one by one.

Breach of the Res Judicata Sub-judice Rules

[28] The doctrine of res judicata was invoked by Counsel for the Applicant to establish the unlawfulness of the COSASE Sub-Committee's actions and decisions. It was argued by Counsel for the Applicant that the COSASE Sub-Committee investigated some matters which had long been concluded by courts of competent jurisdiction, an act that was/is ultra vires. Counsel stated that Article 92 of the Constitution of Uganda, as amended, prohibits

Parliament from passing any law to alter the decision or judgment of any court as between the parties to the decision or judgment. The Applicant through his lawyers had raised this issue to the Sub-Committee in respect of property comprised in Plot 32 Gweri Road, Soroti and a pending court case vide HCCS NO. 42 OF 2005 for Plot 38 Jumabai Road, Soroti; both of which are registered in the names of the Applicant's principals, but the same was ignored by the Sub-Committee.

[29] Counsel for the Applicant further submitted that in contradiction of already existing court decisions, the Sub-Committee handled and made recommendations on the requirement of former owners to physically return to Uganda within 120 days after repossession of property. The Sub-Committee recommended that all property whose former owners did not physically return to manage the properties within 120 days should have their repossessions cancelled. Counsel referred the Court to **pages 33, 34, 35 and 41 of the COSASE Sub-committee report attached as Annexture "B" to the affidavit in support of the application**. Counsel concluded that since such matters had been subject of court decisions, they were res judicata and outside the mandate of the COSASE Sub-Committee. The conduct of the Sub-Committee was, therefore, ultra vires and illegal.

[30] In response, Counsel for the Respondent stated that the Sub-Committee acted within the law and their proceedings were premised on the mandate of Parliament as provided for under Articles 90 and 94 of the Constitution and Rules 159, 178 and 205 of the Rules of Procedure of Parliament and within the terms of reference set by Parliament.

[31] In my view, while Parliament and its relevant Committee were vested with the constitutional right and mandate to investigate and inquire into the matters that are subject of the impugned report, their mandate does not extend to undertaking investigations into matters that are the subject of court

proceedings and decisions. If done, this contravenes the res judicata rule where a matter is already determined; and the subjudice rule where the matter is pending before the court. In this case, it should be noted that the Sub-Committee was operating as a quasi-judicial body. Acting on matters that are res judicata or sub-judice would constitute an affront to the well-established principles of separation of powers and independence of the Judiciary which are cornerstones of the rule of law.

[32] Although there is no bar, in my view, for Parliament to discuss or even undertake investigations over matters that have been subject of court decisions, the cardinal point is that such investigation should not involve or constitute re-hearing of those matters and reaching conclusions that are contrary to the findings and decisions of the court. Parliament is obliged to derive guidance from the court decisions rather than taking liberty to depart or even reverse such decisions. In other words, Parliament should avoid placing itself in a position of reversing a decision of a court. Where a party is not satisfied with the finding and decision of the court, for whatever reason, their remedy is to use the well-established channels for challenging the court decision and not re-opening the same or related matters by way of petitioning a Committee of Parliament.

[33] According to a supplementary affidavit in support of the application deposed by the Applicant dated and filed on 4th November, 2021, one of the properties subject of the investigation by the COSASE Sub-Committee, named as Plot 32 Gweri Road in Soroti City, had been a subject of adjudication by the court between Roshanali B. Bhanji and Amirali Bachu Bhanji, being the principals of the Applicant, on the one hand (as Plaintiffs); and one Obonyo Martin, Soroti District Land Board and The Chief Registrar of Titles, on the other hand (as Defendants). The court decided the dispute in favour of the Plaintiffs. The said decision has not been reversed by any court of competent jurisdiction. The first Defendant (Martin Obonyo), however, is said to have

petitioned the Sub-Committee of the COSASE which went ahead to undertake investigation in respect of the same property and came to findings and recommendations that contradict the court decision. True to the fears haboured by the Applicant, the said Martin Obonyo (who lost before the court) has gone ahead to use the findings of the Committee to interfere with the Plaintiff's ownership rights over the same property. These averments have not been controverted by the Respondent.

[34] In my view, this is a classic example of why two different organs of the State should not have interlocking mandates; and where the mandates are clear, such as in the present case, why one organ should not interfere with the other's mandate. It is not in dispute that the mandate to hear and adjudicate disputes lies with the courts; and that where a court has heard and decided a case, no other organ of the State has the power to undo or re-do what the courts have done. A party aggrieved by any such decision is aware of or has means to know the available legal steps to take to challenge such a decision. Where the decision is unchallenged, or has been challenged and determined by the highest court under the law, the party must accept and abide by the decision. Any other action or step purported to substitute, reverse or disobey the decision of the court is illegal, null and void ab initio. As such, all parts of the report of the Sub-Committee that bear those traits are illegal and are to be set aside accordingly.

[35] There is further evidence by way of a letter from the Departed Asians Properties Custodian Board (DAPCB) dated 8th September 2021 written to the Senior Registrar of Titles, Soroti MZO, (annexture J on the supplementary affidavit in support of the application). In this letter, the Executive Secretary of the Board, Bizibu George William, is communicating sale of the said property at Plot 32 Gweri Road Soroti to Martin Obonyo; the same person who had litigated over the same property in court and had lost. Both Martin Obonyo and Bizibu George William were fully aware of the court decision and the fact that it

is still in force. Upon service of this letter together with a claim by Martin Obonyo to the tenant at the premises, the tenant was thrown into confusion as to the true ownership of the property in issue, prompting the tenant to institute a suit by way of Originating Summons vide Soroti High Court O.S No. 01 of 2021. The suit was for the court to direct, among others, as to which of the parties was the rightful owner of the property and entitled to receive rent thereof. All this would not have been necessary had court decisions been respected by all concerned. This kind of confusion is not anywhere close to what the law makers envisaged when they provided the different organs of the State with their respective mandates. I am also able to discern that this kind of approach and result is not what Parliament deliberately intended when assigning the COSASE Sub-Committee with the task in issue. It is clear that the Sub-committee veered off its lawful mandate.

[36] Counsel for the Applicant pointed out another case in point where the Sub-Committee handled and made recommendation on the requirement of former owners of expropriated properties to physically return to Uganda within 120 days after repossession of the property. The Committee concluded and made a recommendation to the effect that all property repossession in respect of which former owners did not physically return to Uganda to manage the properties as required under the Expropriated Properties Act **(EPA)** should be cancelled. This is reflected at pages 33, 34, 35, 36 and 41 of the Report.

[37] It is however imperative to note that this issue had been a subject of adjudication and of a court decision in ***May Balerio & Another vs Nurbunu W/O Gulamhussein Moledina & Another, HCCS No. 99 of 2011*** wherein the court held that ***"Even then, Section 9(1)(d) [of the EPA] appears not to be mandatory. Where a former owner fails to return and manage the property, it is left to the Minister to make a decision within his/her discretion whether such returned expropriated property should be sold off or disposed of in any other manner as may be stipulated in the***

regulations. I see no specific provision in the Act to prevent registration of property of a former owner who failed to physically return to the country. Secondly, I have already seen strong authority that the EPA is a remedial Act meant to return property wrongly taken over by the military regime to their former owners. Courts of record have thus stressed the need to interpret the Act liberally. See, for example, Registered Trustees of Kampala of Kampala Institute Vs DAPCB ... If Sections 3(2) and 9(1)(d) of the EPA were to be strictly applied or interpreted, it would mean that, former owners under genuine disability would be shut out of the principle remedy of the Act. In any case, had the legislator's intention been to exclude the use of attorneys, they would have specifically provided as much".

[38] That being the case, this is not an issue that the Sub-Committee was at liberty to re-investigate and come to a different finding in full non-compliance and contempt of the court decision. There is evidence that the Sub-Committee was fully aware of this decision and indeed reviewed it in its report. If the Sub-Committee or any other person held the view that the court was not right in the laid out interpretation of the law, the option was to appeal the decision and not to purport to reverse it through exercise of powers granted by the law to Parliament or its Committee. As rightly pointed out by Counsel for the Applicant, such purported exercise of power by Parliament is prohibited under Article 92 of the Constitution. For avoidance of doubt, Article 92 of the Constitution provides that *"Parliament shall not pass any law to alter the decision or judgment of any court as between the parties to the decision or judgment"*. If Parliament cannot pass a law having that effect, it follows that its Committee cannot sustain an investigation, a recommendation and a report to that effect. There is also evidence before this Court that the Defendants in the above cited case (of ***May Balerio & Another vs Nurbunu W/O Gulamhussein Moledina & Another***) and the property in issue are the same in issue in the impugned investigations and report herein.

[39] In ***Attorney General vs Walugembe Daniel, CA Civil Appeal No. 390 Of 2018***, the Court of Appeal held that ***"Court judgments and/or orders cannot be inquired into, compromised or interfered with by orders issued by another arm of government, and to do so would be gross interference within the doctrine of separation of powers and the independence of the Judiciary"***.

[40] The Applicant also accused the Sub-Committee of inquiring into matters that were pending before the court, thereby infringing the rule against *sub-judice*. A case in point was the suit in Soroti High Court vide **Civil Suit No. 24 of 2015: Omron Cuthbert Nicanor vs Mohammed Allibhai & Others** which concerned property comprised in Plot 38 Jumabhai Road in Soroti Town. The above suit was undergoing trial at the time of the Sub-Committee investigations. It is shown in the Applicant's evidence (paragraph 25 of the affidavit in support) that the pendency of the said suit was drawn to the attention of the Sub-Committee but the same was ignored. The said suit was determined by the court on 25/11/2021 after the report of the Sub-Committee had been made, debated and adopted by Parliament. The findings and recommendations in the report regarding the property in issue contradict the court decision. This is the very essence of the sub-judice rule. A person shall not deal with matters that are the subject of a court proceeding in such a way as to prejudice such a proceeding or its outcome. This rule was clearly breached by the Sub-Committee making the Committee's investigation and findings illegal to that extent.

[41] The set of circumstances pointed out above, therefore, constitute illegalities based on the principles of res judicata and sub-judice; which illegalities cannot be left to stand. The report of the Sub-Committee will therefore be accordingly affected to that extent.

Allegation of Ultra vires/ Acting without Jurisdiction

[42] It was submitted by Counsel for the Applicant that the action by the COSASE Sub-Committee to investigate, make findings and recommendations over property that had been dealt with by the Minister in accordance with the EPA was ultra vires their powers and that of the DAPCB, and was therefore illegal. In response, Counsel for the Respondent insisted that the Sub-Committee did not exceed its powers under the law.

[43] My finding is that under Section 6(1) of the Expropriated Properties Act (EPA), one of the ways the expropriated properties could be dealt with was through issuance of a certificate of repossession. The said certificate was issued by the Minister upon being satisfied of the merits of the application. The certificate, once issued, is deemed to be proof that all the necessary steps of verification have been undertaken and the issuing authority, the Minister, thereby becomes *functus officio* and is not empowered to revisit his/her decision. This interpretation of the above provision is supported by the Supreme Court decision in ***Mohan Kiwanuka v Asha Chand, SCCA No.14 of 2002***, wherein it was held that once a Minister issues a Repossession Certificate, he or she or any Government official cannot reverse, review or otherwise modify that decision. The only course of action available to any aggrieved party is to seek redress in the courts of law as prescribed by the procedure set out under Section 15(1) of EPA; which is to appeal to the High Court within 30 days from the date of communication of the decision.

[44] There is evidence on record that the Sub-Committee was aware of this legal position and they expressly reviewed the above mentioned decision of the Supreme Court. There is also evidence that the Sub-Committee was aware that some properties they were investigating had been dealt with by the Minister by way of issuance of repossession certificates. Yet the Sub-Committee went ahead to undertake investigations, make findings and recommendations over the same properties; which recommendations are contrary to the law and the

said court decisions, and thus illegal. A case in point is the list of properties attached to the Applicant's affidavit in support (under Annexture K) which list was in possession of the Sub-Committee and included certificate of repossession numbers. As indicated above, some recommendations by the Sub-Committee occasioned certain subsequent illegalities. In one case that has already been pointed out, subsequent dealings were made by the DAPCB whereby the Board purported to issue a certificate of purchase to one Martin Obonyo in respect of property over which not only a certificate of repossession had been issued but was also subject of a court decision that had upheld such repossession.

[45] I am therefore in agreement with learned Counsel for the Applicant that, to the extent stated above, the actions and decisions of the Sub-Committee were ultra vires their power on account of lack of jurisdiction. Such acts and decisions therefore constitute an illegality that is impeachable through the exercise of the court's prerogative powers.

Allegation of Ultra vires or Illegal Exercise of Judicial Powers to hear private disputes

[46] It was argued by Counsel for the Applicant that by investigating private matters, the Sub-Committee acted ultra vires its terms of reference. Counsel argued that the Sub-Committee openly abused public power to hear private disputes, to determine how private persons execute their contracts to which the DAPCB (the body that was supposed to be investigated) was not privy.

[47] I do not agree that the Sub-Committee's investigation went outside the public domain when it inquired into the repossession and management of expropriated properties or that the DAPCB was not privy to the arrangement between the repossessing owners and their agents. The fact is that no repossession could take place without the involvement of the DAPCB. As such, if the repossession process is subject of an inquiry, the DAPCB cannot be

excluded from this process. It is, well, true that after repossession of a particular property, the DAPCB has no further role in that property. That however does not preclude a body with mandate such as the Sub-Committee of COSASE from undertaking an investigation into how repossession of such property was conducted. Provided such investigation is done within the confines of the law, the same cannot be ultra vires the Committee's powers. The problem only arises from the manner in which such an investigation is done.

[48] In principle, therefore, Parliament was in order to task the Sub-Committee to undertake the investigation and the Sub-Committee was in order to execute the assignment. The Court has only found issue with the manner and extent to which the investigation was undertaken as explicitly and variously stated herein above. This ground is, therefore, not made out by the Applicant.

Allegation of Illegal Issuance of an Arrest Warrant

[49] Counsel for the Applicant submitted that the Applicant was subjected to an irregular trial by the COSASE Sub-Committee. The Applicant was also subjected to an irregular Warrant of Arrest issued by the Sub-Committee while purporting to exercise powers of the High Court. Counsel argued that such exercise of power was unconstitutional and illegal as the same is exclusively vested in the courts of law. Counsel relied on the decision of the Constitutional Court in ***Abdi Alam & Anor v. Attorney General, Constitutional Petition No. 0043 of 2017***. For the Respondent, it was submitted in response that Parliament has power under the law to summon and compel attendance of witnesses including power to arrest and confine a recalcitrant witness for purposes of investigation by a competent authority.

[50] The authority in ***Abdi Alam & Anor v. Attorney General (supra)***, relied upon by Counsel for the Applicant appears distinguishable from the facts and circumstances of the present case. In that case, the Constitutional Court was

interpreting Section 9 of the Commissions of Inquiry Act Cap 166 Laws of Uganda, which Counsel for the Applicant appears to argue that it is worded similarly with Article 90(3)(c) of the Constitution of the Republic of Uganda (as amended) and Rule 205 of the Rules of Procedure of Parliament, 2017, under which the Sub-Committee proceeded to issue the warrant of arrest against the Applicant. Section 9(1) of the Commissions of Inquiry Act, which is relevant to this discourse, provides as follows:

> ***"Power to summon and examine witnesses.***
>
> *(1) Commissioners acting under this Act shall have the powers of the High Court to summon witnesses, to call for the production of books, plans and documents and to examine witnesses and parties concerned on oath."*

[51] On the other hand, Article 90 of the Constitution, as amended, provides as follows:

> ***"Committees of Parliament.***
>
> *(1) Parliament shall appoint committees necessary for the efficient discharge of its functions.*
>
> *(2) Parliament shall, by its rules of procedure, prescribe the powers, composition and functions of its committees.*
>
> *(3) In the exercise of their functions under this article, 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;*
>
> *(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;*
>
> *(ii) compelling the production of documents; and*
>
> *(iii) issuing a commission or request to examine witnesses abroad."* [Emphasis added].

[52] Then Rule 205 of the Rules of Procedure of Parliament, 2017, which were in force at the time, provides as follows:

> ***"Special powers of Committees***
> *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 their functions;*
> *(c) may call or invite any person to take part in the proceedings of the 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) shall have the powers to confine for any specific periods any recalcitrant witnesses and cite any person for contempt."* [Emphasis added]

[53] In the ***Abdi Alam*** case above, the Constitutional Court held that while under Section 9(1) of the Commissions of Inquiry Act, the Land Commission of Inquiry was given powers of the High Court to summon witnesses, to call for the production of books, plans and documents and to examine witnesses and parties concerned on oath, ***"... the placing of repercussions on a person who fails to comply with witness summons is an exercise of judicial power. Courts have the discretion to issue a warrant for the arrest of a person in such circumstances. An example Order 16 rule 10 of the Civil Procedure Rules, S.I 71-1 which sets an elaborate procedure of how a witness who fails to comply with summons is treated. When the Land Commission of Inquiry issued a warrant of arrest of the 1st petitioner for obstructing its work and disregarding its directives, it exercised judicial***

power. The Constitution stipulates that such powers can only be exercised by a Court of Judicature. The Land Commission of Inquiry cannot hide behind the provisions of the COIA, Cap. 166 to justify its exercise of judicial power. This is because the said Act has to be measured against the Constitution, which is the Supreme Law of the Land. If any law is inconsistent with any of the provisions of the Constitution, the Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void ..."

[54] In my view, the facts and circumstances of the present case are not analogous to those that were before the Constitutional Court in the above case. This is because of a number of reasons. One, is that the power given to a Commission of Inquiry under Section 9(1) of the Act above is restricted to summoning and examination of witnesses and parties concerned on oath; and to call for production of documents. On the other hand, the powers given to Parliament and its committees are explicitly wider, to wit; *enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise; compelling the production of documents; to confine for any specific periods any recalcitrant witnesses and cite any person for contempt.* These powers are provided for in the Constitution and in the Rules of Procedure of Parliament. The second reason is that the Constitutional Court took into consideration the fact that the Commissions of Inquiry Act was enacted pre the 1995 Constitution. It therefore had to be construed in such a way as to bring it into conformity with the Constitution. As already stated above, the powers of the High Court given to Parliament and its committees are stipulated in the Constitution itself and in the Rules of Procedure of 2017.

[55] The above circumstances, therefore, lead me to the conclusion that the decision in ***Abdi Alam*** above is not directly applicable to the facts and circumstances of this case. I am doubtful that if the facts and circumstances of the present case were placed before the Constitutional Court for interpretation,

the Court would reach the same finding. For that reason, since Parliament and its committees are granted powers of the High Court to enforce the attendance and examination of witnesses; to compel the production of documents; and to confine any person concerned with matters before it; it is not true that issuance of a warrant of arrest against an individual in the course of performance of its functions by a committee of Parliament is unconstitutional and illegal. While I agree that the procedure adopted by a particular committee of Parliament before issuing the warrant of arrest can be challenged for procedural impropriety, I am unable to agree that Parliament has no power to compel presence of a witness or concerned person by way of issuance of a warrant of arrest.

[56] As a matter of fact, under the Rules of Procedure of the 11th Parliament, passed on 14th May 2021, Section 208 which replaced Section 205(3) of the older rules makes express provision of the power of the Committee to arrest and confine "a recalcitrant witness for purposes of investigation by a competent authority". Since this power is derived from the Constitution (Article 90 thereof), it cannot be impeached on basis of a decision that was interpreting a differently worded provision of an Act of Parliament. This aspect of the Applicant's claim of illegality therefore fails.

Allegations based on the Ground of Procedural Impropriety

[57] According to **Lord Diplock** in ***Council of Civil Service Unions & Others vs. Minister for the Civil Service [1985] AC 374***, "procedural impropriety" has been defined to mean ***"the failure to observe basic rules of natural justice or failure to act with procedural fairness toward the person who will be affected by the decision."*** Procedural impropriety encompasses four basic concepts; namely (i) the need to comply with the adopted (and usually statutory) rules for the decision making process; (ii) the requirement of fair hearing; (iii) the requirement that the decision is made without an appearance of bias; (iv) the requirement to comply with any procedural legitimate

expectations created by the decision maker. See: ***Dr. Lam – Lagoro James Vs. Muni University (HCMC No. 0007 of 2016)***.

[58] Procedural propriety calls for adherence to the rules of natural justice which imports the requirement to hear the other party (*audi alteram partem*) and the prohibition against being a judge in one's cause. The latter essentially provides against bias. Natural justice requires that the person accused should know the nature of the accusation made against them; secondly, that he/she should be given an opportunity to state his/her case; and thirdly, the tribunal should act in good faith. See: ***Byrne v. Kinematograph Renters Society Ltd, [1958]1 WLR 762***.

[59] On the case before me, the Applicant raised a number of complaints pointing to impropriety in the way the Sub-Committee conducted its proceedings. The first complaint is in regard to the Sub-Committee's decision to allow Mr. Bizibu George William, the Executive Secretary of the DAPCB, to work as if he were part of the Sub-Committee. Counsel for the Applicant submitted that the COSASE Sub-Committee made the said George William Bizibu a permanent member of the Committee and yet he is not a Member of Parliament or its employee but the Executive Secretary of the Departed Asians' Property Custodian Board, the very body that the COSASE Sub-committee was supposed to investigate. Counsel submitted that George William Bizibu had already made prejudicial and biased statements against the Applicant in a document he termed as confidential which he submitted to the Sub-Committee through the Clerk to Parliament. Counsel referred the Court to **Paragraph 13 of the Applicant's Affidavit in support, Annexture "I"; Paragraph 6, Annexure "X" of the Applicant's Affidavit in rejoinder**; and **Paragraph 14 of the Applicant's Affidavit in support and Annexture "J".**

[60] Counsel for the Applicant submitted that when prejudicial statements are made by the Chairperson of the Sub-Committee investigating issues where the Applicant appeared as an "accused" and conclusions made in such statements that the Applicant fraudulently repossessed various properties, it does not in the least give even a semblance of impartiality of the committee in the matter. Counsel stated that the situation is made worse when the main accuser, Mr. George William Bizibu of the Departed Asians' Property Custodian Board, made similar prejudicial and biased conclusions about the Applicant and yet he sat in the COSASE Sub-committee permanently throughout the investigations and fully participated as a member of the COSASE Sub-Committee in the retreat held between 16th – 20th November 2020 at Victoria Golf Resort and Spa, which discussed, made resolutions and recommendations which were included in the Report adopted by Parliament on the 5th May 2021. Counsel referred the Court to **Paragraph 6 of the Applicant's supplementary Affidavit and Annexure "U" attached thereto**. Counsel concluded that it is not far-fetched, therefore, to submit that the Chairperson of the COSASE Sub-committee, Hon. Ibrahim Kasozi and George William Bizibu were the accusers, the jury and the judge.

[61] In reply, it was submitted by Counsel for the Respondent that the Sub-Committee co-opted Mr. George William Bizibu in line with the powers given to Parliament under Article 90(3)(b) of the Constitution which allows the Committee to co-opt any member of Parliament or employ qualified persons to assist them in the discharge of their functions. Counsel argued that there was no evidence that the presence of Mr. William Bizibu during the Sub-Committee proceedings occasioned bias and the allegation by the Applicant to that effect was based on conjecture and no real likelihood of bias.

[62] I would understand and appreciate the need for the Sub-Committee to have the presence of the Executive Secretary of the DAPCB at their disposal during proceedings. I have also taken into consideration the explanation given in the letter by the Speaker dated 9th July 2020 as to why it was necessary to

have the said person on Board. The explanation is that as Executive Secretary of the DAPCB, he only sat in the inquiry as a representative of the body under investigation, owing to his peculiar knowledge of the operations of the DAPCB and being the custodian of all public documents of the Board. That, in my view, would be okay if the said person in his individual or official capacity was capable of acting objectively and indeed gave the appearance of objectivity. Further, it would be crucial that the Sub-Committee was able to and indeed exercised restraint and avoided being unduly influenced by the said Executive Secretary's own biases.

[63] Unfortunately, it is apparent that given the background to the investigation, the expected objectivity on the part of Mr. George William Bizibu was substantively affected. This is because, the Audit reports that ignited this very investigation had found Mr. Bizibu's conduct and that of the entire Custodian Board (in name, since it is said the Board had not been in place for over 10 years) questionable. As a matter of fact, when the Sub-Committee set out to investigate, the primary target of the investigation was the DAPCB as an entity and its staff, on top of whom was the said Executive Secretary. The other persons of concern came in at a secondary level. As such, as a person being investigated, the said Executive Secretary was not in position to act and react independently and objectively to the issues subject of the investigation. He was in a position that compelled him to act defensively and/or vindictively. True to that opinion, the evidence before me does not indicate that either the Sub-Committee or the Executive Secretary himself absolved themselves of this impression. In fact, the appearance is that they got themselves clouded by these impressions and the result was to give the investigation a biased approach.

[64] There are, on record, a number of signs that are capable of leading to the above conclusion. One is that in the Sub-Committee meetings that discussed and came up with the final report (Annexture "U" to the supplementary

affidavit), the said Executive Secretary featured as a Member of the Committee (under the title "Members Present"). One could argue that this was a mistaken recording by the Minute Secretary. It is, however, one aspect whose reverberations cannot be ignored. First, the Applicant as one of the persons subjected to the investigation had by this time already complained about the involvement of the said Executive Secretary as being part of the investigators. It would, therefore, be expected that his involvement would be within the confines stipulated in the letter by the Speaker to Parliament. One would, therefore, be right to hold the perception that the Sub-Committee got so comfortable with the Executive Secretary and became oblivious of the fact that he was himself a subject of the investigation. That way, he managed to get his personal biases through, thereby managing to implicate others for faults he was himself responsible for.

[65] The other sign is that although the Applicant maintained throughout the Sub-Committee proceedings and in his affidavits herein that the said Executive Secretary had personal bias against him, there is no attempt by the Respondent to controvert these very serious allegations. Under the law, a matter contained in an affidavit that is not rebutted is deemed to be true and correct. Upon the circumstances before me, I do not find such silence to be innocent. It points to a degree of truthfulness in the Applicant's allegations. That being the case, it remains questionable how the said Executive Secretary could objectively participate in the investigation that led to the impugned report?

[66] As laid out above, bias is one of the grounds for impeachment of a decision of a public body under the broader ground of procedural impropriety or unfairness. It is settled law that the rule against bias in exercising quasi-judicial powers is an element of natural justice. See: ***Tweyambe Johnas & Anor v Attorney General & Anor Miscellaneous Cause No. 39 of 2019***. The Learned Author, **Graham Taylor** in **Judicial Review: A New Zealand**

Perspective (3rd ed, LexisNexis, Wellington, 2014) at 461 defines bias as "**a predisposition to decide a cause or an issue in a certain way which does not leave one's mind properly open to persuasion**."

[67] The rule against bias therefore calls for impartiality on the part of the decision maker. According to **Mubiru J.** in ***Dr. Lam – Lagoro James Vs. Muni University (supra)***, *"Impartiality connotes absence of bias, actual or perceived. Impartiality of the decision-making body is a critical feature of the right to a fair hearing which is captured by the Latin maxim, nemo judex in causa sua debet esse (no one should be the judge in his own cause). There are many different factual settings which could place the impartiality of a decision-making body in question; among such contexts are situations where the decision-makers have or are perceived to have a pecuniary interest, either direct or indirect, in the outcome of the hearing before them. Another such context is where the relationship of the decision-maker to one of the parties or counsel is sufficiently close to give rise to a reasonable apprehension of bias"*.

[68] In ***R. v. Architects' Registration Tribunal [1945] 2 All E. R. 131 (K.B.D.), at p. 138***, cited in the case of ***Dr. Lam – Lagoro James Vs. Muni University (supra)*, Lewis J.** observed as follows:

> ***"Where a decision maker has preconceived opinion and a predisposition to decide a cause or an issue in a certain way, or where one does not leave the mind perfectly open to conviction, and one's inclination clearly appears bending towards one side, it all shows an attitude of bias. The presence of bias thus leaves a reasonable person in doubt as to the impartiality of the decision making process. In these circumstances courts have quashed such decisions where it is obvious that a decision maker stood tainted by bias. (***See: ***R. v. Governor of John Banco School [1990] C.O.D 414).***

[69] In the case of ***Republic v. Commissioner of Domestic Taxes Exparte Sony Holdings Limited [2019] eKLR***, it was stated that;

> ***"Bias, whether actual or apparent, connotes the absence of impartiality." Bias may take many different forms but the main distinction is between actual and apprehended bias. A claim of actual bias requires proof that the decision-maker approached the issues with a closed mind or had prejudged the matter and, for reasons of either partiality in favour of a party or some form of prejudice affecting the decision, could not be swayed by the evidence in the case at hand. A claim of apprehended bias requires a finding that a fair-minded and reasonably well informed observer might conclude that the decision-maker did not approach the issue with an open mind. Apprehended bias has been variously referred to as "apparent," "imputed", "suspected" or "presumptive" bias".***

[70] On the case before me, it has been shown by the Applicant that the Executive Secretary of the DAPCB was affected both by actual and apprehended bias. The particulars have been set out herein above. I have also come to the conclusion that the Sub-Committee failed to avoid being infected with the said bias. The Sub-Committee thus failed to approach the allegations concerning the Applicant with impartiality. This constitutes sufficient ground for impeachment of the Sub-Committee proceedings, findings and recommendations in as far as they affect the Applicant. As indicated in decided cases reviewed above, courts have quashed such decisions where it is obvious that a decision maker stood tainted by bias. Such circumstances prevail in the present case and I am of the firm view that the actions and decision of the Sub-Committee in as far as they relate to the Applicant are affected by procedural impropriety and unfairness on account of bias.

[71] It was further alleged that the Applicant was denied a fair hearing. It was shown by the Applicant that he submitted a written explanation which was received by the Sub-Committee (paragraph 27 of the affidavit in support). The Applicant received a response from the Chair of the Sub-Committee indicating that the explanation had been found satisfactory and the Applicant was accordingly discharged of any liability to attend the Sub-Committee proceedings. The letter of the Sub-Committee Chairperson is annexed as "S" to the affidavit in support. In a surprising turn of events, the Applicant remained subject of investigations, the warrant of arrest earlier issued was not revoked and the final report made no mention of his written explanation or its satisfactory nature or lack of it.

[72] I am persuaded to agree with the Applicant's view that this was unfair treatment by the Sub-Committee against the Applicant and the same substantively offends the rules of natural justice, particularly the right to be given prior notice of the allegations against him and a fair opportunity to be heard before one is condemned. The said manner of proceeding by the Sub-Committee and the result of the inquiry were definitely prejudicial to the Applicant and was in breach of the requirement for procedural propriety before reaching decisions by a public body.

[73] It is a recognized principle of administrative law that the right to a fair hearing is sacrosanct and public or statutory bodies must conduct their investigations with fairness and impartiality. The **Halsbury's Laws of England 5th Edition 2010 Vol. 61 para 639**, makes the following crucial statement with regard to the right to be heard;

> **"The rule that no person is to be condemned unless that person has been given prior notice of allegations against him/her and a fair opportunity to be heard (the audi alteram partem rule) is a fundamental principle of justice. This rule has been refined and adopted to govern the proceedings of bodies other than judicial**

tribunals; and a duty to act in conformity with the rule has been imposed by the common law on administrative bodies not required by statute or contract to conduct themselves in a manner analogous to a court". [Emphasis added]

[74] In ***Ojangole Patricia & Others Vs Attorney General, HCMC No. 303 of 2013***, **Musota J** (as he then was) expressed the view that the rule of natural justice obliges an adjudicator faced with the task of making a choice between two opposing stories to listen to both sides. The adjudicator should not base his/her decision only on hearing one side. He/she should give equal opportunity to both parties to present their cases or divergent viewpoints. The scales should be held evenly between the parties. It does not matter that the result would be the same even if the other party had been heard. For breach of the Applicant's right to a fair and impartial hearing, the proceedings and decision of the Sub-Committee are accordingly affected.

[75] It was further submitted by Counsel for the Applicant that it was procedurally wrong and unfair for the Sub-Committee to conduct hearings in Canada and the UK without notice and/or an opportunity to the Applicant to attend those proceedings, to hear or learn the accusations levelled against him, the evidence adduced; and to cross examine the witnesses that adduced evidence before the Sub-Committee. In response, Counsel for the Respondent stated that the Applicant was on numerous occasions issued invitations to his known address and through his lawyers but he did not turn up for the meetings. The members of the Committee, therefore, construed that the Applicant was turning out to be a recalcitrant witness given his failure to heed the invitations.

[76] As already stated herein above, the right to be heard is sacrosanct and non-derogable under Article 28 (1) and 44 (C) of the Constitution of Uganda. In ***Rosemary Nalwadda vs Uganda AIDS Commission, High Court Civil Suit***

No. 45 of 2008, **Bamwine J.** (as he then was) quoting the Supreme Court decision of ***Charles Harry Twagira vs Uganda, Criminal Appeal No. 27 of 2003*** stated as follows:

> ***"... A fair trial or a fair hearing under this article [28] of the constitution means that a party should be afforded the opportunity to, inter alia, hear the witnesses of the other side testify openly; that he should if he chooses, challenge those witnesses by way of cross examination; that he should be given an opportunity to give his own evidence if he chooses to do so in his defence; that he should if so wishes call witnesses to support his case".***

[77] The foregoing is, no doubt, a correct statement of the law. On the case before me, the Applicant was neither notified of the proceedings that were due to take place out of the Country nor was he invited to attend the same. If for reasons of public finances, the Sub-Committee was unable to include him on the team, the same way some other non-committee member persons were accommodated, then he would still have been notified and given a choice to attend at his own cost. Alternatively, he could have been offered the option of attending the proceedings virtually. In the worst case scenario, if all the above were not possible or explored; upon return, the Sub-Committee would have relayed the evidence they obtained from witnesses outside the Country that concerned the Applicant and asked him whether he intended to respond to the same. None of these options was explored by the Sub-Committee, lending credence to the Applicant's allegation that the Committee was biased against him and deliberately infringed on his right to a fair hearing.

[78] The explanation by Counsel for the Respondent that the Applicant had before been invited and had turned down the invitations cannot answer for this failure to observe the rules of natural justice. There was no order that was formally passed by the Sub-Committee excluding the Applicant from its proceedings. It is even questionable whether the Sub-Committee had powers to

make such an order. As such, the duty of the Sub-Committee was to notify the Applicant. The duty to attend remained on the Applicant. It is clear that the Sub-Committee failed in its duty as a public body to act fairly and appropriately in the circumstances.

[79] It appears from the record that the Sub-Committee labored under the impression that the Applicant had intentions and indeed attempted to interfere with the witnesses that the Sub-Committee intended to interact with in Canada and the UK. The Sub-Committee relied on an email correspondence that was attributed to the Applicant. There is no proof before this Court over the authenticity of that correspondence as it is denied by the Applicant. But even if the said allegation was true, the same would still not justify a deliberate infringement of the Applicant's right to a fair hearing. As already stated, the right is sacrosanct and non-derogable. All the Sub-Committee ought to have done was to mitigate that fear, say by providing opportunity for a virtual hearing or providing the information to the Applicant upon return. It was totally improper and unfair for the Sub-Committee to conduct proceedings under a total black-out on the part of the Applicant and rely on the same to reach its findings. Such conduct violated the Applicant's right to a fair hearing and was procedurally improper and unfair.

[80] This position is further supported by three decisions to which the Respondent's Counsel referred the Court, namely; ***Local Government Board vs Arlidge [1951] AC 120, at pp. 132-133; Selvarajan vs Race Relations Board [1975] 1 WLR 1686, at p. 1694;*** and ***R vs Immigration Appeal Tribunal ex-parte Jones [1988] 1 WLR 477, at p. 481***. The courts in the above decisions expressed the view that the hearing does not have to be an oral hearing in all cases. There is ample authority that decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedure. Provided that they achieve the degree of fairness appropriate to their task, it is for them to decide how they will proceed

and there is no rule that fairness always requires an oral hearing. Whether an oral hearing is necessary will depend upon the subject matter and circumstances of the particular case and upon the nature of the decision to me made.

[81] The above statement should not, in the least, be construed as permitting public bodies to ignore the crucial aspects of the cardinal rule of fair hearing. Rather, it recognizes the liberty and discretion given to such authorities to determine their own procedure. The pre-requisite, however, is that certain procedures must be laid down and that the conduct of the public body as masters of their own rules of procedure must achieve the degree of fairness that is appropriate to their task. There is evidence before the Court, in the present case, to support the view that the conduct of the Sub-Committee did not achieve the expected degree of fairness either within the rules of procedure of Parliament or at all.

[82] Counsel for the Respondent expressed their objection to the Applicant's reliance on a video clip and its transcription on the ground that its authenticity was not tested and the same was inadmissible before the Court. I agree with this argument to the extent that the said evidence (attached as annexture "H" to the affidavit in support of the application) was not subjected to any scrutiny. It may well have been the primary responsibility of the Respondent to express its objection to the said evidence and to ask for presence of the necessary witness for cross examination. Nevertheless, the fact that such evidence was not tested for authenticity and admissibility overrides the Respondent's omission to formally put across their objections. I have, therefore, not placed any reliance on that piece of evidence.

[83] In the circumstances, therefore, the Applicant has satisfied the Court that the report of the COSASE Sub-Committee in as far as it affects him was arrived at with procedural impropriety and unfairness, particulars of which have been

well pointed out herein above. Those parts of the report that are affected by this finding by the Court are liable to be quashed accordingly.

[84] On the ground of **irrationality**, I have reviewed the allegations under this ground and the law applicable, and I have found that the same allegations have been well catered for under the grounds of illegality and procedural impropriety. I have not found those allegations made out in the context of irrationality or unreasonableness. I have, therefore, not given any further treatment to these allegations.

[85] In all, therefore, on the first issue, the Applicant has established that sufficient grounds exist to impeach the actions and decisions of the COSASE Sub-Committee by way of judicial review. The first issue is, therefore, answered in the affirmative.

Issue 2: Whether the Applicant is entitled to the remedies prayed for.

[86] The law is that grant of judicial review remedies remains discretionary and it does not automatically follow that if there are grounds for questioning any decision, action or omission, then the court must issue any remedies available. The court may not grant any such remedies even where an applicant may have a strong case on the merits; so the courts must weigh various factors to determine whether any remedies should lie in any particular case. See: ***R vs Aston University Senate ex p Roffey [1969] 2 QB 558*** and ***R vs Secretary of State for Health ex p Furneaux [1994] 2 All ER 652*** cited in ***Salim Alibhai & Others vs URA, HC M.A No. 123 of 2020***.

[87] In the present case, faced with a decision reached by the decision maker with the highlighted illegalities and in absence of impartiality and procedural fairness, the Court cannot deny the Applicant the prerogative writs that are made out on the evidence. I will therefore allow this application with

declarations and orders that are to follow. But before setting out the declarations and orders granted, let me first deal with the substance of the Applicant's claim for damages.

[88] The law is that in judicial review, there is no right to claim for losses caused by the unlawful administrative action. Damages may only be awarded if the applicant, in addition to establishing a cause of action in judicial review, establishes a separate cause of action related to the cause of action in judicial review, which would have entitled him or her to an award of damages in a separate suit. In that regard, *Rule 8(1) of the Judicature (Judicial Review) Rules, 2009* provides as follows:

"8. Claims for damages

(1) On an application for judicial review the court may, subject to subrule (2), award damages to the applicant if,

(a) he or she has included in the motion in support of his or her application a claim for damages arising from any matter which the application relates; and

(b) the court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his or her application, he or she could have been awarded damages."

[89] In this regard, the agreed position of the law is that the additional cause of action which may be added to an application for judicial review may include a claim for breach of statutory duty, misfeasance in public office or a private action in tort such as negligence, nuisance, trespass, defamation, interference with contractual relations and malicious prosecution. See: ***Three Rivers District Council versus Bank of England (3) [3003]2 AC 1***; ***X (Minors) versus Bedfordshire County Council [1995]2 AC 633*;** and ***Fordham, Reparation for Maladministration: Public Law Final Frontiers (2003) RR 104 at page 104 -105***.

[90] On the case before me, although it has been established by the Applicant that he was subjected to several illegalities and some form of procedural impropriety and unfairness by the Sub-Committee, I have not found sufficient ground and evidence that justify award of damages. I have neither found any evidence of breach of statutory duty nor any misfeasance in public office. The allegations by the Applicant of a negative press campaign orchestrated by the Sub-Committee members that had the effect of maligning his public image do not, in these circumstances, amount to a private tort of defamation. There is no evidence before the Court that is capable of establishing an action in defamation. In the premises, therefore, I have not found any justification for grant of any orders for damages in addition to the other remedies granted in judicial review.

[91] All in all, this application is allowed with the following declarations and orders:

a) A declaration that the COSASE Sub-Committee acted ultra vires, and thus illegally, when it investigated properties that were subject of concluded court decisions or on-going court processes.
b) The COSASE Sub-Committee acted ultra vires, and thus illegally, when it made recommendations that purport to overturn court decisions.
c) The COSASE Sub-Committee exceeded its mandate and acted without jurisdiction, and thus illegally, when it purported to investigate properties already dealt with under the Expropriated Properties Act and in respect of which certificates of repossession had long been issued.
d) The COSASE Sub-Committee acted ultra vires and without jurisdiction, thus illegally, when it made recommendations for cancellation of repossession certificates in respect of properties that had already been dealt with in accordance with the Expropriated Properties Act.
e) The COSASE Sub-Committee acted with bias and in abuse of the principles of natural justice, thus with procedural impropriety and unfairness, when it issued a warrant of arrest against the Applicant.

f) An Order of Certiorari doth issue quashing and expunging from the Hansards of Parliament those parts of the COSASE Sub-Committee report that relate to the Applicant and are affected by the illegalities, procedural impropriety and unfairness contained in the declarations (a – e) above.

g) An Order of Certiorari doth issue quashing and expunging from all official records the warrant of arrest issued against the Applicant.

h) An Order of Prohibition barring the Respondent, their servants, agents or any other body or persons from enforcing the recommendations of the COSASE Sub-Committee in as far as they relate to the Applicant or the affected properties.

i) An order that the Applicant is awarded the costs of this application.

It is so ordered.

Dated, signed and delivered by email this 4th day of July, 2022.

Boniface Wamala

JUDGE