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### 3. Costs of the application be provided for.

#### Grounds of the application:

The grounds upon which this application is premised are contained in the affidavit in support thereof, the details of which are on the court record.

- 5 When this matter came up for hearing on 21<sup>st</sup> December, 2023, counsel for the applicant made a prayer that this court issues an order restraining the respondents from further execution of the orders in **Company Cause No.002 of 2023**; and for court to suspend the execution and implementation of the resolutions passed on 16<sup>th</sup> & 17<sup>th</sup> December 2023 at Ggangu Muslim Primary  
10 School.

From the record, the application was filed in Jinja High Court circuit on 19<sup>th</sup> December, 2023. An *ex parte* application was made and heard vide **MA No. 306 of 2023** by court presided over by Dr. Winfred N. Nabisinde on 18<sup>th</sup> December, 2019.

- 15 An interim order was issued preventing further execution and implementation of the orders in **Company Cause No.002 of 2023**. The order was to have effect until 22<sup>nd</sup> December, 2023.

By that order neither **MA No. 306 of 2023 and MA No. 307 of 2023 (main application)** and present application were all placed before the Principal  
20 Judge for further management.

However, neither **MA No. 306 of 2023 and MA No. 307 of 2023** which arise out of an appeal pending before the Court of Appeal had at the time of hearing this matter been served onto the intended respondents. According to the counsel for the respondents, they only had instructions to represent the  
25 respondents in regard to this application for review, and not the other 2 applications.

Regarding the present application, counsel appearing for the respondents informed court that the respondents who are residents of Jinja were only served yesterday, 20<sup>th</sup> December 2023 for today's hearing through the firm of





**M/s Mugisa Namutale & Co. Advocates** and that they intended to file a reply to the application for review.

Counsel for the respondent challenged the powers of the Principal Judge to hear this application. His argument was that only the judge who made the  
5 orders is supposed to hear and determine an application for review. Accordingly, that this application was intended to usurp the powers of the General Assembly which made the resolutions that took immediate effect.

On the question of jurisdiction by this court, counsel for the applicants however cited **sections 98 of the CPA and 33 of the Judicature Act**, as  
10 well as **section 64(e) of the CPA**. They also relied on the case of **Attorney General & Anor vs James Mark Kamoga SCCA No.8 of 2004**.

For the respondents however, a reference was made to a later case by the same court: **NSSF vs ALCON International Ltd SCCA No. 18 of 2009** the  
15 gist of which is that where there is a specific provision a general law is not applicable.

With all due respect to the submissions made by counsel for the applicant, **section 82 of the CPA** cannot operate independently of **order 46 of the CPR**. As pointed out by his colleague counsel, inherent jurisdiction cannot be invoked where there is an express statutory provision dealing with the matter.  
20 I could not agree more.

Both **sections section 98 of the CPA and 33 of the Judicature Act, Cap. 13** would ordinarily apply where the law does not expressly provide for the procedure. (Ref: **Oluka Matia vs Changa Moses HCCA No. No. 0090 of 2009**).

25 The applicable rules of procedure in this instance are clearly spelt out in **order 46 rule 2 of the CPR**, under which an application for review must be made to the judge who made the order.

There are exceptions however made under those rules. **Order 46 rule 4** stipulates that:



Where the judge who passed the decree or made the order, a review of which is applied for, continues attached to the court at the time when the application for review is presented and is not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, the judge shall hear the application, and no other judge shall hear the application. (emphasis added).

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Within the spirit of that provision, the term 'other cause' would not include a situation as in the present case, where the judge who made the decision intended for review is taking off days for her annual leave.

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This court has also noted that the resolutions made by the General Assembly which were the basis of the prayers sought in the application were only mentioned in the affidavit in support of the application for review.

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These were admittedly picked from the social media broadcasts. As rightly submitted by counsel for the respondents, the members of the General Assembly were not made party to this application. Nor could it therefore be stated with certainty that the respondents against whom the prayers were sought in this application had been party to the General Assembly resolutions.

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For those reasons therefore, this court declines to delve into the merits of this application the determination of which at this stage would deny the respondents an opportunity to file their response.

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Be that as it may, **Section 64(e) of the Civil Procedure Act** as cited by counsel for the applicants vests this court with authority to make interlocutory orders as may appear to be just and convenient.

Although therefore this court lacks jurisdiction to hear the review application based on the provisions under **order 46 rules (2) and (4) of the CPR**, it is not barred from proceeding under **section 64(e) of the CPA** to make interlocutory orders as may appear to be just and convenient.

30 Accordingly, the following orders are made:



1. **MA No. 309 of 2023** is referred back, together with **MA No. 306 of 2023 and MA No. 307 of 2023** to the judge who made the orders sought for review;

5      2. Further execution and further implementation of the resolutions of the General Assembly made on 16<sup>th</sup> and 17<sup>th</sup> December, 2023 in **Company Cause No.002 of 2023** shall await the hearing and determination of this application by the same judge who made the orders.

10      3. Costs shall abide the outcome of **MA No. 309 of 2023**.

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**Alexandra Nkonge Rugadya**

**(Acting Principal Judge)**

*Delivered on 22/12/2023*

15      **22<sup>nd</sup> December 2023.**