

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**MISCELLANEOUS CAUSE NO. 208 OF 2022**

**MINEX KARIA:.....APPLICANT**

**VERSUS**

**ATTORNEY GENERAL:.....RESPONDENT**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**RULING**

This is an application brought under Rules 3,4 and 6 of the Judicature (Judicial review) SI No.11 of 2009, Judicature (Judicial review) (Amendment) Rules, 2019. The applicant seeks the following judicial review orders:

1. *An order of judicial review/certiorari issue to call up and quash/ expunge part of the Report of a Subcommittee of the Parliamentary Committee on Statutory Authorities and Statutory Enterprises (COSASE), described as appendix 10 of the report, (including all deliberations, proceedings and references culminating in the said Appendix 10) which was presented and adopted as a parliamentary report on Wednesday 5<sup>th</sup> May 2021.*
2. *An order of Prohibition against any further interference with the rights of the registered proprietors named in Appendix 10 of the respondent, any government officials, or public servants be made for the applications on grounds that;*
3. *Costs are awarded to the applicant.*

This application is supported by the affidavit of the Minex Karia which briefly stated that;

1. The Report purports to issue ultra vires decisions and recommendations withdrawing certificates of repossession in respect of a number of repossessed properties without lawful authority, such authority being reserved by law to the Minister of Finance under the Expropriated Properties Act.
2. The contents of Appendix 10 include a list of properties allegedly repossessed by the applicant but all of which are owned by persons other than the applicant, which persons were never informed that their properties were being investigated, never advised about the nature of any such investigation or given any opportunity to be heard.
3. The conclusions of the Parliamentary Sub-Committee were irrational as they supposedly relied on a document from the Ministry of Internal Affairs which contained an express disclaimer that in the absence or proper particulars being provided by the Sub-committee, no proper search of travel records had been by the ministry.
4. The subcommittee proceeded to list 46 properties which do not bear the applicant's as the registered proprietor. The names of the respective proprietors are listed in column 6 of the said document under the title 'to whom issued'.

The Respondent opposed this application and filed an affidavit in reply through Waiswa Henry Yoweri-Deputy Clerk, Corporate Affairs and stated briefly as follows;

1. The respondent in specific reply contended that;
  - a) Parliament of Uganda pursuant to the authority vested upon it under Article 94(1) of the Constitution of Uganda made rules to regulate its own procedure, including the procedure of its committees.
  - b) Rule 156 of the Rules of procedure provides for the general functions of the committees of Parliament to access and evaluate activities of Government and other bodies.

- c) Parliament assigned the sub-committee of the standing committee on Commissions, statutory Authorities and state Enterprises (COSASE) to investigate the activities of the Departed Asians Property Custodian Board (DAPCB) according to the Rules of procedure and Article 90(3) of the Constitution of the Republic of Uganda.
  - d) The Sub-committee of COSASE investigated the handling of the property of the departed Asians by DAPCB.
2. That in a letter to the Speaker of Parliament dated 14<sup>th</sup> March 2020 by Akampumuza & Co. Advocates acting on behalf of the applicant responded to the invitation and wrote to the speaker of Parliament requesting for her intervention. And the investigation and the report thereof were conducted in full observance of the rules of natural justice.
  3. That on the 25<sup>th</sup> August, 2021 the Speaker of Parliament expunged appendix 10 from the record of Parliament.

The applicant was represented by *Counsel Ebert Byenkya* while the respondent was represented by *Moses Mugisha (State Attorney)*

At the hearing of the application, the parties were directed to file written submissions which I have had the occasion of reading and considered in the determination of this application.

***The following issues were proposed for the courts resolution;***

1. *Whether this application raises any issues for judicial review?*
2. *Whether the instant application is overtaken by events and therefore moot?*
3. *Whether the application is entitled to the remedies sought?*

***Determination***

The respondent by way of preliminary point of law raised the following issue:

***Whether this application is overtaken by events and therefore moot?***

The respondent counsel has submitted that the remedies sought by the applicant have been overtaken by events since the Hon Speaker of Parliament (as he then was) (RIP) directed that appendix 10 be expunged from the record of Parliament on 25<sup>th</sup> August 2021. Therefore, the applicant wants this court to venture into an academic exercise of expunging the same on the premise that the process was irregular.

Counsel contended that if the applicant deems the actions of the Hon. Speaker of Parliament (as he then was) directing the Clerk to Parliament to expunge appendix 10 as being illegal, he should file an application to that effect, otherwise there is no Appendix 10 on the record of Parliament. Therefore, the application is overtaken by events and there is no longer any controversy between the parties based on appendix 10 before this court.

Counsel for the applicant submitted that the purported “expunging” wherein the Speaker of Parliament expunged appendix 10 from the record of Parliament, took place on 25<sup>th</sup> August 2021, after the present application was filed on 12<sup>th</sup> July 2021 and served on Attorney General on 11<sup>th</sup> August 2021. It is therefore, their contention that the same was orchestrated to render the present court proceedings moot.

It was counsel’s contention that whatever the newly elected Speaker of Parliament purported to do on 25<sup>th</sup> August 2021 was ultra vires his powers, procedurally incorrect and consequently, of no legal effect. The applicant’s counsel contended that the impugned Appendix 10 is still part and parcel of the COSASE report adopted by the previous House and it is necessary for this Honourable court to examine it under its powers of judicial review.

### *Analysis*

According to the Hansard of Parliament of the First Session-19<sup>th</sup> Sitting-First Meeting dated Wednesday, 25<sup>th</sup> August 2021. The Speaker, Mr Jacob Oulanyah Chair (RIP) noted as follows:

*“Honourable Members, in the 10<sup>th</sup> Parliament, an investigation was conducted by a sub-committee of the Standing Committee on Commissions, Statutory Authorities and State Enterprises (COSASE). This was an assignment by the House to investigate the activities of the Departed Asian Property Custodian Board. The investigations were*

*conducted in full observance of rules of natural justice and the same culminated in a report, which was presented and adopted by the Parliament of Uganda on Wednesday, 3 May 2021.*

*While the factual findings made were correct, the appendix 10 that was attached to corroborate the findings was not correct. It was supposed to be a list of persons who never returned in fulfillment of the requirements of the law, which made it mandatory for the departed Asians to return to Uganda but was attached as a list of persons who picked the certificate.....*

*Having studied the report, I invoke the general authority of the Speaker, provided under Rule 7 (1) of our Rules of Procedure, to direct the Clerk to Parliament to expunge the said appendix 10 and any references to it from the report of the House on the operations of Departed Asians Custodian Board and indeed the public record of the Parliament of Uganda. It is so directed.*

*The background to this is that some members of the public picked it and ran with it and yet if they had notified us, we would have corrected it in-house since it is very easy thing to do. It was a honest mistake; stapling one document instead of another, which was not really a fundamental error. It could have been corrected easily. Thank you."*

It is clear that the Parliament as the author of the report noted the error and indeed corrected it. It is not the court's duty to correct simple errors of Parliament. This correction would indeed address the main concern of the applicant in this matter since he was solely challenging the list of persons and properties in Appendix 10 to the report unless he had any other sinister motive.

The present application falls in the mootness doctrine which bar court from deciding moot cases; that is cases in which there is no longer any actual controversy. The exercise of judicial power depends upon existence of a case or controversy.

The function of a Court of law is to decide an actual case and to right actual wrongs and not to exercise the mind by indulging in unrewarding academic casuistry or in pursuing the useless aim of jousting with windfalls. The said appendix 10 attached as an annexure to the COSASE report was expunged by the Speaker of Parliament and in my view is no longer part of the said record, then it is useless to waste court's time in hearing this application.

The doctrinal basis of mootness is that courts do not decide cases for academic purposes because court orders must have a practical effect and be capable of enforcement. *Ref: High Court Civil Suit No 248 of 2012: Abdu Katuntu -vs- MTN Uganda Limited and Others*

Similarly, Justice Musota (as he then was) in the case of *Julius Maganda vs NRM. H.C.M.C No. 154/2010*, held that;

*“Courts of law do not decide cases where no live disputes between parties are in existence. Courts do not decide cases or issue orders for academic purposes only. Court orders must have practical effects. They cannot issue orders where the issues in dispute have been removed or merely no longer exist.”*

Additionally, in the case of *Pine Pharmacy Ltd and 8 others v National Drug Authority Misc. Application 0142 of 2016* Hon. Justice Stephen Musota cited *Joseph Borowski vs Attorney General of Canada (1989) 1 S.C.R.* in which it was held that;

*“The doctrine of mootness is part of a general policy that a court may decline to decide a case which raises merely a hypothetical or abstract question. An appeal is moot when a decision will not have the effect of resolving some controversy affecting or potentially affecting the rights of the parties. Such a live controversy must be present not only when the action or proceeding is commenced but also when the court is called upon to reach a decision. Accordingly, if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot.”*

The counsel for the applicant submitted that expunging of the appendix 10 from the COSASE report on the DAPCB by the Speaker of Parliament that was adopted by the previous Parliament was ultra vires in his powers, procedurally incorrect and consequently of no legal effect. I do not agree with counsel’s submission that the expunging of Appendix 10 had no legal effect. It is this courts view that the removal of appendix 10 to the report substantially changed the case and this is why counsel changed the arguments by insisting that it was ultra vires and is now basically challenging the manner in which the process of expunging of appendix 10 was done. The case cannot stand without appendix 10 which had been expunged and this goes to the root of the applicant’s case.

The applicant's contention that there were others challenges to the entire report are equally secondary and would not require this court to make pronouncements without Appendix 10. The remaining claims or remedies sought are basically academic in nature with no guided target rather than making general and wide attacks on the COSASE report. They are merely speculative or academic or hypothetical. The applicant had an opportunity to amend the application to make a guided attack on the COSASE report after the expunging of appendix 10.

A suit is academic where it is merely theoretical, makes empty sound, of no practical utilitarian value to the plaintiff even if judgment is given in his favour and if it is not related to practical situation of human nature and humanity. A suit is speculative if it is based on speculation and if it is not supported by facts or very low on facts but very high on guesses. As courts of law are not established to adjudicate on guesses but on facts, such actions are struck out. A suit is hypothetical if it is imaginary and not based on real facts, if it looks like a mirage to deceive the other party and the court as to the reality of the real cause of action and if it is a semblance of the actuality of the cause of action or relief sought.

Therefore, when the Speaker of Parliament expunged appendix 10 the original suit became moot or academic and it totally metamorphosed from the original claim and the same cannot be determined in the same manner by this court. This application was therefore overtaken by events of expunging appendix 10.

This application stands dismissed with no order as to costs.

I so Order.

**SSEKAANA MUSA**  
**JUDGE**  
**17<sup>th</sup> March 2023**