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**THE REPUBLIC OF UGANDA**

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

**(CIVIL DIVISION)**

**MISCELLANEOUS CAUSE NO. 376 OF 2019**

**[Arising from Civil Suit No. 443 of 2014]**

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**1. BALIGOBYE JAMADA**

**2. LUSEESA AUGUSTINE CEASER**

**3. NSUBUGA JOHN M. ....**

**APPLICANTS**

**VERSUS**

15

**1. ATTORNEY GENERAL**

**2. SOLICITOR GENERAL**

**3. CHAIRPERSON, PUBLIC ACCOUNTS COMMITTEE**

**PARLIAMENT OF THE REPUBLIC OF UGANDA**

**4. PERMENT SECRETARY/ SECRETARY**

20

**TO THE TREASURY, MINISTRY OF FINANCE,**

**PLANNING & ECONOMIC DEVELOPMENT :::: RESPONDENTS**

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

**RULING:**

5 The Applicants jointly brought this application against the Respondents jointly and severally, under **Section 33, 33, 36 and 37 of the Judicature Act, Cap. 13; Rules 3,4,5 and 6 of the Judicature (Judicial Review) Rules 2009 as amended; Section 33, 36 and 37 of the Judicature Act Cap. 13; Section 64 (c),**  
10 **Section 98 of the Civil Procedure Act Cap 71; Order 52 Rules 1 and 3 of Civil Procedure Rules SI 71-1;** seeking various prerogative writs and other remedied as stated in the Notice of Motion.

The Applicants aver that on 22/08/2019 the Public Accounts  
15 Committee of Parliament (PAC) while interfacing with officials from the Ministry of Justice and Constitutional Affairs (MOJCA) sought to be availed, for reviewing purposes, details of mandamus orders including dates of determination, lawyers involved, presiding judges and the amounts involved. This was accordingly done by the  
20 Solicitor General(SG) by letter dated 26/08/2019. The Applicants contend that as persons who have direct sufficient interest in the matter, they are aggrieved by the decision of PAC and other Government agencies that continue to interfere, meddle and

5 undermine the sanctity of orders of court and execution thereof,  
and delay payments due to litigants, for which they seek;

10 **a) A declaration that the deliberations, discussions, and/or  
requisitions for scrutiny by PAC of the Parliament of the  
Republic of Uganda in the proceedings on the 22<sup>nd</sup> day of  
August 2019 in regard to payment of court awards and  
mandamus orders amounts to interference with the  
execution of court orders and are illegal, ultra vires,  
unconstitutional and/or an affront of the independence of  
the Judiciary and sanctity of courts of law and/or court  
15 orders.**

20 **b) A declaration that the directions, requisitions, orders  
and/or decision by the 3<sup>rd</sup> Respondent herein the  
Chairperson PAC of the Parliament of the Republic of  
Uganda in the proceedings on the 22<sup>nd</sup> day of August 2019  
to be availed details of mandamus payments for scrutiny  
and reviewing including case determination dates, lawyers  
involved, presiding judges of court awards amounts to  
interference with execution orders, is contemptuous, illegal,**

5 ***ultra vires, unconstitutional and a direct affront of the doctrine of separation of powers.***

c) ***A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' actions of submitting to the 3<sup>rd</sup> Respondent for deliberating and/or examining payments of court awards, with details of lawyers and presiding judges involved to Parliament for scrutiny and advising is contemptuous, illegal, ultra vires and directly undermines the independence of the Judiciary and orders of court.***

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d) ***A declaration that the awards/orders are not statutory allocations and are not subject to scrutiny, approval, discussion and/or deliberations, investigation and/or review by the PAC and/or Parliament of the Republic of Uganda and/or any other state agency or executive arm of Government.***

15

e) ***A declaration that execution court orders, judgment and/or mandamus orders is not within the mandate of Parliament of the Republic of Uganda and/or the oversight role of Parliament.***

20

5 **f) A declaration that 4<sup>th</sup> Respondent is statutory bound and/or  
obliged to pay court awards once a decree/order and  
certificate of order against the Government has been issued  
by a competent court and served in accordance with section  
19 of the Government Proceedings Act without further  
10 response to any authority or approvals.**

**g) An order of certiorari doth issue quashing the orders,  
directions and/or decisions of the Chairperson and/or PAC  
of Parliament on 22<sup>nd</sup> August 2019 in as far as they relate  
to furnishing details of court awards for scrutiny/review  
15 and/or investigation.**

**h) An order of prohibition doth issue prohibiting the  
Chairperson and/or the entire PAC of Parliament of the  
Republic of Uganda from deliberating, reviewing and/or  
seeking to approve or direct on payments of court awards  
and/or interfering in anyway whatsoever with the execution  
20 of court orders.**

**i) An order of prohibition doth issue prohibiting the Attorney  
General, SG, Permanent Secretary/Secretary to the Treasury,  
the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Respondents herein or their agents**

5        ***and/or officers from submitting and/or subjecting payment  
of court awards or details thereof to the scrutiny, review  
and/or approval of the Parliament of the Republic of  
Uganda.***

10       ***j) An injunction doth issue restraining the Respondent,  
Parliament, and all state organs from reviewing  
/scrutinizing, investigating, deliberating, discussing,  
seeking to approve and/or interfering in anyway whatsoever  
with execution of court orders and/or payment under court  
awards.***

15       ***k) Any other remedy and or directions this court deems fit in  
the circumstances.***

***l) Costs of this application be provided for.***

The grounds of the application are set out in the affidavit in support  
of the application but are briefly that;

20       ***a) That the PAC of Parliament of the Republic of Uganda in the  
proceedings of the 22<sup>nd</sup> day of August 2019 sought to  
review and/or scrutinize payments of court awards and be***

5        *availed details of payments, dates of determination,  
lawyers involved, presiding judges.*

10        *b) That the Applicants are directly interested and aggrieved  
by the deliberations and/or directions of the PAC of  
Parliament of the Republic of Uganda made in the  
proceedings dated 22<sup>nd</sup> day of August 2019 in as far as  
they relate to payment of court awards and seek to  
scrutinize the same.*

15        *c) That the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents have availed the said  
details to the Committee for reviewing and/or scrutiny  
thereby usurping the powers of court executing the decrees  
and undermining the independence of the Judiciary.*

*d) That the actions of the Respondents amount to review  
and/or interference of execution of court awards issued by  
competent courts.*

20        *e) That the actions of the Respondents are contemptuous,  
illegal, biased, ultra vires, unconstitutional, amount to a  
direct affront of the independence of the Judiciary and  
directly undermine the court orders.*

5 ***f) That is in the interest of justice and good governance to grant this application and safe guard the sanctity of orders/decrees of court and the independence of the Judiciary.***

10 ***g) That the actions of the Respondent directly interfere with execution of court orders and cause gross injustice to beneficiaries under orders and/or decrees of court.***

The application is supported by the affidavit in sworn by the 1<sup>st</sup> Applicant essentially restating and amplifying the grounds above stated. He further states that under **Section 19 of the**  
15 **Government Proceedings Act Cap 77** once a decree and certificate of order against the Government for payment of money issued by a competent court are served on the Treasury Officer of Government, he/ she is duty bound to effect payment and does not need approval from any other Government entity including Parliament.  
20 Further, that the 1<sup>st</sup> Respondent has on various occasions advised the 4<sup>th</sup> Respondent that in effecting payments of court wards/orders/mandamus orders, the 4<sup>th</sup> Respondent is mandated to comply with **Section 19** (supra) and does not require any other



5 approval and or authority. That court has also in various cases/decisions condemned and prohibited the 1<sup>st</sup> Respondent and his agents from interfering with execution of court awards, and that the Constitutional Court/Court of Appeal has as well castigated and prohibited the 1<sup>st</sup> Respondent and his agents from interfering with  
10 execution of court awards. That it is not within the mandate and/or powers of PAC to scrutinize/review, examine, audit, investigate, and/or approve payments of court awards and as such the Chairperson PAC and Parliament exceeded their mandate and/or power and/or acted illegally by requisitioning for details of  
15 mandamus orders including details of lawyers involved and presiding judges for scrutiny and audit. That the said order of PAC is repugnant, unconstitutional, ultra vires and infringes on the Advocate - Client relationship, which contravenes a right to privacy and fiduciary relationship under the **Advocates Act, Cap 267**.

20 In addition, that by scrutinizing and/or reviewing, examining and directing court orders/decrees/mandamus orders, PAC seats as an appellate court which is outside their mandate on payment of court awards. That execution of court orders and/or reviewing and scrutiny of the same is not a mandate of Parliament and not within

5 the oversight role of the 2<sup>nd</sup> Respondent and/or Parliament. That  
the actions of PAC in regard to payment of court awards and/or  
interfering with execution of orders of court are ultra vires, illegal  
and unconstitutional and should be condemned by this court. That  
it is in the interest of justice and fairness that this application is  
10 granted to safe guard the sanctity of court orders, the Judiciary and  
allow smooth execution of court orders in accordance with the law.  
The Respondents in an affidavit sworn by the 2<sup>nd</sup> Respondent  
opposed the application. He avers that courts of law only have  
power to inquire into the legality or even constitutionality of the  
15 conclusions of debates in Parliament, and not before. That as such  
this application is premature and speculative and not fit for judicial  
review since no conclusions were made by PAC and the 3<sup>rd</sup>  
Respondent. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were only complying  
with the directives of PAC which had no consequences at all. That  
20 as such, court should find that there is no fit and proper case for  
judicial review under the circumstances and dismiss the same with  
costs.

Counsel for the parties filed written submissions to argue the  
application and framed the following issues for determination

- 5        **1. Whether there is a fit and proper case of judicial review.**
- 2. Whether the 3<sup>rd</sup> Respondent’s actions, deliberations, investigation and/or requisition for review by the PAC, to investigate, review, audit and/or approve payments of court awards and mandamus orders for payment of court awards are ultra vires, irregular and illegal.**
- 10       **3. Whether the actions of the Respondents contravene the principles of separation of powers and the independence of the Judiciary.**
- 4. Whether the Applicants are entitled to remedies sought herein.**
- 15

**Resolution of the issues:**

**Issue No.1: Whether there is a fit and proper case for judicial review.**

20       **Section 36 (1) of the Judicature Act Cap 13**, provides for the power of the High Court to issue orders under judicial review. It provides as follows;

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

- 5           ***(a) mandamus, requiring any act to be done;***  
***(b) prohibition, prohibiting any proceedings or matter; or***  
***(c) certiorari, removing any proceedings or matter to the***  
***High Court.”***

***Rule 3 (1) and (2) of the Judicature (Judicial Review) Rules SI***  
10 ***11 of 2009***, provides that a party may apply for an order of  
prohibition, certiorari, declaration and injunction by way of judicial  
review in appropriate case. ***Rule 3A of the Judicature (Judicial***  
***Review) (Amendment) Rules SI 32 of 2019*** provides that;

15           ***“Any person who has a direct or sufficient interest in a***  
***matter may apply for judicial review.”***

The Applicants have shown on their affidavit evidence that they are  
persons who have direct sufficient interest in the matter, and that  
they are aggrieved by the decisions of PAC and other Government.  
The particular deposition has neither been denied or rebutted by  
20 the Respondents. The settled law is that where facts are sworn to in  
an affidavit and these are not denied or rebutted by the opposite  
party, the presumption is that they are accepted as the truth. See:  
***Massa vs. Achen [1978] HCB 297.*** This application thus meets

5 the criteria under **Rule 7A** (supra) as being amenable for judicial review. Issue No.1 is answered in the affirmative.

**Issue No.2: Whether the 3<sup>rd</sup> Respondent's actions, deliberations, investigation and/or requisition for review by the PAC of the Republic of Uganda, to investigate, review, 10 audit and/or approve payments of court awards and mandamus orders for payment of court awards are ultra vires, irregular and illegal.**

The Applicants contend that the 3<sup>rd</sup> Respondent's actions, deliberations, investigation and/or requisition for review by PAC to 15 investigate, review, audit and/or approve payments of court awards and mandamus orders for payment of court awards, are *ultra vires*, irregular and illegal. The reasons are already as stated in the affidavit in support sworn by the 1<sup>st</sup> Applicant. Opposing the Applicant's contention on this issue, the Respondents contend that 20 under **Article 163 of the Constitution**, the Auditor General (AG) is required to submit to Parliament annually a report of the accounts audited by him or her under **Clause (3)** thereof, for the financial year closing. That under **Clause (4)** (supra) Parliament is required

5 within six months after the submission of the AG's report referred  
to debate and consider the report and take appropriate action. That  
Parliament considers these reports through committees which are  
appointed under **Article 90** (supra) for the efficient discharge of its  
functions, and makes Rules regulating its own procedures,  
10 including the procedure of its committees.

That PAC was appointed and is mandated by Parliament to examine  
the audited accounts showing the appropriation of the sums  
granted by Parliament to meet the expenditure of Government,  
including the Judiciary and all entities to which sums drawn from  
15 the Consolidated Fund are appropriated. That in this case the  
report of the AG on financial statements of the MOJCA for the year  
ended 30/06/2018 considered domestic arrears as a key audit  
matter which needed to be examined. That in the cited report, the  
AG found that there was persistent accumulation of domestic  
20 arrears that are not authorized, unbudgeted for, inadequately  
supported and in some instances inadequate recognition and  
disclosure of the domestic arrears. Further, that the AG found that  
the bulk of the liabilities comprised on unsettled court awards and  
compensations accounting to the sum of UGX.655,134,362,209.

5 That during PAC deliberations while considering the Report of the  
AG on 22/08/2019, the issue of the outstanding court awards was  
examined and PAC found it prudent to seek evidentiary proof of  
court orders and judgment relating to the outstanding awards,  
among others, and as a result then directed the production of the  
10 impugned documents for purposes of information and eventual  
report of the Committee and report of Parliament. That as such, the  
intention of the request was not to interrogate the judgments and  
orders in issue, but to examine the documents to understand the  
process of mandamus and the delay in payments of court awards to  
15 come up with appropriate recommendations in the PAC's report to  
Parliament. That the actions were, therefore, *intra vires*, regular and  
legal or lawful.

In resolving this issue, the starting point is the position of the law.  
***Black's Law Dictionary 8<sup>th</sup> Edition***, defines "*an illegality*" as an  
20 act that is not authorized by the law or state of not being legally  
authorized. In ***Ojangole Patricia & 4 O'rs vs. Attorney General  
HCMC No. 303 of 2013***, court defined "illegality" to mean;

5           “...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.”

10 Similarly, in *Mrs. Geraldine Sail Busuulwa vs. National Social Security Fund & A’nor, HCMC No. 032 of 2016*, this court held that acting without jurisdiction or *ultra vires* or contrary to the provisions of the law or its principles are instances of illegality. Also in *Thugitho Festo vs. Nebbi Municipal Council (Arua) HCMA No. 15 of 2017*, the court held, *inter alia*, that;

          “An action or decision may be illegal on the basis that the public body has no power to take that action or decision or has acted beyond its powers.”

Also, in *Fuelex Uganda Ltd vs. The Attorney General & O’rs H.C.M.C. No. 48 of 2014* cited in *Dr. Daniel K.N. Semambo vs. National Animal Genetic Resource Centre H.C.M.C. No. 30 of 2017*; Musota J (as he then was) held, *inter alia*, that in order to succeed in an application for judicial review, the applicant has to



5 show that the decision or act complained of is tainted with illegality,  
irrationality and procedural impropriety.

Irrationality, on the other hand, is well elucidated in the oft quoted  
case of **Council of Civil Service Union vs. Minister for Civil  
Service [1985] AC 374 ALL ER 935**. Diplock J referred to the case  
10 with approval in his definition of irrationality when he stated that;

***“By ‘irrationality’, I mean what can now be succinctly  
referred to as ‘Wednsbury’s unreasonableness’...It applies  
to a decision which is so outrageous in defiance of logic  
or of accepted moral standards that no sensible person  
15 who has applied his mind to the question to be decided  
could have arrived at it. Whether the decision falls  
within this category is a question judges by their training  
and experience should be well equipped to answer, or else  
there would be something wrong with our judicial  
20 system.”***

Evidence in the instant application shows that PAC made decision  
on 22<sup>nd</sup> August 2019 to review and/or scrutinize details of the

5 mandamus orders including dates of determination, lawyers involved, presiding judges and amounts involved and ordered MOJCA to avail the said details. The SG of MOJCA on 26<sup>th</sup> August 2019, complied to the “order” of Parliament and submitted the said details to PAC for scrutiny/review.

10 Looking at the reasons and intention, the decision and the “order” of PAC and action of SG respectively, specifically sought to deal with cases that had been subject of court process and which had already been determined by competent courts of law. It is now settled law that where a case has been a subject of court process and has been  
15 determined by court, it cannot be reviewed, set aside, altered or inquired into, by any other authority or other arm of Government, except by the court itself through court processes of review, revision and/or appeal. Any decision to do the contrary by any other arm of Government or authority, would be in contravention of the  
20 Constitution and the law, and as such, is tainted with illegality, irrationality and procedural impropriety.

In the instant case, the issue of deliberations and decision and orders of PAC and actions of SG being ultra vires, irregular and

5 illegal, was raised in paragraph (a) of the application and supported  
in paragraphs 3, 4, 9, 10, 11, 12 and 14 of the affidavit in support  
of the application. It is shown therein that PAC sought to review  
details of mandamus orders, including dates of determination,  
lawyers involved, presiding judges and amounts involved.  
10 Furthermore, on 26<sup>th</sup> August 2019, the SG of MOJCA availed the  
said details. This no doubt ran contrary to the Constitutional  
mandate of Parliament and its appointed Committee as well as  
invaded the sanctity of the independence of the Judiciary enshrined  
and protected under the Constitution. Such decisions, orders and  
15 actions of PAC and SC of MOJCA cannot be left to stand and no  
amount of justification would revive or validate them from being  
illegal and unconstitutional.

Contrary to what was submitted by counsel for the Respondents,  
there is no law that vests Parliament or any of its appointed  
20 Committees with power of oversight role to inquire into decisions of  
Courts of Law. No constitutional power resides in Parliament or its  
Committees to call to itself for review or scrutiny of the decisions of  
Courts of Law. To do so would be for Parliament to constitute itself

5 into appellate body over decisions of Courts of Law and usurp such powers not vested in the Legislature. Not even in its legislative, administrative or quasi- administrative functions, is Parliament or its Committees vested with such powers under the Constitution or any other law. Therefore, against that stated position of the law, the actions and decision of the Respondents were tainted with illegality, 10 irrationality and procedural impropriety. Parliament through its Committee the PAC acted illegally, unconstitutionally and *ultra vires* its powers.

In ***Attorney General vs. Walugembe Daniel CAMA No. 390 of 2018***, the Court of Appeal emphasized the position that judgments of court cannot be reviewed and/or scrutinized by any arm of Government. That this would be a blatant constitutional error. Given that position, it would follow that the said decision of PAC to call to itself for scrutiny and review matters that have already been 15 decided upon by competent courts of law, is illegal, *ultra vires* and irrational. Regardless of the merits, basis, or even good intention, howsoever, PAC is not mandated to review and/or scrutinize court 20 orders and judgments. The decision /actions of PAC and actions of

5 SG respectively, are without doubt, illegal and *ultra vires*. Needless  
to emphasize, that the decisions of the PAC of seeking to review  
and/or scrutinize court orders and judgments, amounts to an order,  
yet PAC is not a Court of Law to issue such orders. Thus, by  
ordering for scrutiny and review of court judgments before itself,  
10 and any other details in regard to the said details, PAC overstepped  
its mandate and as such, it acted illegally and irrationally and *ultra  
vires*. *Issue No. 1* is answered in the affirmative.

***Issue No.3: Whether the action of the Respondents  
contravened the principles of separation of powers and the  
15 independence of the Judiciary.***

It is the argument of the Respondent against the contention of the  
Applicants, that ***Article 90 (3) of the Constitution*** of the Republic  
of Uganda gives Committees of Parliament powers of the High Court  
for enforcing the attendance of witnesses and examining them on  
20 oath, affirmation or otherwise, and compelling the production of  
documents. That a Committee of Parliament has the constitutional  
powers to direct the production of any document including court  
judgments that relate to the issues in query, but that this does not  
mean that the Committee seeks to review the decision of the court

5 as alleged by the Applicants in this case. That the documents are  
only sought for records and information purposes. Further, that  
court orders and judgments are public documents within the  
meaning of the ***Evidence Act Cap 6***, and can be accessed by any  
person. That it is a misconception of the law and powers of  
10 Parliament, for the Applicants to claim that it is illegal for the  
Committee of Parliament to ask for such information. That it  
certainly cannot amount to an abuse of the doctrine of separation of  
powers.

Further, that the Constitution a mechanism of checks and balances  
15 was built to ensure that no single organ of the State acts in  
contravention of the Constitution or any law without being stopped  
by the rest of the other two organs, or any of them. That otherwise,  
when everything is normal and in accordance with the Constitution,  
the internal management of the organs of the State is a no go area  
20 for the others. That the doctrine of checks and balances ensures  
that there is accountability to the people and accountability is the  
bedrock of constitutionalism.

With great respect to the Respondents' submissions, they are  
simply an attempt to assert nonexistent positions of the

5 Constitution and the law on separation of powers as it is known  
and understood today. The settled position in ***Attorney General vs.***  
***Walugembe Daniel*** (supra) is that the doctrine of separation of  
power, which affirms the independence of the Judiciary, requires  
that the Executive and/or the Legislature ought to uphold the  
10 independence of the Judiciary at all times. The Court of Appeal  
made specific reference to ***Article 128***(supra) which provides that;

***“1. In the exercise of judicial power, the courts shall be  
independent and shall not be subject to the control or  
direction of any person or authority.***

15 ***2. No person or authority shall interfere with the courts or  
judicial officers in the exercise of their judicial functions.***

***3. All organs and agencies of the State shall accord to the  
courts such assistance as may be required to ensure the  
effectiveness of the courts.”***

20 In addition, the framers of the Constitution in their wisdom ensured  
that not even Parliament can enact a law whose effect is to override

5 or otherwise alter a decision of Courts of Law as between the parties.

In this regard **Article 92** 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.”***

10 Also at page 12 of the ruling in **Attorney General vs. Walugembe Daniel** (supra) the Court of Appeal further observed that;

***“The Constitution and other laws made there under ensure that the errors made in judicial processes are corrected within the same judicial processes. The judicial process therefore has a self-correcting system of review, revision appeals and even disciplinary measures that ensure that any errors made are corrected within the judicial system itself.”***

15

Therefore, much as court orders and judgments are public  
20 documents within the meaning of the **Evidence Act** (supra) and can be accessed, such access does not in any way give the other arms of Government the mandate or power to scrutinize them for purposes of review, alteration, or otherwise as the decision/orders of PAC



5 appear to suggest in this case. In addition, a Committee of  
Parliament having powers of the High Court under **Article 90 (3)**  
(supra) cannot be read to mean that such a Committee has power  
over decisions of the High Court or even subordinate courts. The  
adjudicatory function remains the exclusive Constitutional preserve  
10 and mandate of the Courts of Law. Any other arm of Government  
exercising quasi – judicial function does so only to the extent  
stipulated in the Constitution or law, but cannot override the  
decisions or orders of the Courts of Law.

The case cited by counsel for the Respondents of **Severino**  
15 **Twinobusingye vs. Attorney General (Constitutional Petition No.**  
**47 of 2011)** which cited the decision in **Maj. Gen. David**  
**Tinyefuza vs. Attorney General, Constitutional Appeal No. 1 of**  
**1997**, actually emphasizes separation of powers between the arms  
of Government even in instances of checks and balances.  
20 Kanyeihamba, JSC stated, inter alai, that;

**“...The Constitution provides that the constitutional  
platform is to be shared between the three institutional  
organs of Government whose functions and powers I have**

5            *already described (supra). The Uganda Constitution*  
*recognized these organs as the Parliament, the Executive*  
*and the Judiciary. It was not by accident either that it*  
*created, described and empowered them in that order of*  
*enumeration. Each of them has its own field of operation*  
10            *with different characteristics and exclusivity and meant*  
*by the Constitution to exercise its powers independently.*  
*The doctrine of separation of powers demands and ought*  
*to require that unless there is the clearest of cases*  
*calling for intervention for the purposes of determining*  
15            *constitutionality and legality of action or the protection*  
*of the liberty of the individual which is presently denied*  
*or imminently threatened, the Courts must refrain from*  
*entering arenas not assigned to them either by the*  
*Constitution or laws of Uganda.* *It cannot be*  
20            *overemphasized that it is necessary in a democracy that*  
*Courts refrain from entering into areas of disputes best*  
*suited for resolution by other Government agents. The*  
*Courts should only intervene when those agents have*

5            ***exceeded their powers or acted unjustly causing injury  
thereby.***” [emphasis mine]

Certainly, the doctrine of separation of powers is not absolute as in the case of checks and balances recognized in the above judgment. However, the doctrine of checks and balances does not extend to  
10 the Legislature calling to itself for scrutiny, and/or review, of judicial decisions, judgments and orders as was done in this case, even where such decisions, judgments and/or orders may be erroneous, wrong or unpalatable in the view of the Legislature or Executive. That is “*a no – go area*” for the other arms of Government.  
15 As was rightly stated in ***Attorney General vs. Walugembe Daniel*** (supra) the Constitution and other laws made there under, ensure that the errors made in judicial processes are corrected within the same judicial processes. The judicial process, therefore, has a self-correcting system.

20 In the same above regard, ***Section 19 of the Government Proceedings Act*** (supra) mandates that once a decree and certificate of order against the Government for payment of money issued by a competent Court are served on the Treasury Officer of Accounts, is duty bound to effect payment and does not need

5 approval from any other Government entity including Parliament. In that regard, the decision of PAC to seek court judgments and the subsequent decision of the SG to avail the said details, is illegal and contravenes the doctrine of separation of powers and independence of the Judiciary. *Issue No.2* is answered in the affirmative.

10 ***Issue No. 4: Whether the Applicants are entitled to the remedies sought herein.***

Section 36 of the Judicature Act (supra) provides for the remedies under judicial review. Having found as above, the application succeeds and it is allowed with the following remedies;

15 ***1. A declaration doth issue that the deliberations, discussions, and/or requisitions for scrutiny by PAC of the Parliament of the Republic of Uganda in the proceedings on 22<sup>nd</sup> August 2019 in regard to payment of court awards and mandamus orders amounts to interference with the execution of court orders and are illegal, ultra vires, unconstitutional and/or an affront of the independence of the Judiciary and sanctity of courts of law and/or court orders.***

20

5           **2. A declaration doth issue that the directions, requisitions, orders and/or decision by the 3<sup>rd</sup> Respondent herein the Chairperson PAC of the Parliament of the Republic of Uganda in the proceedings on 22<sup>nd</sup> August 2019 to be availed details of mandamus payments for scrutiny and**  
10           **reviewing including case determination dates, lawyers involved, presiding judges of court awards amounts to interference with execution orders, is contemptuous, illegal, ultra vires, unconstitutional and a direct affront of the doctrine of separation of powers.**

15           **3. A declaration doth issue that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' actions of submitting to the 3<sup>rd</sup> Respondent for deliberating and/or examining payments of court awards, with details of lawyers and presiding judges involved to Parliament for scrutiny and advising is**  
20           **contemptuous, illegal, ultra vires and directly undermines the independence of the Judiciary and orders of court.**

**4. A declaration doth issue that the awards/orders are not statutory allocations and are not subject to scrutiny,**

5            ***approval, discussion and/or deliberations, investigation  
and/or review by the PAC and/or Parliament of the  
Republic of Uganda and/or any other state agency or  
executive arm of Government.***

10           ***5. A declaration doth issue that execution court orders,  
judgment and/or mandamus orders is not within the  
mandate of Parliament of the Republic of Uganda and/or  
the oversight role of Parliament.***

15           ***6. A declaration doth issue that 4<sup>th</sup> Respondent is statutory  
bound and/or obliged to pay court awards once a  
decree/order and certificate of order against the  
Government has been issued by a competent court and  
served in accordance with section 19 of the Government  
Proceedings Act without further response to any  
authority or approvals.***

20           ***7. An order of certiorari doth issue quashing the orders,  
directions and/or decisions of the Chairperson and/or  
PAC of Parliament on 22<sup>nd</sup> August 2019 in as far as they  
relate to furnishing details of court awards for  
scrutiny/review and/or investigation.***

5       **8. An order of prohibition doth issue prohibiting the**  
          **Chairperson and/or the entire PAC of Parliament of the**  
          **Republic of Uganda from deliberating, reviewing and/or**  
          **seeking to approve or direct on payments of court awards**  
          **and/or interfering in anyway whatsoever with the**  
10       **execution of court orders.**

**9. An order of prohibition doth issue prohibiting the**  
          **Attorney General, SG, Permanent Secretary/Secretary to**  
          **the Treasury, the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Respondents herein or**  
          **their agents and/or officers from submitting and/or**  
15       **subjecting payment of court awards or details thereof to**  
          **the scrutiny, review and/or approval of the Parliament of**  
          **the Republic of Uganda.**

10.       **An injunction doth issue restraining the Respondent,**  
          **Parliament, and all state organs from reviewing**  
20       **/scrutinizing, investigating, deliberating, discussing,**  
          **seeking to approve and/or interfering in anyway**  
          **whatsoever with execution of court orders and/or**  
          **payment under court awards.**

**11. The applicants are awarded costs of this application.**

**BASHAIJA K. ANDREW**  
**JUDGE**  
**07/02/2020**