THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA

AT KAMPALA

CORAM: HON. JUSTICE A.E.N. MPAGI-BAHIGEINE, JA

HON. JUSTICE S.G. ENGWAU, JA

HON. JUSTICE A. TWINOMUJUNI, JA

HON. JUSTICE C.N.B. KITUMBA, JA

HON. JUSTICE C.K. BYAMUGISHA, JA

CONSTITUTIONAL PETITION NO.7 OF 2002

1. DR. JAMES RWANYARARE
2. HAJI BADRU KENDO WEGULO
3. HON. YUSUFU NSUBUGA NSAMBU
4. HON. KEN LUKYAMUZI
5. JAMES GARUGA MUSINGUZI
6. MAJOR RUBARAMIRA RTJRANGA
7. KARUHANGA CHAAPA
8. HUSSEIN KYANJO
9. DR. JOHN JEAN BARYA.....PETITIONERS

V E R S U S

ATTORNEY GENERAL OF UGANDA.....RESPONDENT

JUDGMENT OF THE COURT

This petition was filed in July 2002 to challenge the Constitutionality of various sections of the Political Parties and Organisations Act, 2002. Before it could be heard on merit, a number of preliminary matters were raised. A ruling on one of them resulted into an appeal to the Supreme Court. As a result, the petition could not be heard until the appeal was disposed of. This is why the hearing of this petition appears to have delayed. The causes of the delay were regrettably beyond our control.

In the meantime this court heard Constitutional Petition No.5 of 2002 Paul K. Ssemogerere and 5 Others vs. The Attorney General of Uganda which challenged the constitutionality of sections 18 and 19 of the Political Parties and Organisations Act, 2002. We held that those sections were null and void as they contravened the Constitution. Although this petition also contained a challenge of the same sections, the challenge has now been overtaken by events and it no longer stands. What remains of this petition was framed into agreed issues as follows:

"1. Whether the definition of a "political organisation" under section 2(1) and (2) of the Political Parties and Organisations Act No.18 of 2002 is inconsistent with and contravenes article 21 and 75 of the Constitution and is null and void.

2. Whether S.6(2)(3) and (4) of the Political Parties and Organisations Act No.18 of 2002 is inconsistent with and contravenes articles 20, **21, 29**(1)**(a**)(b)(d) & (e) and 38 and 270 of the Constitution and is null and void.

3. Whether Ss.5(1)(c) (4) and &(1)(b) of the Political Parities and Organisations Act No.18 of 2002 are inconsistent with and contravene articles 20, 21(1)(2) and (4)(c); 29(1) (a)(b)(d) and (e), 38, 43, 75 and 270 of the Constitution and are null and void.

4. Whether S.8 of the Political Parties and Organisations Act, 2002 is inconsistent with and contravenes articles 20, 21, 29(1)(a) (b) & (e), 38, 43 and 270 of the Constitution and is null and void.

5. Whether S.l0(4) of the Political Parties and Organisations Act No.18 of 2002 is inconsistent with and contravenes articles 1, 20, 21(1)(2) and (4)(c), 29(1)(a),(b)(d) and (e), 38, 43, 71(c), 75 and 270 of the Constitution and is null and void.

6. Whether S.10(8) and (9) of the Political Parties and Organisations Act No.18 of 2002 is inconsistent with and contravenes articles 20, 21(1), (4) 29(1), (a), (b) (d) and (e), 29(2), 38, 43, 71(c) and 75 and 270 of the Constitution and is null and void.

7. Whether S.13(b) of the Political Parties and Organisations Act No.18 of 2002 is inconsistent with and contravenes articles 1(4), 20, 21, 29(1)(a)(b),(d) and (e) 29(2) and (b), 38, 43, 71(c) and 270 of the Constitution and is null and void."

The petition was supported by affidavits sworn by the petitioners. The learned Attorney General filed an answer to the petition in which he opposed the entire petition. The answer is also supported by affidavits of several witnesses, many of them being Ministers, Senior Officials of the Movement and Members of Parliament. At the hearing of the Petition, all affidavit evidence was admitted as non-controversial and the parties did not seek to cross-examine any witness.

The petitioners were represented by Mr. Peter Walubiri, Mr. Kiyemba-Mutale and Mr. Moses Ojakol. The respondent was represented by Mr. Joseph Matsiko, the learned Acting Director of Civil Litigation, Mr. Alfred

Oryem Okello, State Attorney and Ms. Victoria Ssekandi, a State Attorney. It was common ground that the following principles would guide this court in the interpretation of the Constitution to resolve the above issues.

1) The onus was on the petitioners to show a prima facie case of violation of the petitioners' constitutional rights. Thereafter, the burden shifts to the respondent to justify that the limitations to the rights contained in the impugned statute were justified within the meaning of articles 43 and 73(2) of the Constitution.

2) Both purpose and effect of an impugned legislation are relevant in the determination of its constitutionality.

3) The Constitution is to be looked at as a whole. It has to be read as an integrated whole with no one particular provision destroying another but each supporting the other. All provisions concerning an issue should be considered together so as to give effect to the purpose of the instrument. See South Dakota vs. North Carolina 192, US 268(1940) L.E.D. 448.

4) The Constitution should be given a generous and purposive construction especially the part which protects the entrenched fundamental rights and freedoms. See Attorney General vs. Momoddon Jobo (1984) AC 689.

5) Where human rights provisions conflict with other provisions of the Constitution, human rights provisions take precedence and interpretation should favour enjoyment of the human rights and freedoms. See Constitutional Petition No.5 of 2002 (supra).

We now turn to the determination of the issues as framed.

ISSUE NO. 1.

This is whether the definition of a political party or political organisation in **section 2** of the Political Parties and Organisations Act, 2002 (herein after **5** referred to as the Act) is inconsistent with and contravenes articles 21 and 75 of the Constitution. Arguing this issue, Mr. Walubiri contended that the definitions of **"political party"** and **"political organisation"** do not include the political system mentioned in article 70 of the Constitution. As a result, the provisions of the Act, most of which the petitioners object to, do not 10 apply to the Movement Political System. The Act in effect gives unequal treatment to political parties and organisation to their disadvantage. In his view, this contravenes article 21(1) of the Constitution which guarantees equality under the law. This leaves the Movement Political System as the only organisation with freedom to operate in contravention of article 75 of **15** the Constitution which prohibits Parliament from enacting legislation establishing a one party state.

Mr. Walubiri submitted further that the Movement set up by the Movement Act 1997 is a political organisation with all the attributes of a political party 20 and should have been included within the definition of political party and political organisation so that the Act equally applies to it.

In reply, Mr. Joseph Matsiko submitted that the petitioners had not produced evidence to prove:

(a) That the Movement Political System referred to in article 70 is a political organisation.

(b) That the operation of the Act accorded the system unequal treatment contrary to article 21(1) of the Constitution. (c) That the operation of the Act had the effect of making the Movement System a one party state.

In Mr. Matsiko's view, the Movement Political Organisation System did not exist. What existed was the Movement Political System in article 70 which clearly defines what the system means. In defining "political party" and political "organisation" in section 2 of the Act, Parliament was aware that 10 the system had already been defined in the Constitution. Mr. Matsiko invited us to hold that the definitions in issue here do not accord unequal treatment to the Movement Political System and neither do they have the effect of creating a one party state.

The impugned definitions are as follows:-

> "S.2(1) In-this Act unless the content otherwise requires "political party" means a political organisation the objects of which include the sponsoring of, or offering a platform to, candidates for election to a political office and participation in the governance of Uganda at any level.
>
> "political organisation" means any free association or organisation of persons the objects of which include the influencing of the political process or sponsoring a political agenda whether or not it also seeks to sponsor or offer a platform to a candidate for election to a political office or to participate in governance of Uganda at any level.

(2) The definition of political organisation in subsection (1) shall not include the following: (a)The Movement Political system referred to in article 70 of the Constitution and the organs under the Movement Political system."

To us, this definition clearly excludes the Movement Political System referred to in article 70 of the Constitution. This is correct because the political system as defined therein is not a political party or organisation. However, the political organs of that system set up by the Movement Act are

quite different. We had occasion to deal with this issue in Constitutional Petition No.5 of 2002 (supra). We held that the Movement set up by the Movement Act was a political organisation as defined by the impugned Act despite disclaimer contained in section 2(2) thereof. This is because we found credible overwhelming evidence to the effect that:

(a) It had a political agenda to obtain and retain political power.

(b) It was a statutory body corporate.

(c) It sponsored candidates for political offices.

(d) It participated in the governance of Uganda at all levels.

(e) It was no longer inclusive or non-partisan.

(f) It had abandoned the principle of individual merit as a basis for election to political offices.

(g) It has a caucus in Parliament.

That decision of this court still stands. In that judgment we referred to the organisation set up by the Movement Act, 1997 as a Movement Political Organisation. We made it very clear that it no longer operates as a Movement Political System as defined by article 70 of the Constitution.

Therefore, the Movement Political Organisation set up by the Movement Act is a political organisation or political party within the meaning of section 2 of the Act. All the provisions of the Act do apply to the Movement Political Organisation as they apply to all other political parties and organisations. There is no discrimination, unequal treatment or creation of one party state by the definitions in section 2 of the Act. We answer the first issue in the negative.

ISSUE NO.2.

This is whether section 6(2)(3) and (4) of the Act which require existing political parties to register as bodies corporate within six months is inconsistent with any articles of the Constitution mentioned in the issue.

Mr. Walubiri contended that the provisions of section 6(2)(3) and (4) of the Act contravened the Constitution in the following ways:

(a) That existing political parties were being compelled to register as corporate bodies and not in any other form. This was not consistent with the freedoms granted by the Constitution under articles 20, 21, 29, 38 and 270.

(b) That the requirement for the old political parties to register within six months was not only unreasonable but also discriminatory in that only old parties were being subjected to that treatment which contravenes equal treatment provisions of article 21(1) and infringes on the freedom to associate in article 29(1)(e) of the Constitution.

Mr. Walubiri submitted that political parties should be free to associate in any form and should be free to register whenever they want, when they are ready. He contended that the respondent had not given any single 10 reasonable justification for imposing such restrictions on existing political parties. He invited us to hold that they were not justified under articles 43 and 73 of the Constitution.

In reply, Mr. Matsiko submitted that the requirement for old parties to register as corporate bodies did not contravene the Constitution. He contended that it was in line with the requirement in articles 71 and 72 of the Constitution which requires political parties to be accountable and to register. It is difficult to make an entity which is not corporate to account for its actions and its resources. However, Mr. Matsiko did not

respond on why the registration had to be done in six months, in default of which the party would cease to exist or operate.

The rights and freedoms under chapter four of the Constitution are inherent and not given by the State. This however, does not mean that they are absolute. Their enjoyment is subject to article 43 of the Constitution which states:-

> "Article 43(1) In the enjoyment of the rights and freedoms prescribed in this chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.
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> (2) Public interest under this article shall not permit :-
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> (a) political persecution;
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> (b)detention without trial;
>
> (c)Any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is provided in this Constitution."

It is only the rights and freedoms mentioned in article 44 which are absolute and non-derogable. That article states:-

> "Article 44. Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms:-
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> (a) freedom from torture, cruel, inhuman or degrading treatment or punishment; (b)freedom from slavery or servitude; (c) the right to fair hearing; (d)the right to an order of habeas corpus."

It should be noted here that all the articles of the Constitution mentioned in this issue are not covered by article 44. They can be derogated from provided that the restrictions imposed are within what is allowed by article 43(2) (supra) and article 73(2) which gives power to Parliament to make regulations which must not "exceed what is necessary for enabling the political system adopted to operate." The issue now is whether the

requirement for existing political parties to register as corporate bodies within six months is a reasonable condition acceptable under articles 43 and 72.

We deal first with the requirement to register as a body corporate. We observe that the requirement does not apply to existing political parties alone. It is a requirement for all political parties to register under the Act. Mr. Walubiri did not articulate reasons why this is objectionable except to say that parties should be allowed to associate in any form. In our view, any organisation which hopes to compete for political power in this country and to be accountable to the country and its members should be a body corporate. It should be able to own and to hold property and to sue and be sued in its own name. This will also help to reduce trilling parties which are formed purely for financial gain and have no fixed abode or address. This will also reduce proliferation of numerous political parties which are capable of creating political instability in the country. In our view, this condition for registration is quite reasonable. It applies to all political organisations and is not a derogation to any rights and freedoms granted by the Constitution.

Regarding the requirement for old political parties to register in six months, we think that there must be a time frame within which the registration must take place. The Constitution requires that all political parties register. The parties are already recognised by article 270 of the Constitution. They are deemed to have structures and membership. They should find it easier to register as long as obnoxious provisions of this Act are removed. We think that if the parties hope to start operating, the Constitution requires that they should register. This is so, so that their existence becomes a certainty and a reality and not just presumed. The six months requirement is not unreasonable. We answer this issue in the negative.

ISSUE NO.3.

This is where section 5 requires that political parties and organisations should be of a national character. National character is defined as one which "has in its membership at least fifty representatives from each of at least half of all the districts of Uganda."

Section 7 requires that to register, a political party or organisation shall provide full names and addresses of at least fifty members of the party or organisation from each of at least one third of all the districts of Uganda, being members ordinarily resident or registered as voters in the district. Mr. Walubiri contends that this requirement is not consistent with articles 20, 21, 29, 38, 43, 75 and 270. In his view, "National Character" is not a question of numbers. The party should have objectives that foster the national good. The provisions prevent individuals who are unable to travel the whole country from forming political parties. Yet even two people should be able and free to associate. In reply, Mr. Matsiko submitted that the requirement is neither unreasonable nor unconstitutional. The Constitution requires that political parties and organisations be of national character.

Article 71(a) requires that every political party shall have a national 5 character. The Constitution leaves Parliament with the power to define "National Character" which has been done in section 5 of the Act. We do not see anything unreasonable in this definition. We think that an organisation which hopes to take political power under this Constitution should be representative of the people of Uganda. The requirement will also 10 prevent the registration of opportunistic political parties and organisations.
The numbers required both in terms of membership and districts are not unreasonable. For the reasons we gave in issue No.2 above, we think political parties and organisations should be reasonably a reflection of Uganda. We think the requirements are within the spirit of the Constitution 15 and they neither contravene nor are they inconsistent with any of its articles. We answer this issue in the negative.

ISSUE NO.4.

The issue here is whether section 8 of the Act prohibits political parties and organisations from registering "any identifying symbol, slogan, colour, name or initials" of any existing political party or organisation continued in existence under article 270 of the Constitution, and if so, whether that restriction renders the section unconstitutional. Mr. Walubiri submitted that this section bars parties which existed before 1995, i.e. UPC, DP, UPM and CP from registering their parties under then names, symbols, slogans colours and initials. The effect of the prohibition is that the parties will have to choose new names, colours, and symbols e.t.c. before they are allowed to register. The parties are forced to completely abandon their identities and to put on an entirely new identity. In his view, this restriction is intended to completely destroy the old political parties and the section is therefore inconsistent with articles 20, 21, 29, 38, 43 and 270 of the Constitution. He submitted that there was no acceptable reason, in terms of article 43 of the Constitution, why in Uganda of today, we should have such a provision.

In reply, Mr. Joseph Matsiko did not agree with Mr. Walubiri's interpretation of section 8 of the Act. He submitted that section 6(3) provided that political parties continued in existence under article 270 of the Constitution must continue to exist but must apply for registration within six months. This clearly means that they are allowed to register their own identity. In his view, section 8 of the Act is only intended to protect the identities of old parties from encroachment by the new parties who might wish to use their names, colours, and symbols e.t.c. There was nothing unconstitutional about such a requirement. It is aimed at protecting the old parties rather than destroying them.

Section 8 of the Act provides:-

> "No political party or organisation shall submit to the Registrar-General for the purpose of registration under section 7 of this Act, any identifying symbol, slogan, colour or name which is the same as or similar to the symbol, slogan, colour or name or initials of: (a) any registered political party or organisation; or
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> (b)any existing political party or organisation continued in

existence under article 270 of the Constitution; or

(c)the Republic of Uganda; or

(d)Statutory corporation or other body the whole or the greater part of the proprietary interest in which is held by or on behalf of the State, or in which the State has a controlling interest:"

We think that this section read together with section 6(3) of the Act cannot, and should not be construed to have the meaning that Mr. Walubiri attributed to it. In our view, the section provides protection to the existing political parties to stop their names, colours, symbols, slogans and initial from being adopted and registered by any new political parties and organisations as their own. This is the only natural meaning of section 8 of the Act.

We cannot construe it as a restriction but as a protection which is justified because the parties in existence do own these names, symbols e.t.c. We hold that the section neither contravenes nor is it inconsistent with any article of the Constitution. We agree with Mr. Matsiko's interpretation of the section and we answer this issue in the negative.

ISSUE NO.5.

This is whether section 10(4) of the Act which restricts political parties and organisations to elect members of their National Conference only during the 4th year of the life of any Parliament contravenes articles 1, 20, 21, 29, 38, 43, 71(c), 75 and 270 of the Constitution. Mr. Walubiri complained that although article 1 of the Constitution vests sovereignty in the people of Uganda, yet section 10(4) restricts their political parties to a body called a "National Conference" whose members can only be elected in the 4 year of Parliament. Mr. Walubiri wondered why the political parties are compelled to have an organ called the National Conference and why they cannot choose freely the organs to manage their political parties. He wondered why the parties cannot elect their leaders at any time other than during the 4th year of Parliament. He could not comprehend what it was in the 4th year

of Parliament that made it the only suitable time to hold elections for the National Conference. He contended that this was an attempt by the State to give all the political parties and organisations a uniform Constitution so that they are managed by regimentation like in state imposed one party states. He invited us to hold that the section contravenes and is inconsistent with articles 1, 20, 21, 29, 38, 43, 71(c), 75 and 270 of the Constitution.

In reply, Mr. Matsiko could not agree that the section contravened any part of the Constitution. He gave two justifications for the section:-

(a) The rationale was to give political parties and organisations opportunity to prepare themselves for elections.

(b) It is intended to limit disruptions of the population as a result of political activities to only one year before Parliamentary Elections.

Mr. Matsiko contended that political activity can cause disruptions in society and Parliament, in its wisdom, deemed it necessary to limit it to only the 4th year of the life of any Parliament. He invited us to decide this issue in the negative.

In order to put section 10(4) of the Act in its proper context, we reproduce herebelow the first four sub-sections of that section:-

> "(1) A political party or organisation shall, in its internal organisation, comply with the provisions of the Constitution, in particular articles 71 and 72 of the Constitution.
>
> (2) Every political party or organisation shall elect such persons as may be determined by the members of the political party or organisation as members of the executive committee of the political party or organisation with due consideration for gender equity.
>
> (3) The election of members of the executive committee of every political party or organisation shall be conducted at regular intervals.

(4) Apart from the first election held after the registration of a political party or organisation, the election of members to the national conference of a political party or organisation shall take place only in the fourth year of the term of Parliament."

Article 71 referred to in section 10(1) above provides:-

"A political party in the multi-party political system shall conform to the following principles:

(a) every political party shall have a national character;

(b) membership of a political party shall not be based on sex, ethnicity, religion, or other sectional division;

(c) the interna] organisation of a political parry shall conform to the democratic principles enshrined in this Constitution:

(d)members of the national organs of a political party shall be regularly elected from citizens of Uganda in conformity with the provisions of paragraphs (a) and (b) of this article and with due consideration for gender;"

It will be seen that from the above provisions, political parties must be of a national character, must not be sectarian, must be democratic, must elect their party organs regularly and in particular members of the Executive Committee must be elected at regular intervals. It is against this background that section 10(4) becomes difficult to appreciate. The word "Conference" is defined in S.2 of the Act to mean

"a meeting of a political party or organisation lasting one or more days to discuss matters concerning the political party or organisation."

We presume that a national conference is such a conference but composed of members of the party of all sexes and diversities from the whole country. We believe this is intended to be the top most policy-making organ of every political party or organisation. Why then is this organ singled out to be elected in the 4th year of every Parliament? Why are political parties and organisations, which are free associations of persons, being forced to elect this top policy making organ of the party only once in five years? Would it interfere with the

operation of any political system if a party or an organisation decided to elect its national conference say, every two years? What is the rationale of tying the election to the life span of Parliament? Is it consistent with the freedom of association in article 29(1)(e) or is it a justifiable restriction within the meaning of article 43 of the Constitution?

We have given anxious consideration to this issue. We are not persuaded by Mr. Matsiko's argument that it is a reasonable and justifiable restriction on the freedom of association in order to prevent what he called "disruptions in the population" or "to give political parties and organisations opportunity to prepare for elections."

We do not see how a single orderly meeting of a political party in one place can cause disruptions, even if it is held once every year. Parties are enjoined by the Constitution to hold elections at regular intervals. The phrase "regular intervals" is not synonymous with "five years". The parties and organisations should be free to determine for themselves what period is suitable for electing their top organ. We do not appreciate why the election must occur in the 4th year of Parliament. We do not see why a National Conference elected at any other time cannot prepare its party or organisation for election (whatever that means). We hold that the restriction contained in section 10(4) of the Act is totally unjustified and unjustifiable in a free and democratic society. It is far in excess of what is reasonably necessary for enabling any political system adopted, whether Movement or Multiparty, to operate. It contravenes and is not consistent with article 29(1)(e) of the Constitution. A political party contending for ascendancy should not be made subject to legislative measures that limit its capacity to associate, engage in dialogue and communication. It is therefore null and void.

ISSUE NO.6

This is whether section 10 (8) and (9) of the Act is inconsistent and contravenes articles 20, 21(1) and (4), 29(1)(a**)(bXd)** and **(e),** 29(2)(a), 38, 43, 71(c), 75 and 270 of the Constitution. Section 10(8) and (9) provide:-

"S.l0(8) After the issue of the certificate of registration to a political party or organisation under section 7 of this Act, the political party or organisation may, within one month after the issue to it of the certificate of registration, hold only one meeting in each district to elect members to the national conference for the purpose of electing its first members of the executive committee; and after the election of the members at the district, any structures established for the purpose of that election shall cease to exist.

(9) Any political party or organisation which holds a meeting contrary to subsection (8) of this section or otherwise acts contrary to that subsection, commits an offence and is liable on conviction to a fine not exceeding three hundred currency points; and every officer of the political party or organisation who contributes in any way to the contravention, also commits an offence and is liable on conviction to a fine not exceeding three hundred currency points or imprisonment not exceeding three years or both."

According to Mr. Walubiri, after registration of the party or organisation, it can only hold one meeting in the district to elect the District Executive of the party. Thereafter all structures set up for that purpose must be dismantled. The implications of this provisions are:-

(a) Only one meeting at the district is permitted.

(b)The meeting must take place after one month of the issue of a registration certificate.

(c) The purpose of the meeting is restricted to one agenda, i.e. electing the National Conference and nothing else. (d)All structures set up in order to elect the National Conference must be dismantled after the election of the National Conference.

(e) A very heavy penalty is imposed in case of any default.

(f) A party which defaults risks being de-registered under section 20(1) of the Act.

Mr. Walubiri submitted that these provisions were intended to kill political parties by alienating them from the people so that they only remain at the District Headquarters without grassroots support. Yet the Movement, under the Movement Act has got branches from the village up to its National Headquarters. In his view, this provision was similar to sections 18 and 19 of the Act which this court has already struck down as being unconstitutional. He invited this court to do the same with section 10(8) and (9) of the Act.

In reply, Mr. Matsiko denied that the section restricted meetings of parties and political organisations. He stated that it is only meetings aimed at electing the National Conference which were restricted. Mr. Matsiko did not say why this was necessary. He did not explain why it was necessary to dismantle all party structures formed for electing the National Conference but he insisted that the restriction did not contravene the Constitution.

We shall be brief on this issue because section 10 is very similar to section 18 and 19 of the Act. This court has already condemned those sections as unconstitutional and a flagrant violation of the freedom of association enshrined in the Constitution. It has not been shown to be justified or justifiable under article 43 of the Constitution and it exceeds by far what is necessary to enable any political system which may be in power to operate. It is a monstrosity in a free and democratic society and it should not stand. We declare that it is not consistent with the spirit and letter of the Constitution and it contravenes article 29(1) (e), 38, 71(c) and 73(2) of the Constitution. It is therefore null and void.

ISSUE NO.7.

Whether section 13(b) of the Act is inconsistent with and contravenes article 1(4), 20, 21, 29(1)(a)(b) and (e), 29(2)(a) and (b), 38, 43, 71(e) and 270 of the Constitution. The section states:

> "No person shall be appointed nor accept any political office in a political party or organisation in Uganda if he or she:-(a)is not a citizen of Uganda.
>
> (b)has, immediately before he or she is to be appointed, lived outside Uganda continuously for more than three years."

Mr. Walubiri could not comprehend why the right of a citizen to participate in the affairs of government is being denied merely because such a citizen has lived outside Uganda, for any reason, for three or more years. He submitted that section 13(b) cannot be justified and should be declared null and void.

Mr. Matsiko did not agree. His justification for the provision was that Parliament had powers to make such a restriction under articles 72 and 73 of the Constitution and section 13(b) of the Act was a product of the exercise of that power. He did not say whether the restriction was justified under article 43 of the Constitution or whether it was needed in order to protect the political system in operation. In fact Mr. Matsiko appeared to be at a loss as to what purpose the provision was designed to serve.

Section 3(2) of the Act provides that every citizen of Uganda has a right to join a political party or organisation. This implies the right to hold a political office in that organisation. So we are equally at a loss to understand why Parliament enacted such a draconian provision. We agree **5** that subject to the Constitution, Parliament has the power to enact such a provision. However, the Constitution requires that if the enactment infringes on a human right or freedom, it must be justified under article 43 or 73(2) of the Constitution.

In our view, section 13(b) contravenes the right and freedom to associate (article 29(1) (e)) and the right to participate in the affairs of government, individually or through representatives in accordance with the law (article 38(1)). Yet no justification has been made as to why a citizen who has resided out of Uganda continuously for three years or more should be denied is those rights and freedoms. We have no doubt that the provision contains a restriction on the sacrosanct rights and freedoms of a citizen that should not be permitted to stand in a free and democratic country like ours, at this point in time. It is therefore null and void.

In the result, we make the following declarations and orders:-

1) This petition fails on issues 1, 2, 3 and 4.
2) The petition succeeds on issues 5, 6 and 7.

3) Our order dated 16th January 2003 in Constitutional Application No.6 of 25 2002 staying the operation of section (6)(3) and (4) of the Act is hereby vacated.

4) Owing to the fact that:

(a) Article 269 of the Constitution expired when this Act was enacted.

(b) Sections 18 and 19 of the Act were nullified in Constitutional Petition No. 5 of 2002.

(c) The meaning of section 8 of this Act has been clarified in this petition,

(d) Restrictions imposed by sections 10(4), (8) and (9), and 13(b) have been nullified in this petition, the political parties referred to in article 270 of the Constitution have no more legitimate reason to resist registration as required by article 72(2) of the Constitution and section 6(2)(3) and (4) of the Act. They should now register within six months from the date of this judgment.

5) In view of our orders (1) and (2) above, it is only fair that each party bears its own costs of this petition.

Dated at Kampala this 17th day of November 2004.

Hon. Justice A.E.N. Mpagi-Bahigeine,

JUSTICE OF APPEAL

Hon. Justice S.G. Engwau

JUSTICE OF APPEAL

Hon. Justice. Twinomujuni

JUSTICE OF APPEAL

Hon. Justice C.N.B. Kitumba

JUSTICE OF APPEAL

Hon. Justice C.K. Byamugisha

JUSTICE OF APPEAL