

**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 C.N.B. KITUMBA, JA.**  
**HON. JUSTICE C.K. BYAMUGISHA, JA.**  
**HON. JUSTICE S.B.K. KAVUMA, JA.**

**CONSTITUTIONAL PETITION NO. 22 OF 2006**

1. **PAUL KAFEERO**
2. **HERMAN KAZIBWE ::::::::::::::::::::::::::::::: PETITIONERS**

**VERSUS**

1. **THE ELECTORAL COMMISSION**
2. **THE ATTORNEY GENERAL ::::::::::::::::::::::: RESPONDENT**

**JUDGEMENT OF KITUMBA, JA**

The petition is brought under the Articles 137 (3) and 50 (1) and (2) of the Constitution and the Fundamental Rights and Freedoms (Enforcement Procedure) Rules 1992, and the Civil Procedure Rules. It was filed in this Court on 11/5/2005 and amended on 2<sup>nd</sup> July, 2007. The petitioners namely Paul Kafeero and Herman Kazibwe are Ugandan citizens who claim to be aggrieved as stated in the petition.

**“1. Your petitioners Paul Kafeero and Herman Kazibwe are affected and aggrieved by the following matters being inconsistent with the Constitution of the Republic of Uganda.**

- (a) **Your petitioners are aggrieved by the 1<sup>st</sup> respondent’s refusal to register their Political Party in the names of “KABAKA YEKKA” on the grounds that the name contravenes the provisions of Sections 5(1) and 16(1) of the Political Parties and Organisations Act 2005 and as it is likely to be confused with the Kingdom of Buganda.**
- (b) **That the decision by the 1<sup>st</sup> respondent not to register the Political Party “KABAKA YEKKA” contravenes Article 72(1) of the**

**Constitution of the Republic of Uganda which guarantees the petitioners and other citizens of Uganda the right to form Political Parties of their choice.**

- (c) **That the decision by the 1<sup>st</sup> respondent not to register the Political Party “KABAKA YEKKA” contravenes Article 29(1) (e) of the Constitution which provides for freedom of association.**
2. **Your petitioners is further aggrieved by the respondents’ continued observance and enforcement of Section 5(1) (a) and (2) of the Political Parties and Organisations Act 2005 in relation to your petitioners and their Political Party “KABAKA YEKKA” in contravention of Articles 72(1) and 29(1) (e) of the Constitution of the Republic of Uganda.**
3. **That the 1<sup>st</sup> respondent’s observance and enforcement of section 5(1) (a) and (2) of the Political Parties and Organisations Act 2005 puts limitations and restrictions on the petitioners’ enjoyment of their rights and freedoms beyond what is justifiable and acceptable in a free and democratic society and accorded in the Constitution by Article 43(2) (c) thereof.**
4. **The petitioners have suffered much inconvenience and great loss by the failure of the 1<sup>st</sup> respondent to register the party “KABAKA YEKKA”.**
5. **Your petitioners state that by reason of the matters stated in paragraphs 1, 2 and 3 above the actions of the 1<sup>st</sup> respondent as they relate to the party “KABAKA YEKKA” are unconstitutional and must be struck down as null and void.”**

They pray that the court make the following declarations and orders.

- “(a) A declaration that the Political Party “KABAKA YEKKA” fulfilled all the conditions required under the law for registration of Political Parties.**
- (b) Make a declaration that the refusal/failure of the 1<sup>st</sup> respondent to register the Political Party called “KABAKA YEKKA” was inconsistent with and contravened Articles 72(1) and 29(1) (e) of the Constitution.**
- (c) Grant an order directing the 1<sup>st</sup> respondent to register the Political Party “KABAKA YEKKA”.**
- (d) Grant an order for redress for loss suffered by the petitioners due to the refusal/failure of the 1<sup>st</sup> respondent to register the Political Party “KABAKA YEKKA”.**
- (e) Grant an order directing the respondents to pay the costs of the petition.”**

The petition is supported by the affidavit sworn by Paul Kafeero, the 1<sup>st</sup> petitioner.

In answer to the petition both respondents deny all allegations in the petition. The respondents' claim that the allegations contained in paragraphs 1, 2, 3 and 5 of the petition are frivolous and vexatious. The two respondents make specific answers to the petition as follows:

**“3. In specific reply to paragraph 1(a-c) 2, 3 and 5 of the Petition.**

- (i) **The first respondent lawfully and justifiably refused to register the Political Party in the names of “KABAKA YEKKA” as this would contravene the provisions of section 5(1) (a) (b) and 16(1) of the Political Parties and Organisations Act 2005 and it was likely to be confused with the Kingdom of Buganda.**
  - (ii) **Denies in response to paragraph1 (b) that the decision by the 1<sup>st</sup> respondent not to register the Political Party “KABAKA YEKKA” contravenes Article 72(1) of the Constitution which guarantees the Petitioners and other citizens of Uganda the right to form Political Parties of their choice.**
  - (iii) **Denies in response to paragraph 1(c) that the decision by the 1<sup>st</sup> Respondent not to register the Political Party “KABAKA YEKKA” contravenes Article 29(1)(e) of the Constitution which provides for freedom of association.**
  - (iv) **Denies in response of paragraph 2 that the respondents continued observance and enforcement of section 5(1)(a) and 2 of the Political Parties and Organisations Act in relation to the petitioners and their Political Party “KABAKA YEKKA” contravenes Article 72(1) and 29(1)(e) of the Constitution of the Republic of Uganda.**
  - (v) **Aver that the limitation under section 5(1)(a) and 2 of the Political Parties and Organisations Act 2005 are justifiable, reasonable and acceptable in a free and Democratic society and are in line with Article 43(2)(c) of the Constitution.**
  - (vi) **Aver that the decision of the First respondent relating to the party “KABAKA YEKKA” was in line with the provisions of the Political Parties and Organisations Act, which provides emanate from the Constitution of the Republic of Uganda and was, therefore, Constitutional.**
- 4. The respondents aver that the Petitioners are estoppel from seeking remedies in this petition as they ignored the specific procedure in the Political Parties and Organisations Act for challenging the refusal to register a party.**
  - 5. The Respondents consequently aver that the Amended Petition is incompetent, without merit and does not require Constitutional interpretation.**

The answer to the petition is supported by two affidavits. Eng. Badru Kiggundu, the chairman of the first respondent, deponed one affidavit and Bafirawala Elisha who is a State Attorney in the Chambers of the second respondent swore another.

The background to the petition is that the two petitioners filed an application before the Registrar General who was then the Registrar of Political Parties and Organisations. The Registrar General did not register the Political Party and advised them to change the name. Later on the mandate of registering the Political Parties was passed on the Chairman of the Electoral Commission. The Chairman of the Commission declined to register their Political Party **“Kabaka Yekka”** after consulting the Attorney General of Buganda Kingdom. In his letter dated 28<sup>th</sup> September, 2005 the Attorney General stated that if the party was registered under the name **“Kabaka Yekka”** that the party would infringe the provisions of the law.

During the scheduling conference the parties agreed on the following issues for determination, namely: -

1. **Whether the refusal/failure of the 1<sup>st</sup> respondent to register the Political Party “KABAKA YEKKA” was inconsistent and contravened Articles 72(1) and 29(1) (e) of the Constitution and therefore, null and void.**
2. **Whether the 1<sup>st</sup> respondent’s observance and enforcement of sections 5(1) (a) and 16(1) of the Political Parties and Organisation Act 2005 with respect to the petitioners and their Political Party “KABAKA YEKKA” puts limitation and restriction on the petitioners’ enjoyment of their rights and freedoms beyond what is justifiable and acceptable in a free and democratic society and what is provided for in the Constitution.**
3. **Whether the petitioners are entitled to the remedies sought in the petition.**

At the trial the petitioners were represented by learned counsel, Ms Eve Luswata Kawuma and learned Senior State Attorney, Ms Margaret Nabakooza appeared for both respondents.

During the hearing of the petition both counsel supplemented their conferencing notes with oral submissions and argued the petition following the agreed issues consecutively. I will handle the petition in the same order.

**“Whether the refusal/failure of the 1<sup>st</sup> respondent to register the Political Party “KABAKA YEKKA” was inconsistent and contravened Articles 72(1) and 29(1) (e) of the Constitution and was, therefore, null and void.”**

Ms Luswata-Kawuma, for the petitioners contended that the refusal by the first respondent to register the petitioners' party "**Kabaka Yekka**" was inconsistent with Article 72(1) of the Constitution which guarantees the citizens of Uganda the right to form Political Parties of their choice. She contended further that the same action of the first respondent was inconsistent and contravened Article 29(1) (e) of the Constitution, which provides for freedom of association.

Counsel submitted that the petitioners had fulfilled all the required conditions precedent to the registration of a Political Party as is provided by section 7 of the Political Parties and Organisations Act, No. 5 of 2005 herein after to be referred to as the (PPOA). The 1<sup>st</sup> respondent refused to register their party. The reasons that he gave for his refusal were contained in his letter of 17/2/06. In that letter he informed the petitioners that the name "**Kabaka Yekka**" was likely to be confused with the Kingdom of Buganda in contravention of sections 5(1) (a) and 16(1) of the Political Parties and Organisations Act.

According to counsel, the chairman of the 1<sup>st</sup> respondent did not show how the above mentioned sections of the PPOA were contravened. She argued that the promoters and members of the "**Kabaka Yekka**" party did not belong to any of those categories of people prohibited by section 16(1) of the PPOA. Additionally, membership of the party was not based on the categories prohibited by section 5(1) (a). She argued that according to the annexures to the affidavit of the first petitioner membership of the party reflected a cross section of Ugandans in nineteen districts representing five regions of the country. No particular sex, religion or ethnic group was prominent, which in her view, was indicative of the fact that the party was of a true national character. Counsel urged that this Court in determining the constitutionality of the provisions of sections 5(1)(a) and 16(1) of the PPOA should consider its purpose and effect. In support of her submission she relied on **A.G. Vs Salvatori Abuki Constitutional Appeal No. 1 of 1998.**

Counsel argued that the purpose of the Constitution is the establishment and promotion of a just and democratic society based on unity, social justice and progress. She submitted that the effect of the actions of the chairperson of the first respondent while acting under sections 5(1)(a) and 16(1) of the PPOA in connection with the petitioners' application to register their party contravened the purpose of the Constitution and had the effect of curtailing their rights which are guaranteed by Articles 72(1) and 29(1)(e) of the Constitution.

Counsel prayed court to answer the 1<sup>st</sup> issue in the affirmative.

The learned Senior State Attorney did not agree. She contended that the decision by the chairman of the first respondent not to register the petitioners' Political Party "**Kabaka Yekka**" was justified. The reason he gave that the members of the public would confuse it with the Kingdom of Buganda was correct, as it would thereby contravene the provisions of sections 5(1)(a) (b) and 16(1) of the Political Parties and Organisations Act. She submitted that, therefore, decision was not inconsistent with and did not contravene articles 72(1) and 29((1) (e) of the Constitution. She stated that according to the settled principles of constitutional interpretation, the Constitution must be viewed as one integrated whole. She argued that while the right to form Political Parties is guaranteed by Article 72(1) of the Constitution it is subjected to clauses (2) and (3) of the same article. In her view, all clauses of Article 72 must be read together. It was her contention that articles 72(2) and (3) of the Constitution are couched in mandatory terms. Clause 2 provides that no organisation shall operate as a Political Party unless it conforms to the constitutional principles. The said principles are unity, peace, equality, democracy and freedom. According to clause 3 Parliament was mandated to enact the law to regulate the operations of Political Parties. Pursuant to that, Parliament enacted the Political Parties and Organisations Act.

Learned Senior State Attorney submitted that section 5(1)(a) of PPOA prohibits any person from forming any Political Party the membership of which is based on sex, race, colour or ethnic origin, tribe, birth, creed or religion or other similar division. Section 5(1) (b) prohibits the formation of any Political Party, which uses words, slogans or symbols, which could arouse divisions on any basis specified in paragraph (a).

She submitted that section 5(1)(a) and (b) must be read together. She argued that based on article 72(2) of the Constitution by registering a party in the name of "**Kabaka Yekka**" would undermine, the Constitutional Principle of Unity since such a name would arouse tribal divisions as the Kabaka is the cultural leader of the Buganda Kingdom. Additionally, the right thinking people would assume that the cultural leader of the Buganda Kingdom is participating in partisan politics contrary to article 246(3) (e) of the Constitution and section 16 of the PPOA. The Buganda Kingdom objected to the registration of the petitioners' Political Party as "**Kabaka Yekka**". The petitioners refused to change the name though they were advised to do so.

In conclusion, counsel for the respondents submitted that refusal by the first respondent to register the Political Party "**Kabaka Yekka**" did not contravene articles 72(1) and 29(1)(e) of the Constitution. She prayed court to answer the first issue in the negative.

Before I answer the first issue I must state some of the principles of Constitutional interpretation, which must be borne in mind when determining the matter before Court. Counsel for the respondents has correctly submitted that when interpreting the Constitution the whole document must be looked at as one whole. See **Paul K. Ssemwogerere and 2 Others v Attorney General Constitutional Appeal No. 1 of 2002** in which Mulenga, JSC, at P.4 – 5 of his Judgement stated:

**“It is a cardinal rule in constitutional interpretation, that provisions of a constitution, concerned with the same subject should as much as possible be construed as complimenting, and not contradicting one another. The Constitution must be read as an integrated and cohesive whole. The Supreme Court in U.S.A. in Smith Dakota Vs North Caroline 192 US 279 (1940) put the same point thus-**

*“It is an elementary rule of constitutional construction that no one provision of the Constitution is to be segregated from the others and to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be interpreted as to as to effectuate the great purpose of the instrument.”*

**There is no authority, other than the Constitutional Court charged with the responsibility to ensure that harmonisation”.**

The provisions of the Constitution which concern fundamental human rights, as is the case in the instant petition should be given liberal interpretation. As stated by Manyindo, DCJ, as he then was, in **Major General David Tinyefuza Vs Attorney General Constitutional Petition No. 1 of 1996.”** at P.16 of his judgement.

*“In my opinion Constitutional provisions should be given liberal construction, unfettered with technicalities because while the language of the Constitution does not change, the changing circumstances of a progressive society for which it was designed may give rise to new and fuller import to its meaning. A Constitutional provision containing a fundamental right is a permanent provision intended to cater for all time to come and, therefore, while interpreting such a provision, the approach of the Court should be dynamic, progressive and liberal or flexible, keeping in view ideals of the people, socio-economic and politico-cultural values so as to extend the benefit of the same to the maximum possible.*

*In other words, the role of the Court should be to expand the scope of such a provision and not to extenuate it. Therefore, the provisions in the Constitution touching on fundamental rights ought to be construed broadly and liberally in favour of those on whom the right to have been conferred by the Constitution.*

*If a petitioner succeeds in establishing breach of a fundamental right, he is entitled to the relief in exercise of Constitutional jurisdiction as a matter of*

*course. However, the court may decline relief if the grant of same, instead of advancing or fostering the cause of justice, would perpetuate injustice or where the court feels that it would not be just and proper for example, if the matter has been overtaken by events. In my opinion, in this regard, there seem to be no distinction between the enforcement of a fundamental right and a legal right under a general law.”*

*(Underlining mine)*

The petitioners’ complaint in the first issue is that the action of the first respondent contravenes and was inconsistent with article 72(1) and article 29(1) (d) of the Constitution.

I should quote the articles, which are in issue.

Article 72(1) provides-

**“Subject to the provisions of this Constitution the right to form Political Parties and any other political organisations is guaranteed.”**

Article 29(1) (e) provides:

**“Every person shall have the right to –  
freedom of association which shall include the freedom  
to form and join associations or union, including trade  
unions and political and other civic organisations.”**

Article 72(1) guarantees the citizens of Uganda the right to form Political Parties but that right is subject to the provisions of the Constitution. The same article goes on to provide in sub-articles 2 and 3 as follows:

**“(2) An organisation shall not operate as a Political Party or  
organisation unless it conforms to the principles laid  
down in the Constitution and is registered.**

**(3) Parliament shall by law regulate the financing and  
functioning of political organisations.”**

The petitioners’ complaint is about the enforcement of sections 5(1) and (2) and 16(1) of PPOA to their application to register their party “**Kabaka Yekka**”.

The petitioners’ right to form a Political Party must be regulated by the Constitutional provisions and the Political Parties and Organisations Act. The 1995 Constitution is based on the principles of unity, peace, equality democracy, freedom, social justice and progress.



Section 5(1) of the PPOA states:-

**“A person shall not form a Political Party or Organisation-**

- (a) the membership of which is based on sex, race, colour or ethnic origin, tribe, birth creed or religion, or other similar divisions, or**
- (b) which uses words, slogans or symbols which could arouse divisions on any basis specified in paragraph (a),**

By section 16(1) of the PPOA a traditional or cultural leader is prohibited from participating in Political Party or political organisations activities.

Basing himself on the provisions of section 5(1) (a) and 16(1) of the PPOA the chairman of the first respondent rejected the petitioners’ application to register their Political Party **“Kabaka Yekka”**. The ground of his refusal was that it was likely to be confused with the Kingdom of Buganda in contravention of the above mentioned section of the PPOA.

I am not persuaded by counsel’s argument that as the petitioners had fulfilled all the conditions precedent to the registration of their Political Party pursuant to section 7 of PPOA, the chairman of the first respondent had to register the party regardless of the name. I am of the considered view that although the party had registered members in 19 districts of Uganda and was constituted of persons of different race, colour, sexes or ethnic origin creed or religion, the name was still a very important aspect.

The Chairman of the 1<sup>st</sup> respondent had the discretion to register or not their party under the proposed name of **“Kabaka Yekka”**. If there were justifiable reasons for his actions.

***“LEG353/01***

***17/02/2006.***

***The Chairman***

***Kabaka Yekka***

***P.O. Box 70229***

***Kampala***

***YOUR APPLICATION FOR REGISTRATRION AS A POLITICAL PARTY***

***Please refer to the above outlined subject.***

*According to available records you were advised by the Assistant Registrar of Parties to change name because Kabaka Yekka was likely to be confused with the Kingdom of Buganda in contravention of the Provisions of Sections 5(1)(a) and 16(1) of the Political Parties and Organisations Act 2005.*

*This is therefore to reiterate the advice given to you regarding this matter.*

**Eng. Dr. Badru M. Kiggundu**

**CHAIRMAN, ELECTORAL COMMISSION”**

The petitioners were advised to change the name but adamantly refused and brought the petition to this Court.

It is a well known fact which this Constitutional Court has to take judicial notice of that the traditional/cultural leader of Buganda Kingdom is called the Kabaka. Section 5(1) (b) of the PPOA prohibits the use of “**words**” which could arouse divisions on any basis specified in para (a). Paragraph 1(a) prohibits membership based on, inter alia, ethnic origin, tribe. Since the Kabaka of Buganda is a cultural /traditional leader of the Baganda the use of the name “**Kabaka**” which is a word was likely to cause divisions. I appreciate the submission by the respondents’ counsel that the right thinking people were likely to assume that the Kabaka of Buganda was indulging into partisan political activities, contrary to article 246(3)(e) of the Constitution. This would cause unwarranted divisions and would be contrary to the Constitutional Principle of Unity.

For the foregoing reason, I am of the considered view that the refusal by the first respondent to register the petitioners’ Political Party “**Kabaka Yekka**” was justified and did not contravene and was not inconsistent with articles 72(1) and 29(1)(e) of the Constitution. The petitioners were not denied the right to associate or to join a Political Party. I answer the first issue in the negative.

I now turn to the second issue.

*“Whether the 1<sup>st</sup> respondent’s observance and enforcement of section 5(1)(a) and 16(1) of the Political Parties and Organisations Act 2005 with respect to the petitioners and restrictions on the petitioners enjoyment of their rights and freedoms beyond what is justifiable and acceptable in a free and democratic society and is provided for in the Constitution.”*

Regarding the second issue the petitioners’ counsel relied on article 43(2) (c) of the Constitution. She contended that contrary to what is provided for in the above article, the limitation that was

imposed on the petitioners was beyond what is justifiable in a free and democratic society. It was her submission that in order to determine whether the limitations imposed on the respondents were justifiable in a free and democratic society, the court considers the following namely; the nature of the right that is limited, its importance to an open and democratic society based on freedom and equality, the extent of the limitation and its efficacy.

According to her, the right of the petitioners, which were restricted, was very important. The petitioners were not in the categories of the list that was prohibited in section 5 of the PPOA. She contended that the formation of Political Parties and the right of association is very important to the country. She urged court to answer the second issue in the affirmative.

Counsel for the respondents did not agree. It was her contention that the limitations and restrictions provided for by sections 5(1)(a) and 16 (1) of the PPOA are justifiable and acceptable in a free and democratic society. She argued that the impugned sections were enacted in fulfilment of the mandatory requirement of Article 72(3) of the Constitution. She submitted that since the Constitution, by article 72 (2), gave Parliament the mandate to regulate the operation and functioning of the Political Parties and Organisations it was not for this Court to question the law that was enacted. She argued that the petitioners had not brought forward any evidence to prove the unconstitutionality of the sections complained of.

She supported her submissions with a quotation **Attorney General v Major General David Tinyefuza** by Kanyeihamba, JSC. where he stated as follows at P. 11 of his judgement:

*“It cannot be over-emphasized 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 exceeded their powers or acted unjustly causing injury thereby”.*

She prayed this Court to answer the second issue in the negative.

Article 43(1) provides –

**“General limitation on fundamental and other human rights and freedoms.**

**(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.**

**(2) Public interest under this article shall not permit –**

**(a) political persecution;**

**(b) detention without trial;**

**(c) Any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution”.**

The phrase “**beyond what is demonstrably justifiable in a free and democratic society**” is not defined in the Constitution.

The duty to interpret the phrase is upon this Court. This Court has done so in **Zachary Olum and Another Vs Attorney General** Constitution Petition No.6 of 1999.

In his judgement my senior brother Okello, JA stated:

The phrase in a “free and democratic society” has been considered by courts in other jurisdictions.

In Canada, the Supreme Court in *The Queen Oakes* [1987] (Const) 477 at 498 – 9 said: -

*“A second contextual element of interpretation of (section 1) is provided by the words “free and democratic society”. Inclusion of these words as the final standard of justification for limits on rights and freedoms refers the court to the very purpose for which the charter was originally entrenched in the Constitution of Canadian society is free and democratic. The court must be guided by the values and principles essential to a free and democratic society which I believe embody to name but a few, respect for inherent dignity of human rights, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity and faith in social and political institutions which enhance the participation of individual and groups in society. The underlying value and principles of a free and democratic society are the genesis of the rights and freedoms guaranteed by the charter and the ultimate standard against which a limit on a right or freedom must be shown, despite its effect to be reasonable and democratically justified”.*

The limitations or restrictions provided for in sections 5(1)(a) and 16(1) of the PPOA, in my view, embody the values and principles essential to a free and democratic society are provided for in the Constitution.

Some of these values and principles that are mentioned in the above quotation are “**commitment to social justice and equality, accommodation of a wide variety of beliefs and respect for cultural and group identity**”.

Chapter sixteen of the Constitution provides for the institution of Traditional and Cultural Leaders. In particular Article 246 (1) and 3(e) provide:

1. *Subject to the provisions of this Constitution, the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.*
- 3 (e) *a person shall not, while remaining a traditional leader or cultural leader, join or participate in partisan politics.*

It would be wrong, in my view, to allow the institution of a cultural leader to exist and then at the same time register a Political Party “**Kabaka Yekka**” which would arouse excitement and divisions on grounds of ethnic origin or tribe.

Additionally if the petitioners were allowed to register their Political Party under the name of “Kabaka Yekka”, they would be interfering with the rights of the people of Buganda Kingdom who wish to peacefully practice their cultural rights of having their traditional leader.

It is my considered opinion that these limitations or restrictions in the above mentioned sections are justifiable in a free and democratic society. These restrictions are provided for by the Constitution.

I would answer the second issue in the negative.

Regarding the third issue

I would hold that the petitioners are not entitled to any of the declarations or remedies sought.

In the result I would dismiss the petition with costs to the respondents.

**Dated at Kampala this 30<sup>th</sup> day of April 2008.**

**C.N.B Kitumba**

**JUSTICE OF COURT OF APPEAL**

**JUDGEMENT OF A.E. N.MPAGI-BAHIGEINE, JA.**

I have read in draft the lead judgement of C.N.B.Kitumba J.A. I entirely agree that the petition should fail.

I would only add just a very brief comment for emphasis.

Though political parties are a form of association essential to the proper functioning of democracy, there can be no doubt, in view of the importance of democracy, that these political parties should come within the scope and purview of the legitimate aims of the law regulating political parties i.e. ensuring national unity, public safety and protection of the rights and freedom of others. Thus the proposed name “*Kabaka Yekka*” cannot be justified by any legitimate aim of article 72(2) and (3) of the Constitution and the *Political Parties and Other Organisations Act 2005 (PPOA)* which regulates the functioning of political parties. It is likely to rekindle the old emotions of the 1960s stirring up public unrest, commotion and confusion which would all in turn be ascribed to the *Kabaka of the Kingdom of Buganda* as the purveyor of partisan politics in the country, which is the mischief under *article 246 (3)(e) of the Constitution* and *Section 5(1)(b) PPOA 2005*.

Since my Lords S.G. Engwau, C.K. Byamugisha and S.B.K. Kavuma JJA. all agree, the petition fails with orders as proposed by C.N.B. Kitumba JA.

Dated at Kampala this 30<sup>th</sup> day of April 2008.

HON. A.E.N.MPAGI-BAHIGEINE  
JUSTICE OF APPEAL

**JUDGMENT OF ENGWAU JA**

I have read in draft form the lead judgment of Kitumba JA. She carefully considered the facts on the petition; issues framed for determination and the submission of counsel for the parties and

arrived at a decision and orders which I fully support. In the premises, I have nothing more useful to add.

Dated at Kampala this 30<sup>th</sup> day of April 2008

S.G.Engwau  
Justice of Constitutional Court of Appeal

### **JUDGMENT OF BYAMUGISHA**

I had the benefit of reading in draft form the lead judgment that was prepared by Kitumba JA. The facts leading to the institution of the petition, the issues framed for our determination and the submissions of both counsel have been stated with efficient clarity by my learned colleague. The judgment has clearly stated my own views on the issues and I find it unnecessary to add anything further.

I concur in the judgment.

Dated at Kampala this 30<sup>th</sup> day of April 2008

C.K.BYAMUGISHA  
Justice of the Constitutional Court

### **JUDGMENT OF S.B.K.KAVUMA**

I have had the advantage of reading in draft the judgment prepared by Hon. Lady Justice C.N.B.Kitumba, JA. I agree with that judgment, the reasoning therein and the orders proposed. I have nothing to add.

Dated at Kampala this 30<sup>th</sup> day of April, 2008

S.B.K.Kavuma,  
Justice of Constitutional Court