THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPA LA

CONSTITUTIONAL APPLICATION NO.14 OF 2013

AND

CONSTITUTIONAL APPLICATION NO.23 OF 2013

(Arising from Constitutional Petitions umbers 16 and 21 of 2013)

Hon. Lt. (Rtd) Saleh M.W. Kamba
M.S. Agasha Marym
National Resistance Movement
::::::::Applicants/Petitioners

Versus

The Attorney General of Uganda
Hon. Theodore Ssekikubo
Hon. Wilfred Niwagaba
Hon. Mohammed Nsereko
Hon. Barnabas Tinkasimire
::::::::::::::Respondents

Coram: Hon. Justice S.B.K. Kavuma, Ag. DCJ

Hon. Justice A.S. Nshimye, JA

Hon. Justice Remmy Kasule, JA

RULING OF COURT

Background to the applications:

This Ruling is in respect of two preliminary objections raised in respect of two consolidated **Constitutional Applications numbers 14 and 23 of 2013.** Both applications arise from **Constitutional Petitions Numbers 16 and 21 of 2013.**

In **Constitutional Application Number 14 of 2013** the applicants Hon. Lt (Rtd) Saleh M.W. Kamba and Ms Agasha Marym, pursuant to **Section 98, 64(c) & (e) of the Civil Procedure Act, Section 33 of the Judicature Act, Rules 10 and 23 of the Constitutional Court (Petitions and Reference) Rules S.I. 91 of 2005, Rules 43 and 44 of the Judicature (Court of Appeal Rules) Directions S.I. 13-10,** seek as against the Attorney General of Uganda, an order for a Temporary injunction to issue restraining the implementation of the ruling of the Right Hon. Speaker of Parliament by restraining Hon. Theodore Ssekikubo, Member of Parliament Lwemiyaga County, Hon. Wilfred Niwagaba, Member of Parliament Ndorwa East Constituency, Hon. Mohammed Nsereko, Member of Parliament for Kampala Central Constituency and Hon. Barnabas Tinkasimire, Member of Parliament for Buyaga West Constituency, from entering, sitting, participating in any proceedings and/or accessing premises or precincts of the Parliament of Uganda until the disposal of **Constitutional Petition Number 16 and 21 of 2013.**

In **Constitutional Application Number 23 of 2013**, the National Resistance Movement seeks as against the Attorney General, Hon. Theodore Ssekikubo, Hon. Wilfred Niwagaba, Hon. Mohammed Nsereko and Hon. Barnabas Tinkasimire, a similar order of a temporary injunction as is prayed for in **Constitutional Application No.14 of 2013.**

In both applications the applicants pray for costs against the respondents.

Constitutional Petition Number 16 of 2013 was lodged by the applicants (Hon. Lt. (Rtd) Saleh.M.W. Kamba and Ms Agasha Marym) in **Constitutional Application No.14 of 2013** against the respondent (The Attorney General) to the said Petition; while **Constitutional Petition Number 21 of 2013** was brought by the applicant (National Resistance Movement) in **Constitutional application number 23 of 2013** against the respondents (The Attorney general, Hon. Theodore Ssekikubo, Wilfred Niwagaba, Mohammed Nsereko and Barnabas Tinkasimire) in that application.

In both **Constitutional Petitions Numbers 16 and 21 of 2013** the petitioners contend as against the respondents, that the ruling of the Right Hon. Speaker of Parliament made on 02.05.2013 to the effect that Honourable Members of Parliament Theodore Ssekikubo, Wilfred Niwagaba, Mohammed Nsereko and Barnabas Tinkasimire, who were explelled from the National Resistance Movement Party, could not vacate their respective seats in Parliament when each one

Learned Counsel John Mary Mugisha, Joseph Matsiko, Sam Mayanja, Chris Bakiiza and Severino Twinobusingye represented the applicants, while Senior Counsel George Wilson Kanyeihamba, Orono Emmanuel, Medard Ssegona, Caleb Alaka, Nicholas Opio, Wandera Ogalo, Ben Wacha, Joseph Kyazze, Francis Bainomugisha, Jude Mbabali, Simon Kiiza, Julius Galisonga and Abdu Katuntu appeared for the 2nd to 5th respondents.

Submissions of Counsel for the 2nd to 5th respondents:

Counsel G.W. Kanyeihamba submitted on the first preliminary objection that **Articles 1 and 2 of the Constitution** made the Constitution to be the supreme law of the land. All persons and organs of the state are bound by the Constitution. Even the President of Uganda, if he/she acts contrary to the Constitution is liable to being impeached and anyone who purports to overthrow the Constitution by use of unlawful means commits the offence of treason. Courts of Judicature are therefore, by their very nature and mission, bound to act within the bounds of the Constitution.

Article 135 sets up the composition of the Court of Appeal while **Article 137 (2)** constitutes the Constitutional Court. The Court of Appeal is properly constituted at any sitting if it consists of an uneven number of Justices not being less than three members of the court. The Constitutional Court, on the other hand, has to consist of a bench of five members of the Court of Appeal.

In constitutional matters, Counsel submitted, every order, whether of an interlocutory nature or otherwise, must be made by the court sitting as a Constitutional Court with the coram of justices being not less than five. Those constituting the Constitutional Court must act together in respect of all matters connected with constitutional adjudication. Therefore, constitutional **applications Numbers 14 of 2013 and 23** of 2013, cannot be determined by a coram of three justices because they are not a matter for the Court of Appeal. They have to be determined by a Constitutional Court consisting of five Justices. Therefore the Court of three justices was not properly constituted as a Constitutional Court and had no jurisdiction to entertain **Constitutional Applications Numbers 14 and 23 of 2013.**

Counsel Kanyeihamba further submitted that, as at the date of raising the preliminary objections, there was no coram for the Constitutional Court as well as for the Supreme Court to entertain a Constitutional appeal against a decision of the Constitutional Court. This lack of coram in each of the said courts is inconsistent with the Right to a fair hearing under **Article 28 (1) of the Constitution,** which right is non derogable under **Article 44** of the Constitution.

Counsel invited this court to follow what the Supreme Court did in **Constitutional Appeal No.1 of 2002: P.K. Ssemogerere & 2 Others Vs Attorney General,** when, the said Court restrained itself

of them was neither independent nor a member of the opposition, and in effect allocated them special seats in Parliament, is inconsistent with and/or is in contravention of **Articles 1(1) (2) (4), 2 (1) (2), 20 (1) (2), 21, 28 (1) (3) (a) (g), 42, 43 (1) (2) (c), 45, 77 (1) (2), 78 (1), 79, 83 (1) (g) (b) and 83 (3) of the Constitution of the Republic of Uganda.**

When consolidated **Constitutional Application Numbers 14 and 23 of 2013** came up for hearing on 19.07.2013 before this court of a coram of three justices, two preliminary objections were raised for and on behalf of the 2nd to 5th respondents.

Preliminary Objections:

The two preliminary objections raised are:

1. A coram of three Justices is not a Constitutional Court and therefore has no jurisdiction to entertain interlocutory applications like those of Numbers 14 and 23 of 2013.

2. The current Acting Chief Justice who is also at the same time the Acting Deputy Chief Justice should not be part of the Coram to entertain the two applications since, in case of an appeal to the Supreme Court, he is likely to give orders, administrative or otherwise, regarding the conduct of the case.

Legal Representation:

from entertaining an interim application in the appeal because it had no coram of seven justices. Counsel invited this court to refrain from entertaining **applications Numbers 14 and 23 of 2013** and adjourn them sine die until such a time as there would be a coram for the Constitutional Court and for the Supreme Court to entertain constitutional appeals from the Constitutional Court.

With respect to the presiding Justice of the Court, His Lordship Justice S.B.K. Kavuma, who at the same time is both the Ag. CJ and Ag. DCJ at the same time, Counsel Kanyeihamba submitted that he ought to excuse himself from presiding over this court. This is because he is likely to be part of the panel of justices in the Supreme Court as Ag.CJ in case an appeal was to be lodged in that court against the decision of this court. At any rate as Ag. CJ, he will have to give administrative directions concerning the prosecution of the appeal, should one be filed in the Supreme Court against a decision of this court.

Counsel invited the court to rely on the case decisions of:-

Rtd Col. Dr. Kizza Besigye V Museveni Kaguta Yoweri: Presidential Election Petition No.1 of 2006 (SC) Constitutional Court Petition No.46 of 2011 and Reference No.54 of 2011: Hon. Sam Kuteesa and 2 Others Vs Attorney General.

Supreme Court of South Africa: Speaker of the National Assembly V De Luke, 1999 (4) SA 863 (SCA) and

South Africa Gauteng High Court: Johannesburg: Radio Pulpit Vs Chairperson of The Council of The Independent Africa and Another (09/19114) 2011 ZAP JHC 83 (8th March 2011), and invited us to uphold both preliminary objections.

Counsel Wandera Ogalo also for the 2nd to 5th respondents referred Court to **Rule 23 of the Constitutional Court (Petitions and References) Rules, 2005 SI 91 of 2005** and submitted that the **Civil Procedure Act** and rules made under it apply to the Constitutional Court with such modifications as the Constitutional Court may consider necessary in the interest of justice and expedition of the proceedings. However, Counsel submitted, jurisdiction of the Constitutional Court is not conferred by **Rules of Procedure**. It is conferred by the Constitution itself. Therefore the fact that **Rule 53 (2) (b) of the Judicature (Court of Appeal) Rules,** rules out an interlocutory application for an injunction, which **Applications Numbers 14 and 23 of 2013** are, from being entertained by a single justice, emphasizes the fact that the framers of the Constitution and the Rules intended that such interlocutory applications be determined by the Constitutional Court with a coram of five Justices.

Counsel further asserted that in **Miscellaneous Application No.3 of 2002** and **Constitutional Application No.6 of 2011: Joseph Bossa Vs Attorney General,** which were applications for

injuctions in the Constitutional Petitions, the coram of a full Constitutional Court determined those applications. It is only after there was a shortage of justices to constitute a full coram of the Constitutional Court that the practice of constituting the Court with a coram of three Justices sitting in interlocutory matters arising from Constitutional petitions was resorted to. This was and is contrary to the Constitution.

Referring to **Articles 131 (1)** which gives the coram of the Supreme Court to be five Justices in a non-constitutional appeal to it, and also to **Article 131 (2)** where the coram of the Supreme Court, in a constitutional appeal is a full bench of all members of the Supreme Court, learned Counsel submitted that the Constitution does not make any allowance for a lesser coram of justices to entertain interlocutory matters in a constitutional appeal to the Supreme Court. This same principle must also apply to the Constitutional Court when dealing with Constitutional Petitions/References, regardless of whether the matter is interlocutory or substantive.

Counsel Wandera Ogalo referred Court to the cases of:

Supreme Court Civil Appeal No.21 of 2010: Komakech Geoffrey & Another Vs Rose Okullo and 2 Others.

Supreme Court of Appeal of South Africa case No.818/2011: The Judicial Service Commission & Another Vs The Cape Bar Council and Another

and

Supreme Court of Appeal of South Africa Case No.043/2013: In the matter between Boisile Amos Plaatjies and Director of Public Prosecutions, Transvaal, and invited the court to follow the principles enunciated in those cases and allow the two preliminary objections.

For the first respondent, the Director of Civil Litigation in the Attorney General's Chambers, learned Counsel Cheborion Barishaki submitted that there was no merit in the two preliminary objections.

To him, the court comprising of a coram of three Justices was competent to determine the two **applications Numbers 14 and 23 of 2013** as interlocutory applications arising from a Constitutional Petition with no question requiring interpretation of the Constitution. The coram of five Justices of the Constitutional Court is only required when that court is interpreting a constitution, and not otherwise.

Rule 23 (1) of the Constitutional Court (Petitions and References) Rules, the Civil Procedure Act, the Civil Procedure Rules and the Court of Appeal Rules have to be resorted to with necessary modifications, to enable disposal of interlocutory matters arising from a Constitutional Petition.

Since **Rule 53 (1) of the Court of Appeal Rules** provides that an application for an injunction cannot be heard by a single justice, it follows therefore that it can only be heard by a coram of three justices stipulated in **Article 135 (1) of the Constitution.**

By having interlocutory matters arising from a Constitutional Petition disposed of by a court of a coram of three justices, a speedy hearing is ensured and this is in compliance with **Article 28 (1)** of the Constitution of providing a fair, speedy and public hearing to the parties involved.

Counsel for the first respondent saw no merit at all in the submission that the court presided over by his Lordship Justice S.B.K. Kavuma should not entertain the application because Justice Kavuma was currently serving as Ag. CJ and Ag. DCJ at the same time.

Counsel relied on the authorities of:

Constitutional Application No.38 of 2010: George Owor Vs Attorney General & Another and Constitutional petition No.8 of 2008: R/0133 Major General Kazini Vs The Attorney General and prayed court to dismiss the two preliminary objections.

Learmed Counsel Joseph Matsiko submitted for all Counsel for the applicants. He too saw no merit in the preliminary objections.

He contended that **Article 137 (1)** vested in the Constitutional Court the right to interprete the Constitution and this is when the court is constituted of five Justices. The Constitutional Court does not have to consist of all the five Justices when handling other matters, even when those matters arise from the Constitutional petition/Reference. A Taxation arising out of a Constitutional Petition for example, is not handled by a coram of five justices. Accordingly **applications Numbers 14 and 23/2013**, which are for a temporary injunction, and do not involve interpreting the constitution do not have to be before a coram of five justices. An interlocutory matter is interim and temporary in nature and as such cannot amount to a final resolution of an issue which interpreting a constitution by a Constitutional Court envisages.

Counsel invited court to apply **Rule 53 (1) of the Court of Appeal Rules** together with **Rule 23 (1) of the Constitutional Court (Petitions and References) Rules** and hold that a court of three Justices had jurisdiction to determine **constitutional applications numbers 14 and 23 of 2013** since the same were interlocutory in nature.

As to the head of the court being the Ag.CJ and Ag.DCJ at the same time and thus creating the impression that the learned justice holding those offices may give administrative orders as to the prosecution of a possible appeal to the Supreme Court, Counsel

dismissed this as being merely speculative without any factual justification.

Learned Counsel submitted that the case authorities cited by Counsel for the 2nd to 5th respondents were distinguishable from the facts of the two applications under consideration. He prayed court to disallow the preliminary objections with costs.

In reply learned Counsel G.W. Kanyeihamba asserted that **Constitutional Applications Numbers 14 and 23 of 2013** were in effect petitions for interpreting the Constitution but disguised as applications for temporary injunctions. They had therefore to be dealt with by a properly constituted Constitutional Court of five Justices.

Counsel Wandera Ogalo, submitted that the provisions of the Constitution cannot be changed or modified by Rules of Procedure such as **Rule 23 of the Constitutional Court (Petitions and References) Rules. Article 137 (2)** providing that a coram of the Constitutional Court is five Justices cannot be changed or modified by the said **Rule 23** or any other Rules of Procedure for that matter.

Applications Numbers 14 and 23 of 2013 had been filed in the Constitutional Court and so they had to be determined by a properly constituted Constitutional Court of five Justices. Counsel prayed court to allow the preliminary objections.

Resolution of the Preliminary Objections by Court.

This court has carefully considered the submissions of respective counsel, as well as the statutory and case law authorities that Counsel availed to Court. Court now proceeds to resolve the two preliminary objections.

The first objection is that a coram of three justices of the Court of Appeal is not a Constitutional Court and as such it cannot determine **Constitutional Applications Numbers 14 and 23 of 2013** which arise from **Constitutional Petitions Numbers 16 and 21 of 2013.**

Article 137 of the Constitution sets up the Constitutional Court. It provides:

"137. Questions as to the interpretation of the Constitution.

(1)Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court.

(2)When sitting as a Constitutional Court, the Court of Appeal shall consist of a bench of five members of that court.

(3).....

We note from the above **Article** that the Constitutional Court has its foundation from the Court of Appeal as set up by **Article 135**

of the Constitution. The court of Appeal transforms into a Constitutional Court only for one purpose of determining:

> **"Any question as to the interpretation of this Constitution....." Article 137 (1).**

The word **"Interpretation"** means, according to **Black's Law Dictionary, 6th Edition,** the art or process of discovering and ascertaining the meaning of a statute or a written document. Legal interpretation rests upon the law itself while doctrinal interpretation rests upon the intrinsic reasonableness of the subject matter being interpreted.

When the legislature expressely provides the interpretation, then such legal interpretation is **"authentic".** When interpretation turns on the meaning of words and sentences, then it is **"grammatical".** Interpretation is said to be extensive when it stretches the words of a statute to cover its obvious meaning. On the other hand, if the interpretation avoids giving full meaning to the words, in order not to go beyond the intention of the legislature, then such interpretation is said to be restrictive.

An interpretation method is **historical** when the court looks to the intentions of the framers of the Constitution (or statute) to shed light on its meaning, **textual,** when the meaning of words in the Constitution is determined relying on common understandings of what the words currently mean, **structural**

when court infers structural rules of power relationships outlined in the Constitution, **doctrinal** when rules established by precedents are applied by court, **ethical**, when court looks at the moral commitments reflected in the Constitution and **prudential** when court seeks to balance the costs and benefits of a particular meaning given to a provision of the Constitution. See:

Street law, Inc and The US Supreme Court Historical Society Landmark cases: accessible (24.07.2013) at www.streetlaw.org/en/page/430/interpretingtheconstitution

Once the meaning of a particular provision of the Constitution has been ascertained, then the Constitutional Court proceeds to determine whether the Act or Statute, act or omission, which is alleged to be inconsistent or contrary to the Constitution, is in fact inconsistent or in contravention, with the ascertained meaning of the provision of the Constitution. If the determination of the Constitutional Court is affirmative, then the Act, statute, act or omission, is declared unconstitutional to the extent of its inconsistency and/or contravention of the Constitution.

As already observed the Constitutional Court has its foundation in the Court of Appeal. The fact that the Court of Appeal is vested with the powers to be the Constitutional Court by **Article 137 (2) of the Constitution** does not deprive this court, whether as Court of Appeal, or as Constitutional Court, of

its operations being governed by the **Procedural Rules** of the **Court of Appeal**, **The Civil Procedure Rules** under the **Civil Procedure Act** and the **Judicature Act.**

In respect of interlocutory causes or matters, which **Constitutional Applications Numbers 14 and 23 of 2013** are, **Section 12 of the Judicature Act, cap 13,** vests in a single Justice of the Court of Appeal powers to exercise any power vested in the Court of Appeal in any interlocutory cause or matter. A person dissatisfied with a decision of a single justice is entitled to have the matter determined by a bench of three justices of the Court of Appeal, which may confirm, vary or reverse the decision of a single justice.

Our appreciation of the import of **Article 137 (1) and (2) of the Constitution** and **Section 12 of the Judicature Act** is that the coram of five Justices of the Court of Appeal applies when the Court of Appeal is sitting as a Constitutional Court to determine to finality any question as to the interpretation of the Constitution. However, in respect of interlocutory matters and causes that are by nature interim or temporary and not constituting a final resolution of the whole controversy, matters that are in the nature of equitable or legal relief sought before a final decision, then there is no mandatory requirement, constitutional or otherwise, that the coram of the justices of the Court has to be five Justices. Such interim or temporary causes

even though arising out of Constitutional Petitions, are not, by their own nature, matters where

"any question as to the interpretation of this Constitution shall be determined .....". (Article 137 (1))

This court has, in a number of cases, addressed this very issue.

In **Miscellaneous Application No.001 of 2007: James Isabirye Vs Attorney General and Another**, a panel of three justices of the Court of Appeal held that, an interlocutory application for execution, injunction or stay of proceedings arising from a Constitutional Petition could be entertained by five justices and the interim order of execution, injunction or stay of proceedings could be entertained by three justices.

Their Lordships of this Court however later found that the above **James Isabirye** case had been made per incuriam because the court that made the decision never addressed itself to the effect of **Section 13 (now 12) of the Judicature Act.**

In **Constitutional Application No.26 of 2010: Olara Otunnu V Attorney General,** a single Justice of the Court of Appeal held that he had jurisdiction to entertain any interlocutory application arising out of a Constitutional Petition/Reference under **Section 13 (now 12) of the Judicature Act.**

The **James Isabirye and Olara Otunnu cases (supra)** were extensively considered by a Court of three Justices in **Constitutional Application No.38 of 2010: George owor V The Attorney General and Another** whose facts were somewhat similar to those of **Constitutional Applications Numbers 14 and 23 of 2013,** the subject of this ruling.

The applicant in the **George Owor case (supra)** had lodged a Constitutional Petition challenging the constitutionality of Hon. William Oketcho to continue sitting as a Member of Parliament for West Budama North. While the Constitutional Petition awaited determination by the Constitutional Court, the applicant/petitioner sought through **Constitutional Application No.38 of 2011** an interim order to restrain Hon. William Oketcho from sitting as a Member of Parliament and drawing remuneration as such until disposal of the application for a temporary injunction.

The court after reviewing the **James Isabirye and Olara Otunnu** cases, held that a single justice has all the powers to determine any interlocutory cause or matter before the Constitutional Court. The Court further noted that it was also the practice of the court that three justices had entertained interlocutory causes or matters arising from Constitutional Petitions/References and that this was valid inspite of the

decision in the **James Isabirye** case (Supra). None of the above decisions were ever appealed to the Supreme Court.

The position of the law therefore is that in case of interlocutory matters or causes arising out of the Constitutional Petition/Reference a single justice has jurisdiction to entertain an application for an interim order and three justices have jurisdiction to entertain any interlocutory application in constitutional matters: See **Olara Otunnu and George Owor** cases (supra).

The **James Isabirye** decision was made per incuriam to the extent that it did not address **Section 13 (now Section 12) of the Judicature Act** and as such it is not mandatory, though it may happen, depending on the circumstances of a particular cause or matter, that interlocutory applications for execution, injunction or stay of proceedings can be entertained by a panel of five justices of the Court of Appeal sitting as a Constitutional Court.

The above being the position of the law, we are not persuaded by the submissions made for the respondents that every interlocutory matter or cause arising from a constitutional petition must by law and of necessity be regarded as involving a question of interpreting the Constitution and as such must be entertained by a bench of five justices of the Court of Appeal necessary to constitute a Constitutional Court. We also find in

this regard that the case authorities cited to us by counsel for the 2nd to 5th respondents are not applicable to the issue at hand, namely, whether or not a bench of three justices is seized of jurisdiction to entertain an interlocutory matter or cause arising out of a Constitutional Petition/Reference.

We accept as the correct position of the law that **Rule 23 of the Constitutional Court (petitions and References) Rules, 2005,** allows the practice and procedure of the Court of Appeal sitting as a Constitutional Court to be regulated by the **Civil Procedure Act** and the **rules** made under that Act as well as by the Court of Appeal Rules, with such modifications as the Court may consider necessary. Both the **Civil Procedure Rules** under the **Civil Procedure Act** and the **Court of Appeal Rules** must be applied subject to **Section 12 of the Judicature Act**, which is a substantive Act and not subsidiary legislation which the Rules are.

The sum total of both the statutory and case law decisions, as considered and applied herein above, fortifies us to hold that this court comprising of three Justices has jurisdiction and is competent in law to entertain and determine **Constitutional Applications Numbers 14 of 2013 and 23 of 2013.** We also find it incorrect both in law and in fact that this Court, should refrain from entertaining any Constitutional Petitions/References and matters related thereto until a coram of the Constitutional

Court is set up in the Court of Appeal and a coram to entertain constitutional appeals is set up in the Supreme Court. While admittedly there has been a shortage of Justices in the Court of Appeal and in the Supreme Court, which has now been partly addressed with the appointment of more Judges and Justices, we as a Court, have to carry on adjudicating those causes where the Court has the necessary jurisdiction and numbers to carry out its adjudication role. We thus dismiss the first preliminary objection.

The second preliminary objection, as we appreciate it, is to the effect that his Lordship Justice S.B.K. Kavuma, being the Acting Chief Justice and also the Acting Deputy Chief Justice, thus being the head of the Judiciary and head of the Court of Appeal/Constitutional Court, should not be part of the coram constituting this court because he is likely, in future, to give administrative orders and instructions concerning the case of the 2nd to the 5th respondents in the two applications and the Constitutional Petition from which they arise. His Lordship may also have to deal with the appeal, just in case one is lodged, in the Supreme Court of which he is currently the head in the capacity of Acting Chief Justice.

We observe that the administrative functions of the Chief Justice and Deputy Chief Justice are constitutionally set out in **Article 133 and 136 of the Constitution.** The Chief Justice is

head of the judiciary and as such is responsible for the administration and supervision of all courts in Uganda. For that purpose the Chief Justice may issue orders and directions to the courts necessary for the proper and efficient administration of justice.

The Deputy Chief Justice performs the functions of the Chief Justice, if the Chief Justice, for some reason, is unable to perform the functions of the office, until when the Chief Justice is able to do so, or if that office is vacant, until another Chief Justice is appointed.

The Deputy Chief Justice also deputises for the Chief Justice as and when the need arises. The Deputy Chief Justice is head of the Court of Appeal and in that capacity assists the Chief Justice in the administration of that Court. The Deputy Chief Justice performs such other functions as may be delegated or assigned to him or her by the Chief Justice.

It is thus a fact that, inspite of the constitutional administrative duties that the offices of Chief Justice and Deputy Chief Justice have to perform, the Chief Justice and Deputy Chief Justice have also to respectively preside over when part and parcel of the coram of the Supreme Court for the Chief Justice and the Court of Appeal/Constitutional Court for the Deputy Chief Justice, when these courts are carrying out their adjudication roles as constitutional and appellate courts.

Therefore, the mere fact that a Chief Justice or Deputy Chief Justice has powers to give administrative orders concerning any case cannot be a ground for the holder of those offices, which offices his Lordship S.B.K. Kavuma, happens to be holding as of now, for him to withdraw from being part of the coram to entertain the applications, the subject of the preliminary objection; or any other causes or matters before the Court of Appeal/Constitutional Court. Were that to be allowed to be the practice, then the Chief Justice and the Deputy Chief Justice and indeed even for the Principal Judge for the High Court, would never adjudicate any cases before them, since each one of them is ever issuing, on an everyday basis, administrative orders and directions that have bearings on the cases in the Judiciary. Such was never and is not envisaged by the Constitution as the way the Judiciary should function. We also find the contention of Counsel for the 2nd to 5th respondents to be highly speculative in this regard.

We accordingly find no merit in the second preliminary objection and we disallow the same.

The two preliminary objections having failed, it is ordered that the hearing of **Constitutional Applications Numbers 14 and 23 of 2013** as consolidated does proceed.

As to the costs of the disallowed preliminary objections, we order that, since the hearing of the applications is still ongoing,

the issue of costs of the preliminary objections abid es the outcome of the two **applications numbers 14 and 23 of 2013**. We so Order.

Dated at Kampala this .....day of.....2013.

S.B.K. Kavuma

AG. DEPUTY CHIEF JUSTICE

A.S. Nshimye

JUSTICE OF APPEAL

Remmy Kasule

JUSTICE OF APPEAL