

**THE REPUBLIC OF UGANDA**  
**IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA**  
**CONSOLIDATED PETITIONS**

**1. CONSTITUTIONAL PETITION NO. 16 OF 2013**

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**1. HON.LT(RTD) SALEH M.W.KAMBA**  
**2. MS AGASHA MARY ..... PETITIONERS**

**VERSUS**

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**1. THE ATTORNEY GENERAL**  
**2. HON.THEODORE SSEKIKUBO**  
**3. HON.WILFRED NIWAGABA .... RESPONDENTS**  
**4. HON.MOHAMMED NSEREKO**  
**5. HON.BARNABAS TINKASIMIRE**

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**AND CONSTITUTIONAL APPLICATION NO.14 OF 2013 ARISING**  
**FROM CONSTITUTIONAL PETITION NO. 16 OF 2013**

**2. CONSTITUTIONAL PETITION NO.21 OF 2013**

**NATIONAL RESISTANCE MOVEMENT...PETITIONER**

**VERSUS**

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**1. THE ATTORNEY GENERAL**  
**2. HON.THEODORE SSEKIKUBO.... RESPONDENTS**  
**3. HON.WILFRED NIWAGABA**  
**4. HON.MOHAMMED NSEREKO**  
**5. HON.BARNABAS TINKASIMIRE**

25

**AND CONSTITUTIONAL APPLICATION NO.25 OF 2013 ARISING**  
**FROM CONSTITUTIONAL PETITION NO. 21 OF 2013**

**3. CONSTITUTIONAL PETITION NO.19 OF 2013**

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**JOSEPH KWESIGA.....PETITIONER**

**VERSUS**

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

**4. CONSTITUTIONAL PETITION NO.25 OF 2013**

**HON.ABDU KATUNTU.....PETITIONER  
(SHADOW ATTORNEY GENERAL)**

5 **VERSUS**  
**THE ATTORNEY GENERAL.....RESPONDENT**

10 **CORAM: HON.MR. JUSTICE S.B.K KAVUMA AG. DCJ/PCC,  
HON. MR. JUSTICE A.S. NSHIMYE JA/JCC,  
HON. MR. JUSTICE REMMY KASULE JA/JCC,  
HON. LADY JUSTICE FAITH MWONDHA JA/JCC,  
HON. MR. JUSTICE RICHARD BUTEERA JA/JCC,**

15 **JUDGMENT OF:**

20 **HON. MR. JUSTICE S.B.K KAVUMA AG. DCJ/PCC  
HON. MR. JUSTICE A.S. NSHIMYE JA/JCC,  
HON. MR. JUSTICE RICHARD BUTEERA JA/JCC,**

### **Introduction**

Constitutional petition Nos. 16,19,21 and 25 of 2013 were filed into this court  
25 separately and later consolidated. Nearly at the same time, the Constitutional  
Application Nos.16, 14 and 23 of 2013, arising from Constitutional Petitions Nos.  
16 and 21 were also filed separately. The Court decided to consolidate the said  
Petitions and Constitutional Applications and hear them together.

### 30 **Facts and background**

The facts from which the consolidated Constitutional Petitions and Applications  
arise are as follows:

The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents in Constitutional Petition Nos.16 and 21 of 2013 are the elected Members of Parliament (MPs), representing Lwemiyaga County in Sembabule District, Ndoorwa East, Kabale District, Kampala Central, Kampala District,(Now Kampala Capital City Authority), and Buyaga East, Kibale  
5 District Constituencies respectively. They all once belonged to the National Resistance Movement (NRM) Party.

On 14<sup>th</sup> April 2013, the Central Executive Committee (CEC) of the NRM expelled the four from the party on grounds that they had acted/behaved in a manner that contravened various provisions of the party constitution. The respondents  
10 challenged their expulsion in the High Court and the matter is still pending.

Following the expulsion of the said four MPs from the NRM party, the Secretary General of the Party wrote to the Rt. Hon. Speaker of Parliament informing her of the party's decision and requesting her to direct the Clerk to Parliament to declare the seats of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents in Parliament vacant to enable the  
15 Electoral Commission conduct by-elections in their constituencies.

On the 2<sup>nd</sup> of May 2013, the Rt. Hon. Speaker in her ruling in Parliament declined to declare the seats vacant and upon that refusal, Hon. Lt. (Rtd) Saleh Kamba and Ms.Agasha Marym filed Constitutional Petition No.16 of 2013 in this Court challenging the constitutionality of the Speaker's decision.

20 Similarly Mr. Joseph Kwesiga filed Constitutional Petition No. 19 of 2013 challenging the same decision. This was followed by Constitutional Petition No. 21 of 2013 which was filed by the National Resistance Movement party also challenging the same decision.

On 8<sup>th</sup> May 2013, the Attorney General wrote to the Rt. Hon. Speaker of  
25 Parliament advising her to reverse her decision on the grounds that it was

unconstitutional. Constitutional Petition No.25 of 2013 filed by the Shadow Attorney General, Hon. A. Katuntu challenges the Attorney General's advice to the Speaker.

The Attorney General filed a reply, in addition to which he filed a cross Petition to  
5 Constitutional Petition No. 25 of 2013.

The scheduling conference conducted inter parties, left a disputed fact as to whether the Speaker allocated the expelled MPs special seats in Parliament. At the said scheduling conference, counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents also raised a preliminary objection as to whether Constitutional Petition Nos. 16 and 21  
10 disclosed a cause of action.

At the scheduling conference, 13 issues were framed and at the commencement of the hearing of the consolidated Constitutional Petitions issue No.7 was framed by court bringing the total number of issues to 14 substantially listed as below:-

1. **Whether the expulsion from a political party is a ground for a Member  
15 of Parliament to lose his / her seat in Parliament under Article 83(i)(g) of the 1995 Constitution of Uganda.**
2. **Whether the act of the Rt.Hon. Speaker in the ruling made on the 2<sup>nd</sup> of May 2013 to the effect that the 4 MPs who were expelled from the National Resistance Movement (NRM), the party for which they stood  
20 as candidates for election to Parliament should retain their respective seats in Parliament is inconsistent with or in contravention of the named constitutional provisions.**
3. **Whether the Rt.Hon.Speaker of Parliament in her communication created a peculiar category of Members of Parliament, peculiar to the  
25 Constitution.**

4. Whether the continued stay in Parliament of the four MPs after their expulsion from the NRM Party on whose ticket they were elected is contrary to and/or inconsistent with Articles 1(1) (2)(4), 2(1), 21(1)(2), 29(1)(e), 38(1), 43(1), 45, 69(1), 71, 72(1), 72(2), 72(4), 78(1), 79(1)(3) and 255(3) of the Constitution.
5. Whether the said expelled MPs who left and/or ceased being members of the Petitioner vacated their respective seats in Parliament and are no longer Members of Parliament as contemplated by the Constitution.
6. Whether the said expelled MPs vacated their respective seats in Parliament and are no longer Members of Parliament as contemplated by the Constitution.
7. Whether the Court should grant a Temporary injunction stopping the said four members of Parliament from sitting in Parliament pending the determination of the consolidated constitutional petitions.
8. Whether the Rt.Hon. Speaker had jurisdiction to make a ruling on such a matter and whether her action is inconsistent with or in contravention of the Constitution.
9. Whether the act of the Attorney General of advising that the only persons who can sit in Parliament under a multiparty political system are members of political parties and representatives of the army is inconsistent with and in contravention of Article 78 of the Constitution.
10. Whether the act of the Attorney General of advising that after their expulsion from the NRM Party, Hon. Theodore Ssekikubo, Hon. Wilfred Niwagaba, Hon. Mohammed Nsereko and Hon. Barnabas Tinkasimire are no longer Members of Parliament, is inconsistent with and in contravention of Article 83(1) (g) of the Constitution.

11. Whether the act of the Attorney General of advising the Speaker of Parliament to declare the seats of Hon. Theodore Ssekikubo, Hon. Wilfred Niwagaba, Hon. Mohammed Nsereko and Hon. Barnabas Tinkasimire in Parliament, are now vacant because of their expulsion from the NRM Party is inconsistent with and or in contravention of Article 86(1) (a) of the Constitution.

12. Whether the act of the Attorney General of advising the Speaker of Parliament to reverse her ruling on whether the seats of Hon. Theodore Ssekikubo, Hon. Wilfred Niwagaba, Hon. Mohammed Nsereko and Hon. Barnabas Tinkasimire is inconsistent with and or in contravention of Article 119 of the Constitution.

13. Whether the act of the Attorney General of advising the Speaker of Parliament to reverse her ruling on whether the seats of Hon. Theodore Ssekikubo, Hon. Wilfred Niwagaba, Hon. Mohammed Nsereko and Hon. Barnabas Tinkasimire are vacant when the said ruling is the subject of court's interpretation in Constitutional Petition No.16 of 2013, where the Attorney General is the 1<sup>st</sup> respondent, is inconsistent with and in contravention of Article 137 of the Constitution.

14. What remedies are available to the parties?

## Representation

### Petitioners/Applicants

At the hearing of the consolidated Constitutional Petitions and the applications, Counsel John Mary Mugisha (lead Counsel), Joseph Matsiko, Chris John Bakiza Sam Mayanja and Severino Twinobusingye represented the Petitioners in

Constitutional Petition Nos 16 and 21 of 2013 and in application No.14 and 23 of 2013.

Counsel Alison Karuhanga represented the petitioner in Constitutional Petition No. 19 of 2013.

- 5 Counsel Peter Mukidi Walubiri represented the Petitioner in Constitutional Petition No. 25 of 2013.

### **Attorney General**

The first respondent in all the above consolidated Petitions and the cross Petitioner  
10 in Constitutional Petition No. 25/2013 was represented by Mr. Cheborion Barishaki, the Director of Civil litigation at the Attorney General's Chambers, Ms Patricia Mutesi, Principal State Attorney, Mr. Richard Adrole, Ms Moureen Ijang, and Ms Imelda Adongo all State Attorneys at the same chambers.

**Counsel for the respondents in Constitutional Petition No.16 and  
15 Constitutional applications Nos. 14 and 23 of 2013.**

The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents in Constitutional Petition Nos. 16 and 21 and Constitutional Application Nos. 14 and 23 of 2013 were represented by Counsel Prof.G.W.Kanyeihamba (lead Counsel), Prof. Fred Sempebwa, Ben Wacha, Wandera Ogalo, Emmanuel Orono, Medard Ssegona, Kyazze Joseph, Galisonga  
20 Julius, and Caleb Alaka.

### **Principles of Constitutional interpretation**

We find it appropriate at this juncture to restate some of the time tested principles of constitutional interpretation we consider relevant to the determination of

Constitutional Petitions and Applications before court. These have been laid down in several decided cases by the Supreme Court, this Court, other courts in other Commonwealth jurisdictions and expounded in some legal literature of persuasive authority.

5 These principles are:

1. *The Constitution is the Supreme law of the land and forms the standard upon which all other laws are judged. Any law that is inconstant with or in contravention of the Constitution is null and void to the extent of the inconsistency. See Article 2(2) of the Constitution. See also The Supreme Court in Presidential Election Petition No.2 of 2006 (Rtd) Dr. Col Kiiza Besigye vs Y.K. Museveni and Supreme Court Constitutional Appeal No.2 of 2006, Brigadier Henry Tumukunde versus The Attorney General and Another.*

2. *In determining the constitutionality of a legislation, its purpose and effect must be taken into consideration. Both purpose and effect are relevant in determining constitutionality, of either an unconstitutional purpose or an unconstitutional effect animated by the object the legislation intends to achieve.*

See. *Attorney General vs Silvaton Abuki Constitutional Appeal No. 1/1998(SC).*

3. *The entire Constitution has to be read together as an integral whole and no particular provision destroying the other but each sustaining the other. This is the rule of harmony, the rule of completeness and exhaustiveness. See P.K Ssemwogerere and Another vs Attorney General – Constitutional Appeal No. 1/2002 (SC) and The Attorney General of Tanzania vs Rev. Christopher Mtikila [2010.].EA13*



4. A constitutional provision containing a fundamental human right is a permanent provision intended to cater for all times to come and therefore should be given a dynamic, progressive, liberal and flexible interpretation, keeping in view the ideals of the people, their socio economic and political cultural values so  
5 as to extend the benefit of the same to the maximum possible.

See **Okello Okello John Livingstone and 6 others Versus The Attorney General and another, Constitutional Petition No. 1 of 2005(CA), Kabagambe Asol and 2 others vs The Electoral Commission and Dr. Kiiza Besigye. Constitutional Petition No.1of 2006 (CA) and South Dakota vs South Carolina 192, U.S.A 268,**  
10 **1940.**

5. Where words or phrases are clear and unambiguous, they must be given their primary, plain, ordinary or natural meaning. The language used must be construed in its natural and ordinary sense.

6. Where the language of the Constitution or a statute sought to be interpreted is  
15 imprecise or ambiguous, a liberal, generous or purposeful interpretation should be given to it. See **The Attorney General Versus Major General David Tinyefuza (Supra)**

7. The history of the Country and the legislative history of the Constitution is also relevant and a useful guide in constitutional interpretation.

20 See **Okello Okello John Livingstone and 6 others Versus the Attorney General and Another. Constitutional Petition No.4 of 2005 (CA)**

8. The National Objectives and Directive Principles of State Policy in the Constitution are also a guide in the interpretation of the Constitution.

Bearing in mind the above principles of Constitutional interpretation among others, we now proceed to consider submissions of Counsel for all the parties and the evidence before us and relate them to the issues raised in the said petitions and Applications.

5 **Issues no.1, 4, 5 and 6.**

The above four issues were argued together by all counsel that handled them. We too shall consider them together. At the conferencing there was no agreement on the wording of issues No.5 and 6 which were retained as they were with liberty to counsel to argue them as they preferred.

10 It became clear in the course of the hearing, that the gist in these issues is whether the expelled Members of Parliament *left* the party for which they stood and were elected to Parliament and whether they *vacated* their seats thus rendering their continued stay in parliament unconstitutional.

15 Counsel for the Petitioners in Constitutional Petition numbers 16, 19 and 21 of 2013, with counsel for the Attorney General were in agreement, and took a common stand on these issues.

They argued that, upon expulsion from the NRM party, which party had sponsored the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents, and for which they stood for elections, they *left* the party and no longer represented its interests in Parliament. They did not join  
20 and do not represent the opposition. They were not under the control or direction of any of the parties represented in Parliament. They were not independents as provided for in the Constitution. Counsel argued that the word ***leave*** used in **Article 83(1)(g)** is neutral as to cause. The expelled MPS could not, counsel submitted, become independents legally as they had not been elected to Parliament  
25 as independents. Counsel contended that the 2<sup>nd</sup>, 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> respondents became

*de facto independents* in Parliament and that this was in contravention of **Article 83 (1) (g)**.

5 **Submissions by Counsel for the 2<sup>nd</sup> 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> respondents and Counsel for the Petitioner in Constitutional Petition No.25 of 2013 on issues No. 1,4,5 and 6**

Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents and counsel for the Petitioner in Constitutional Petition No.25/2013 argued that the expulsion of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents from the NRM party did not result into their leaving the party for  
10 which they stood as candidates and were elected to Parliament as envisaged under **Article 83(1)(g)**.

To Counsel, the word *leave* used in **Article 83(1)(g)** imports voluntary action on the part of the person who leaves a party to join another or to become an independent. Counsel submitted that **Article 83(1)(g)** was designed as an  
15 instrument to prevent a Member of Parliament from voluntarily leaving his /her party and crossing the floor to join another party or to become an independent. They submitted that the issue of expulsion from a political party was not contemplated. There was a lacuna in the Constitution and according to Counsel, that should be handled by Parliament and not by this Court.

20

**Court's resolution of Issues No. 1,4,5 and 6**

The meaning of the word *leave* as used in **Article 83(1)(g)** is important for the determination of the issues now under consideration.

The word , in our view, is clear and unambiguous.

We find the literal rule of constitutional interpretation stated above as appropriate to apply in interpreting the word *leave*.

What is the ordinary and natural meaning of the word *leave*? The Oxford  
5 Advanced Learner’s Dictionary defines *leave* as “**go away from; cease to live at (a place) belong to a group**”, Webster’s New World Dictionary defines “**leave**” as “**to go away from/to leave the house, to stop living in, working for, or belonging to; to go away**”. From the above, we find that the word *leave* in the context in which it is used is neutral as to cause and connotes, *inter alia* going  
10 away and/or ceasing to belong to a group.

Counsel for the 2<sup>nd</sup> 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> respondents invited us to consider the legislative history of **Article 83(1)(g)** of the Constitution and we oblige. **Article 83(1)(g)** was in the 1995 Constitution. It was worded as it is currently after the 2005 Constitutional amendment.

15 The background to the inclusion of **Article 83(1) (g)** is reflected in the report of the Uganda Constitutional Commission, Analysis and Recommendations. The relevant part was annexed and marked as ‘D’ to the affidavit of the Hon. Theodore Ssekikubo.

20 *“The Commission reported that because of Concerns arising from the memory of the crossing of the floor by almost all opposition members during the Obote I Government and some considerable number in Obote II, Government formed the basis for submission of strong views that in case of a Multi-party Parliament, any member wishing to cross the floor must  
25 first resign his or her seat and seek fresh mandate from his*

*constituency... In addition, the members elected as independent candidates should be treated the same way if they join political parties.”(sic)*

5 The Constitutional Commission recommended inclusion of a constitutional provision to deal with this vice. **Article 83(1) (g)** thus found its way into the 1995 Constitution. The mischief that was targeted in 1995 was to stop the weakening of political parties by elected Members of Parliament crossing from the parties for which they were elected and joining other parties whilst in Parliament without seeking a fresh mandate from the electorate or becoming independent whilst in  
10 Parliament without seeking such a mandate.

There was an attempt to amend **Article 83(1) (g)** in 2005 by **The Constitutional (Amendment)(No.3) Bill, 2005**. The proposed amendment was:-

15 *“83(1)(g) if that person leaves the political organization or political party for which he or she stood as a candidate for election to Parliament to join another political organization or political party or to remain in Parliament as an independent member or if he or she is expelled from the political organization or political party for which he or she stood as a candidate for  
20 election to Parliament”*

The underlined are the words that were proposed to be added to the original article in order to effect the amendment. The proposed amendment was debated on 7<sup>th</sup> July 2005 and again on 8<sup>th</sup> August 2005 when the same was withdrawn. It was a heated debate. There was opposition to amending the article for various reasons.  
25 Some members, for example, opposed the amendment and called for its deletion

because it would lead to dismissals and counter dismissals from political parties and it would be used for internal discipline of political parties.

There are others, however, who supported deletion of the proposed amendment because it was redundant. These included Hon. Jacob Oulanyah who chaired the  
5 Legal and Parliamentary Committee that had proposed the amendment. He stated:-

***“on Clause 26, the Committee had proposed an insertion but after reflection and considering what exists in the Constitutional provision, it is not necessary,...”***

10 Hon. Ben Wacha was of the same view as Hon. Jacob Oulanyah. He supported the proposal for deletion of the proposed amendment and stated:-

15 ***“I am supporting it just because the words he is complaining about are actually redundant. What is the effect of a person if he or she is in Parliament? That person would (a) choose to remain independent or (b) he or she might choose to join another party now, if those are the two effects, then they are fully covered by the first part of the clause, which therefore makes the second half, which honourable Wandera is complaining about; so this becomes redundant.”(sic)***

20 Hon. Adolf Mwesigye, the responsible Minister, explained that the purpose of the amendment was to make it clearer. He stated:

***“The Constitution, Article 83(1)(g), there is already a provision, which provides for the vacation of a seat of a***

***Member of Parliament if a person leaves a political party organisation for which he contested.***

5 ***When you are expelled from a party, the effect of the expulsion is that you leave the party that is the effect. You cannot be expelled and stay. You can actually be expelled, and you choose not to run as an individual or not even to run for another political party.***

***So Madam Chairperson, the purpose of introducing this amendment was to make it clearer ...(sic)”***

10 The debate continued with members expressing different views. The person then chairing the debate that afternoon was the then Deputy Chairperson (Hon. Rebecca Kadaga). According to the Hansard, she stated:-

***“Honourable Members, if you are expelled you do not stay; when you are expelled you go.”***

15 The amendment was withdrawn by the Minister of Justice and Constitutional Affairs. He said:

20 ***“...had caused a lot of controversy. Honourable members expressed serious concerns about what it meant. We can go into explaining what it meant and so on, but we propose in the interest of peace that the clause be deleted.”***

This was reconciliatory language used by, the learned Minister of Justice and Constitutional affairs/Attorney General but did not remove the redundancy of the proposed amendment that he withdrew. The proposed amendment was withdrawn but not defeated.

The interpretation that the legislators read into **Article 83(1)(g)** in the debate of 2005 had been pointed out in the debate leading to the 1995 Constitution. That interpretation was not new. It was debated and retained in the 1995 Constitution.

The Hansard reporting proceedings of 23<sup>rd</sup> March 1995 shows that the Constituent  
5 Assembly debated this same issue. See pages 3533,3534 of the Hansard.

Mr. Lumala Deogratus (RIP) (Kalungu west), sought clarification as stated below:-

10 *“Madam Chairman, I am seeking clarification with regard to changing parties from one to the other. In practice, someone may decide not to formally resign from one party to another for fearing that he will not be elected if he did so. So he sits on benches of the opposition but will always vote with the other party” (sic)*

Mr. Mulenga(RIP) offered clarification in response in the following words:-

15 *“Perhaps to put the minds of Hon. Lumala and others at ease, the word used is leaves. He can leave either voluntarily or by expulsion. If that party notices that he is no longer supporting them, they might expel him from the party and therefore, he leaves the party.”*

20 The above is the legislative history of **Article 83(1)(g)**.

This Court had occasion to interpret this article before. This was in **Constitutional Petition No.38 of 2010 George Owor vs The Attorney General & Hon. William Okecho**.



The 2<sup>nd</sup> respondent had contested for a seat in Parliament and he was elected as an Independent. Whilst still in Parliament, he joined the National Resistance Movement Party and contested in the party primary elections. When interpreting **Article 83(1)(g)** this Court held:-

5                                   **“that Article 83(1)(g) is a simple and clear provision. It is not ambiguous and should be construed basing on the natural meaning of the English words used in the relevant Clause.”** The Court held;

**“In our judgment the provision means:-**

10                   **(I) A Member of Parliament must vacate his/her seat if he/she was elected on a political party/organization ticket and then before the end of that Parliament the member joins another party.**

15                   **(II) He/she must vacate his/her seat if he/she was elected on a party ticket and elects to be nominated as an Independent before the term of the Parliament comes to the end.**

**(III) If he/she was elected to Parliament on a party ticket, he/she cannot remain in Parliament as an Independent member.**

20                   **(IV) Common sense dictates that if one was elected to Parliament on a political party ticket and joins another party, he/she cannot be validly nominated for election on the ticket of that latter party unless he/she has at the time of nomination resigned or vacated the seat in Parliament.**

25                   **(V) If one was elected to Parliament on a party ticket and he/she leaves that party to become independent, he/she cannot**

**validly be nominated as an independent unless he/she has ceased to be or has vacated the seat in Parliament...**

**The rationale of this interpretation is easy to see. You cannot, in a multiparty political system continue to represent the electorate on a party basis in Parliament while at the same time offering yourself for election for the next Parliament on the ticket of a different political party or as an independent.”**

5  
10 It was submitted by Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents and for the Petitioner in Const. Petition No.25 of 2013 that the **George Owor Case** (supra) is in respect of an MP voluntarily changing and should not be applied to one who has been expelled from his political Party. To Counsel, the expulsion of a Member of Parliament from his political party is not a constitutional matter. It is a matter  
15 between the Member of Parliament and his political party.

Counsel for the petitioners, (save for Counsel for the Petitioner in Constitutional Petition No.25/2013) and the Attorney General, submitted that when the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents left their party, they were no longer controlled by their political Party. They became ***de facto independent*** Members of Parliament. They were not  
20 elected as independent Members of Parliament. Their stay in Parliament is unconstitutional.

**Article 83(1)(g)** in the 1995 Constitution targeted, *inter alia*, the problem of MPs crossing the floor of Parliament. But is the evil or the mischief merely crossing the floor? Crossing the floor, in our view is, only part of the problem. The mischief is

much wider. The purpose of incorporating the article in the Constitution was to protect multi-partism in particular.

The article should therefore be interpreted using the liberal or generous rule of interpretation. As was held by Justice G.W.Kanyeihamba JSC, (as he then was) in the case of the **Attorney General vs. Major General David Tinyefuza** (supra) at page 9:-

10 *“It is also a recognized principle by Courts in many jurisdictions that in interpretation, a Constitution of a state must be given a generous and purposive construction as was opinionated by Lord Diplock in the Gambian case of Attorney General v Modou Jobe (1984) AC 689, at P.700 and by Lord Keith in the Trinidad & Tobago case of Attorney General v. Whiteman (1991)2 WLR, 1200, at P. 1204 with the marks:-*

15 *“The language of a constitution falls to be construed, not in a narrow and legalistic way, but broadly and purposively so as to give effect to its spirit, and this is particularly true of those provisions which are concerned with the protection of Constitutional rights.”*

20 In the same case, his Lordship, with approval, quoted the case Botswan of **Dow v Attorney General (1992) LRC (623)**. Agunda, JA, said:-

25 *“...It (the Constitution) cannot be a lifeless museums piece; on the other hand, the Courts must continue to breathe life into it from time to time as the occasion may arise to ensure the healthy growth and development of the State through*

**it... We must not shy away from the basic fact that whilst a particular construction of a Constitutional provision may be able to meet the designs of the society of a certain age such a construction may not meet those of a later age. I conceive it that the primary duty of the Judges is to make the Constitution grow and develop in order to meet the just demands and aspirations of an ever developing society which is part of the wider and larger human society governed by some acceptable concepts of human dignity.”**

5

10 The underlining is ours for emphasis.

If a Member of Parliament was expelled from the political party for which he or she stood as a candidate for election to Parliament he/she would have left his/her political party.

15 Upon expulsion he/she is no longer under the control or direction of the party for which he/she was a candidate and was elected. He/she is not under the control, direction and does not belong to any political party that is represented in Parliament.

Black’s Law Dictionary defines independent as:

**“(ii)...not subject to the control or influence of another**

20

**Not associated with another (often larger entity).”**

Webster’s’ New World dictionary defines Independent as

**“(i) free from the influence, control, or determination of another or others. (c) not connected with any**

**political party organization.”** It is further defined in another definition as

**“a person not an adherent of any political party;”**

After expulsion, the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents became *de facto independents* in Parliament. They do not qualify to be *de jure* independents as they did not stand for elections as independents. Would they stay in Parliament in that capacity when they are *de facto independent* and yet they had stood for a political party during their elections to Parliament? Would their stay in Parliament in those circumstances promote the growth of multi-partism as contemplated by the enactors of **Article 83(1)(g)**?

In our view, a Member of Parliament that has been expelled from the political party for which he/she stood as a candidate and was elected to Parliament, would not adhere to his/her political party after the expulsion.

If he/she remained in Parliament after the expulsion, he/she would in effect, not be different from the one who would have crossed voluntarily.

The party he/she left would be disadvantaged and would not rely on him or her. It needs the same protection as the party of the members who voluntarily crossed the floor. Multi-partism needs the same protection from the conduct of such Members of Parliament if it is to grow.

That was the purpose of enacting **Article 83(1)(g)** in the Constitution. The Article should be interpreted to give effect to the purpose for which it was enacted.

It was submitted by counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents that members of Parliament represent constituencies and not political parties in Parliament. Counsel further submitted that members of Parliament have their individual rights and should therefore be protected from the dictates of the parties for which they

stood as candidates during elections. It was argued that they were elected by their Constituencies which comprised of different political parties and that the electorate comprised of different political party members. They, therefore, were not elected only by members of the political party for which they stood as candidates. The  
5 members of Parliament, therefore, according to counsel, are accountable to Parliament.

It is true that Members of Parliament represent their Constituencies in Parliament. Political parties, however, are the driving engines and play recognized significant roles in Parliamentary affairs in a multiparty political dispensation. This is  
10 recognized and provided for, *inter alia*, in the National Objectives and Directive Principles of State Policy, various provisions of the Constitution and the Rules of procedure of Parliament.

**Article 82A** of the Constitution for instance provides for the position of Leader of the Opposition. **Article 90** provides for appointment of Parliamentary Committees  
15 for the efficient discharge of Parliamentary functions. Parliamentary Committees operate under the Rules of Procedure of Parliament which are made under **Article 94** of the Constitution.

**Rule 148 (3)** (of the Rules of Procedure of Parliament) provides:-

**Rule 148(1)...**

20 (2)...

***3“...so far as reasonably practicable, the overall membership of Committees shall reflect proportional membership in the house taking into consideration the numerical strength of the parties and the interests of the independent members.”***

*Rule 148 (5) provides:-*

***“parties have powers to withdraw and relocate members from individual Committees.”***

Political parties are so important in their roles in Parliament that the rules of procedure provide clearly for party leadership in Parliament.

**Rule 14** provides for the posts of the Government Chief Whip, the Chief Opposition whip and a party Whip for a Party in opposition. These leaders ensure due attendance, conduct of their members, participation in proceedings and voting in Parliament of members of their parties.

In view of these provisions, it's clear that although members of Parliament represent their constituencies, they play important roles in Parliament on behalf of their political parties.

If expelled Party members remained in Parliament after their expulsion, then the numerical strength of the party they left and its representation on Parliamentary Committees would be adversely affected. Clearly this would prejudice and undermines the proper functioning of the political parties, and the healthy growth of multi-partism.

The Supreme Court of New Zealand in **SC CUV 9/2004 between Richard William Prebble, Ken Shirely, Rodney Hide & Muriel Newman and Donna Awatere Huata**, handled a case with facts as set out below:-

Donna Awatere Huata was elected as a Member of Parliament for ACT New Zealand Political Party in 1999 general elections. Mrs Awatere Huata's subscription as a member of ACT Party was not renewed by her when it became due in February 2003. She tried to renew her membership on 6<sup>th</sup> November 2003

but the party refused to accept her subscription. On 10<sup>th</sup> November 2003, the leader of the ACT Parliamentary Party gave notice to the Speaker that she was no longer a member of the ACT Caucus. Mrs Awatere Huata denied the allegations against her and contended, she continued to represent ACT political party interests. She  
5 said “*I have not left the ACT party at all, rather the ACT party has chosen to suspend and ostracise me.*” The leader of ACT Parliamentary Party initiated the process for her seat to become vacant. In handling this case the New Zealand Supreme Court held:-

10                   **“The language of “cessation” is neutral as to cause. Such neutrality does not suggest that a member ceases to belong to the party only where he has resigned formally or by unequivocal conduct. Reciprocity in freedom of association is of the nature of voluntary groups, and is secured for ACT New Zealand and its parliamentary caucus by their rules. Just as members are free to move on from the party, the party is free to leave members behind, if it acts in accordance with its rules of association and if it is willing to wear the political risk of such action with the electorate. Whether the change in affiliation is a result of the party acting to exclude the member of Parliament from its caucus or whether it is a result of the member of Parliament resigning or becoming independent, distortion of the proportionality of political party representation in Parliament as determined by electors equally results if the  
15  
20  
25 member continues to remain as a member of Parliament.”**



The above decision is not binding on this Court but New Zealand is a Commonwealth country and the case is persuasive. We also find the reasoning persuasive as the factual situation the court was handling is, in a way, similar to that in the instant petitions.

5 In Uganda, during a Multiparty political dispensation, the electorate in their various electoral constituencies delegate some of their disciplinary powers over their Members of Parliament to their respective political parties. This is why, during the time when the Multiparty Political System of governance is in operation, the electorate in their constituencies cannot exercise their disciplinary  
10 powers of recalling any errant Member of Parliament under Article **83(1)(f)** of the Constitution. That is left to the political parties represented in Parliament to be exercised through their various organs.

In conclusion to these issues, we do find that the 2<sup>nd</sup>, 3<sup>rd</sup> 4<sup>th</sup> to 5<sup>th</sup> respondents were expelled from the[NRM] party for which they stood as candidates for election to  
15 Parliament, a fact they do not deny. Upon their expulsion they left the Party. We follow the binding decision of this Court in the **Gorge Owor case** (supra) and hold that they vacated their seats in terms of **Article 83(1)(g)** of the Constitution. Vacation of their seats was by operation of that constitutional Article.

They remained in Parliament as *de-facto* independent members of Parliament with  
20 an unconstitutional status. We therefore answer issues 1,4,5 and 6 in the affirmative.

### **Issues Nos 2,3 and 8**

### **Alleged unconstitutional acts of the Right Hon. Speaker of Parliament.**

We shall handle issues No.2 and No.3 together. The two issues are related and were submitted upon together.

Counsel for the petitioners, save for Counsel for the Petitioner in Constitutional Petition No. 25 of 2013, argued that the Rt. Hon. Speaker of Parliament acted  
5 unconstitutionally when by her ruling of 2<sup>nd</sup> May 2013 she declined to declare vacant the seats in Parliament of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents and retained them in Parliament after their expulsion from their party. That they had *left* the Party and therefore, under **Article 83(1)(g)**, had vacated their seats in Parliament.

Counsel for the said petitioners submitted that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents  
10 upon expulsion, from the NRM party, left the party and thus lost their seats in Parliament.

That the Speaker created a special category in Parliament when she allocated them seats of a category not envisaged by the Constitution.

It was submitted for the 2<sup>nd</sup> 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> respondents that they were elected to  
15 Parliament by their constituencies. That the Speaker of Parliament had powers to allocate them seats as members of Parliament. That when she allocated them seats in Parliament that was in exercise of her powers. She did not thereby create a special category of members of Parliament.

**Article 81(4)** provides that every Member of Parliament shall take the subscribed  
20 oath of allegiance and that of a member of Parliament. The members of Parliament then qualify to sit in the House under **Article 81(5)**.

The Speaker of Parliament has power then to allocate seats to them in accordance with Rule 9 of the Rules of Procedure of Parliament. The rule directs the Speaker on how the seats are to be allocated.

The seats to the right hand side of the Rt. Hon. Speaker are reserved for members of the political party in power. Currently in the 9<sup>th</sup> Parliament, the NRM political party is the party in power.

5 The Leader of the Opposition and members of the opposition parties sit on the left hand side of the Rt. Hon. Speaker.

After their election, the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents took the prescribed oath, and occupied seats allocated to them on the right hand side of the Rt. Hon. Speaker because they belonged and subscribed to the NRM ruling party.

10 In our considered view, the Rt. Hon. Speaker is, under the Constitution and the rules of procedure of Parliament, empowered to allocate seats in accordance with the said rules made under **Article 94** of the Constitution.

When the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents were expelled from the NRM party, the Speaker was informed.

15 For members of Parliament elected on the sponsorship of a political party that is in government, their seats under the rules of procedure of Parliament can only be on the right hand side of the Speaker of Parliament. Those are the seats they had earned when they came to Parliament and lost upon expulsion.

According to the evidence on record, the Rt. Hon. Speaker reallocated them seats not on her right hand side but in front of the clerk's table facing the Speaker.

20 Clearly this was in breach of the rules of procedure of Parliament made under **Article 94** of the Constitution and was therefore unconstitutional.

Earlier, in this judgment, while dealing with issue Nos. 1,4, 5 and 6, we in effect, also disposed of issue No. 2 above. We followed our earlier decision in the case of

**George Owor vs Attorney General** (supra) and held that the said four members of Parliament vacated their seats in accordance with **Article 83(1)(g)** of the Constitution. The Rt. Hon. Speaker, therefore had no power to reallocate them seats since they were not members of Parliament any more. The ruling of the Rt.  
5 Hon. Speaker of 2<sup>nd</sup> May 2013 to the effect that the four members of Parliament should retain their seats in Parliament is therefore, inconsistent with and in contravention of the named constitutional provisions.

In result, we answer issue Nos. 2 and 3 in the affirmative.

We shall deal with issue No.7 later in the course of this Judgment.

10 **Issue No. 8**

The Rt. Hon Speaker of Parliament received a letter from the Secretary General of the NRM party informing her of the party's decision and requesting her to direct the Clerk to Parliament to declare the seats of the four respondents vacant. The Secretary General of NRM was asking her to exercise her jurisdiction. The Rt.  
15 Hon. Speaker has power under rules 7 and 9 of the rules of procedure of Parliament to preside over the sittings of the house, to preserve order and decorum and to allocate seats in the house.

It was in exercise of her jurisdiction under the said rules that she responded to the request of the Secretary General of NRM political party and also made her ruling  
20 on 2<sup>nd</sup> may 2013.

Our holding in the disposal of issues No.1, 4, 5 and 6 cleared the position of the seats of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> respondents in Parliament.

We find, therefore, that the pronouncement by of the Rt. Hon. Speaker of Parliament of retaining the 2<sup>nd</sup>, 3<sup>r</sup>, 4<sup>th</sup>, and 5<sup>th</sup> respondents in Parliament and

allocating them new seats was unconstitutional, though she was acting within her powers as Speaker of Parliament to pronounce herself on the matter. We therefore answer issue No. 8 in the negative.

5 **Issues no. 9,10,11,12 and 13.**

These issues concern certain acts of the Attorney General which were challenged as being unconstitutional in Constitutional Petition No.25 of 2013. We shall handle these issues together as they were argued together in the submissions of Counsel for the respective parties.

10 Counsel Peter.M.Walubiri for the Petitioner in Constitutional Petition No 25/2013 submitted, *inter alia*, that the Attorney General is the Principal legal advisor to Government, but his advice is generally required in respect of contracts and agreements under **Article 119(5)** of the Constitution. According to him, the Attorney General's advice is also required in respect of Government defined in a  
15 narrow sense which covers ministers and civil servants working under them as part of the Executive. He was supported on this by counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents.

Counsel for the Petitioners in Constitutional Petition Nos.16, 19, and 21 and counsel for the Attorney General/cross Petitioner in Constitutional Petition No. 25  
20 of 2013, submitted that the Attorney General rightly advised the Rt. Hon Speaker of Parliament in exercise of his Constitutional mandate under **Article 119** of the Constitution. That the Legislature is one of the organs of Government that the Attorney General is constitutionally mandated to advise.

## **Resolution of Issue Nos. 9,10,11,12 and 13**

The Attorney General (AG)'s office is a creature of **Article 119** of the Constitution and his/her role is defined in **clause (3)** which provides:-

5 **119 (1)...**

**(2)...**

**(3)... “the Attorney General shall be the principal  
legal advisor of the Government”.**

**Article 119(4)** lays out the functions of the Attorney General.

10 The Supreme Court Considered the role of the Attorney General in **Bank of Uganda vs Banco Arabe Espanol, Civil Appeal No.1 of 2001.**

It was analysing a situation where the Attorney General had given an opinion in respect of a contract between the Bank of Uganda and a third party. The Supreme Court, in the judgment of Justice G.W.Kanyeihamba JSC, (as he then was), with  
15 which the other Justices concurred, held;

20 **“In my view, the opinion of the Attorney General as authenticated by his own hand and signature regarding the laws of Uganda and their effect or binding nature on any agreement, contract or other legal transaction should be accorded the highest respect by government and public institutions and their agents. Unless there are other agreed conditions, third parties are entitled to believe and act on that opinion without further enquires or verifications. It is**

5                   **also my view, that it is improper and untenable for the Government the Bank of Uganda or any other public institution or body in which the Government of Uganda has an interest to question the correctness or validity of that opinion in so far as it affects the rights and interests of third parties.”**

At this stage, it is worth noting the contents of **Article 162(2)** of the Constitution.

10                   **“In performing its functions, the Bank of Uganda shall conform to this Constitution but shall not be subject to the direction or control of any person or Authority.”**

The Bank of Uganda is an independent institution but according to the Supreme Court, the Attorney General has the duty and mandate to advise the Bank as an institution of Government. The court held that the Attorney General’s opinion

15                   **“should be accorded the highest respect by such a public institution.”**

We note that this is

**“in so far as that opinion affects the rights and interests of third parties,”**

It would be

20                   **“improper and untenable for the Bank or any other government institution to question the correctness or validity of that opinion.”**

The Supreme Court had occasion again to consider and pronounce itself on the mandate of the Attorney General in **Civil Appeal No. 06 of 2008 Gordon Sentiba and 2 others and the Inspectorate of Government(supra)** and later in **Constitutional Application No.53 of 2011 Parliamentary Commission and**  
5 **Twinobusingye Severino and the Attorney General (supra)**. The Court held:-

**“All legal proceedings by or against the Government are instituted by or against the Attorney General.”**

The Court quoted its decision in **Gordon Sentiba and Others vs IGG**, (Supra) in which it held:

10 **“It is trite law that the Attorney General is the principal legal advisor to Government as provided for in Article 119(3) of the Constitution and that the legal opinion of the Attorney General is generally binding on government and public institutions like the respondent (IGG). Therefore,**  
15 **the respondent is not correct in submitting that it can intervene or take over a case where the Attorney General has decided not to take action in order to prevent the Government from losing colossal sums of money. The respondent is a creature of the Constitution and statute and its functions and powers are clearly laid down in those legal**  
20 **instruments...”**

**We therefore find and hold that Articles 119 and 250 of the Constitution and the above decisions set out the correct legal position regarding the function of the office of the**  
25 **Attorney General.”(sic)**



This Court also, had occasion to consider the powers and role of the Attorney General. On the issue of whether the Attorney General could advise the Electoral Commission and whether such advice was binding, this Court in **Constitutional Petition No.1 of 2006 Kabagambe Asol and 2 Others versus The Electoral Commission and Dr. Kiiza Besigye**(supra) held:-

“First, we do not accept that the Electoral Commission is subject to the “direction or control” of the Attorney General or any other authority. It is an independent public institution subject to some other provisions of the Constitution. Article 119 of the Constitution is not one of them. There are other provisions, for example relating to powers of the judiciary and the legislature to which Article 62 of the Constitution is subject. The 1995 Constitution created many other independent institutions e.g. the Human Rights Commission, the Judicial Service Commission, the Public Service Commission e.t.c which can be advised by the Attorney General but are not bound to follow his advice. It would indeed be absurd if Article 119 of the Constitution was construed to mean that the courts of law of this country, which are the third arm of the state, are bound by the advice of the Attorney General. Article 128 (1) of the Constitution is very clear and instructive.

...In the instant case, we are dealing with the powers of the Attorney General under Article 119 of the Constitution *visa à vis* Article 62 of the Constitution which vests the Electoral Commission with independence.

5                   **Lastly, there is no doubt that the Attorney General is the principal legal advisor to government. The English meaning of the words “advise, advice and advisor” are common knowledge to anyone with some knowledge of the English language. No advice can be binding on the entity being advised. In the judgement of the court, we stated;**

10                   **“Though the Attorney General is the principal advisor of Government, the Constitution does not provide anywhere that such advice amounts to a directive that must be obeyed. In case of the Electoral Commission, it can seek, receive and accept or reject the advice of the Attorney General.”**

15                   What is clear from the cases above quoted is that the Attorney General as principal legal advisor to government is mandated to advise all government institutions including independent institutions like the Bank of Uganda. The Attorney General’s advice should be accorded the highest respect by public institutions including the constitutionally independent ones like the Bank of Uganda, and the IGG.

20                   According to **Kabagambe Asol and another vs The Electoral Commission** (supra) the advice of the Attorney General to independent institutions of Government may be sought and may be given by the Attorney-General but such advice does not constitute commands from the Attorney General. Independent institutions could receive the advise and study the same and after due consideration, accept the advice or respectfully disagree with the advice.

25                   We wish to clarify that this Court, in **Kabagambe Asol and another vs the Electoral Commission**(Supra), was handling a case specifically in respect of

advice given by the Attorney General to an independent institution which is constitutionally insulated and declared to be independent by the Constitution. The advice being considered was in respect of performance of functions of the constitutionally independent institution.

5

This Court made it clear, and held:-

**“...in the instant case, we are dealing with the power of the Attorney General under Article 119 of the Constitution vis a vis article 62 of the Constitution which vests the Electoral Commission with independence.”**

10

In the petitions before us we have not found a provision the equivalent of **Article 62** in reference to Parliament. This distinguishes this case from that of **Kabagambe Asol and another versus The Electoral Commission** (Supra)

15

In **Gordon Sentiba and 2 others and Inspectorate of Government** (supra) and the **Parliamentary Commission and Twinobusingye Severino and the Attorney General** (supra), the Supreme court was considering the advice of the Attorney General in relation to organs of Government Generally, and in a situation similar to the one in these Petitions. We find that we are bound to follow the Supreme Court holding in the quoted cases.

20

Therefore, the Attorney General as principal legal Advisor of Government is mandated to advise Government and all Government organs and public institutions including the Legislature and the Rt.Hon.Speaker of Parliament his advise is generally binding.

In exercise of that mandate, the Attorney General would not be acting unconstitutionally when he/she offers legal advice to the Rt. Hon. Speaker of Parliament.

Should this Court intervene in such a case and determine the propriety of the Attorney General's exercise of powers given to him by the Constitution? The Supreme Court considered such an issue and offered guidance in **Attorney General versus Major General Tinyefuza Constitutional Appeal No.1 of 1997**. on page 11 G.W.Kanyehamba, JSC (as he then was), held:

10                   **“Finally, I wish to comment on another principle which often crops up in adjudicating petitions of this kind. That principle concerns the extent to which Courts should go in interpreting and concerning themselves with matters which are, by the Constitution and law, assigned to the jurisdictions and powers of Parliament and the Executive... the rule appears to be that Courts have no jurisdiction over matters which are within the Constitutional and legal powers of the legislature or the executive. Even in cases, where Courts feel obliged to intervene and review legislative measures of the legislature or administrative decisions of the executive when challenged on the grounds that the rights or freedoms of individuals are clearly infringed or threatened, they do so sparingly and with the greatest of reluctance.**

20                   **...The province of the Court is solely to decide on the rights of individuals, not to inquire how the executive, or executive**

25

officer, perform duties in which they have discretion. Questions (which are) in their nature political or which are by the Constitution and Laws, submitted to the executive can never be made in this Court.

5 ...Courts, and especially the Supreme Court, are not the only actors on the Constitutional stage is equally applicable to Uganda. The Constitution provides that the Constitutional platform is to be shared between the three institutional organs of Government whose functions and powers I have already described (supra). The Uganda Constitution recognises these organs as the Parliament, the Executive and the Judiciary. It was not by accident either that it created, described and empowered them in that order of enumeration. Each has its own field of operation with different characteristics and exclusivity and meant by 10 the Constitution to exercise its powers independently. The doctrine of separation of powers demands and ought to require that unless there is the clearest of cases calling for intervention for the purpose of determining constitutionality and legality of action or the protection of the liberty of the individual which is presently denied or imminently threatened, the Courts must refrain from entering arenas not assigned to them either by the Constitution or laws of Uganda. It cannot be over- 20 emphasised that it is necessary in a democracy that Courts refrain from entering into areas of disputes best suited for 25

**resolution by other government agents. The Courts should only intervene when those agents have exceeded their powers or acted unjustly causing injury thereby.”**

In the instant case we do not find any cause to fault the Attorney General in the  
5 exercise of his constitutional powers.

The Attorney General was acting within his powers under **Article 119** of the Constitution. It was neither contrary nor in contravention of the Constitution. We therefore, answer issue Nos. 10 and 12 in the negative.

**Issue No.9** arises from the act of the Attorney General giving advice to the Rt.  
10 Hon. Speaker of Parliament to the effect that the only persons who could sit in Parliament under a multi-party political system are members of political parties and representatives of the army and this was challenged for being inconsistent with and in contravention of **Article 78** of the Constitution.

**Article 78** defines the composition of Parliament.

15 The enlisted members in **Article 78(1) (a)(b)(c)** and **(d)** are more than what was covered in the relevant Attorney General’s advice to the Rt. Hon. Speaker.

The Attorney General’s representative Mr. Chebroin Barishaki, submitted that the advice was in reference to the respondent Members of Parliament and thus in the context of the expulsion of directly elected Members of Parliament. Further, that  
20 as such there was no need for the Attorney General to refer to the other category of Ex-officio members under **Article 78(1) (d)**. The Attorney General’s letter did not refer to all the categories of the members of Parliament as contained in **Article 78** of the Constitution.

Our appreciation of the Attorney General's advice to the Rt. Hon. Speaker is that it was not comprehensive on the content of **Article 78** of the Constitution. Whether the Attorney General's explanation that he did not have to refer to the whole article is satisfactory to this Court or not, is in our considered view, not an issue for  
5 constitutional interpretation. The Attorney General was giving advice in the exercise of his constitutional powers.

We therefore answer issue No.9 in the negative.

### **Issue No.11**

10 We have already found that the Attorney General has the Constitutional mandate to advise the Rt. Hon. Speaker. The advice to the Rt.Hon.Speaker was in respect of the Attorney General's understanding of **Article 83(1)(g)** of the Constitution. His opinion was that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and to 5<sup>th</sup> respondents stay in Parliament after their expulsion from their Party was inconsistent with and in contravention of  
15 **Article 83(1)(g)** of the Constitution.

He restricted his opinion on the matter to the interpretation of **Article 83(1)(g)**. The Attorney General did not extend his opinion to cover **Article 86(1)(a)** of the Constitution. We find **Article 86(1)(a)** of the Constitution inapplicable to the situation pertaining to the instant consolidated constitutional petitions.

20 **Article 86(1)(a)** provides:

**“The High Court shall have jurisdiction to hear and determine any question whether (a) a person has been validly elected a member of Parliament or the seat of a member of Parliament has become vacant.”**

This article provides for, *inter alia*, the jurisdiction of the High Court.

The Article is primarily concerned with the validity of an election process that leads to a person being elected to Parliament.

The Supreme court had occasion to consider the provisions of **Article 86** of the  
5 Constitution in **Baku Raphael Obudra and another and the Attorney General.**  
**Constitutional Appeal No. 1 of 2005** Justice Tsekooko, JSC held:-

**“Article 86 is concerned with consequences of elections.**

10 **...thus in clause (1) the Article confers on the High Court  
jurisdiction to hear and determine disputes arising from the  
election of the members of Parliament, the Speaker and the  
Deputy Speaker of Parliament.”**

Justice Katureebe JSC explained that using **Article 86**

15 **“the framers of the Constitution decided to provide for how  
questions arising from a Parliamentary election are to be  
handled and who handles them.”**

Justice Mulenga JSC held:-

20 **“The clear objective of Article 86 is to vest jurisdiction by  
stating the fora by which disputes arising from  
parliamentary elections are to be resolved. The Article  
clearly states it is to be by the High Court, and in case of a  
party aggrieved by its decision by the court of Appeal.”**



This is neither the issue upon which the Attorney General was giving advice nor is it an issue with which the Petitions before us are concerned.

The instant consolidated constitutional Petitions and the interlocutory applications arising therefrom are concerned with different circumstances. They are in respect  
5 of validly elected members of Parliament vacating/losing their seats in Parliament in circumstances that differ from those covered by **Article 86(1)(a)** of the Constitution.

It was submitted that it was only the High Court which had the power to declare a seat of a member of Parliament vacant under **Article 86(1)(a)**.

10 We disagree. A matter necessitating the interpretation of **Article 86(1)(a)** could appropriately be placed before the Constitutional Court. During the resolution of the controversy between the parties, the Constitutional Court may find it appropriate to grant a remedy under **Article 137(4)** of the Constitution. The remedy or remedies this Court may grant might include declaring the seats of the  
15 concerned MPs vacant. The Jurisdiction in **Article 86** of the Constitution, therefore, is not exclusively the preserve of the High Court.

This Court will not condemn the Attorney General as having unconstitutionally given advice to the Hon. Rt. Speaker contrary to a Constitutional provision on which the Attorney General, never gave his advice to the Rt. Hon Speaker. The  
20 advice the Attorney General gave to The Rt. Hon. Speaker of Parliament was not contrary to and did not contravene the provisions of **Article 86(1)(a)** of the Constitution.

We therefore answer issue No.11 in the negative.

### **Issue No.13.**

It was submitted by Counsel Peter. M. Walubiri that once Constitutional Petition No. 16 of 2013 in which the Attorney General was the 1<sup>st</sup> Respondent was in court, the act of the Attorney General advising the Speaker of Parliament to reverse her  
5 ruling on whether the seats of the expelled Members of Parliament are vacant when the said ruling is subject to Courts interpretation is inconsistent with and in contravention of **Article 137** of the Constitution. **Article 137** of The constitution creates the Constitutional Court. The Article defines the jurisdiction, the composition, powers, processes, procedures and a number of other matters that  
10 affect that Court.

The advice the Attorney General gave to the Rt. Hon. Speaker of Parliament was in exercise of his constitutional powers under **Article 119** of the Constitution. In offering advice to Government, the Attorney General would study and interpret the laws and the Constitution.

15 The Attorney General as the Principal legal advisor to Government is competent to advise Government, before and after, suits are filed in courts of law. The power of the Attorney General to Advise Government on legal matters under **Article 119** of the Constitution is not limited to any specific areas or time. The situation is not different in respect of matters that arise under **Article 137** of the Constitution. The  
20 advice would not interfere with or in any way take away the powers of the Constitutional Court guaranteed by **Article 137**. We, therefore, answer issue No.13 in the negative.

## **Issue No. 7**

We shall now deal with issue No. 7 which was framed by court in the following terms:-

- 5 Whether the court should grant a temporary injunction stopping the said members of Parliament from sitting in the House pending the determination of these Constitutional Petitions.

On the 6<sup>th</sup> September 2013, by a majority of four, (4) to one (1), this court granted the Petitioner /Applicants a mandatory injunction in the above Constitutional  
10 Petitions and Applications under this issue.

We reserved our full reasons for that grant until the Court would deliver its judgment in the said Petitions and Applications. We shall now give those reasons after a recap of the submissions of counsel for the respective parties.

### **15 Submissions by counsel for the Petitioner/Applicants**

Counsel for the Petitioner /Applicants submitted that the application for the mandatory injunction they prayed court to grant was grounded in **Sections 64 and 98 of the Civil Procedure Act, Rule 2(2) of the Judicature (Court of Appeal Rules, S.I 13-10, Rule 23 of the Constitutional (Petitions and Reference) Rules,**  
20 **S.I No.91 of 2005 and Article 126(2)** of the Constitution.

They emphasized that there was urgent need for court to bar the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents from continued stay in Parliament and from participation in the proceedings of the House unconstitutionally.

Counsel submitted that the Rt. Hon. Speaker of Parliament, having previously participated in the proceedings of the NRM Central Executive Committee, (CEC), as its member, which party organ determined the fate of the Respondents, acted in contravention of the principles of natural justice when she went ahead and ruled on  
5 2<sup>nd</sup> May 2013 over the matter of the 2<sup>nd</sup>, 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> respondents having vacated their seats in Parliament. It was counsel's further submission that the said ruling of the Rt. Hon. Speaker undermined the sovereignty of the people and the supremacy of the Constitution of the Republic of Uganda in contravention of **Articles 1, 2** of the same.

10 They contended that the Rt. Hon. Speaker's ruling and the continued stay of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents in Parliament resulted in irreparable and, grave damage and harm to the Petitioner/Applicants which could not be compensated by way of damages. Counsel contended further that according to the  
15 Petitioner/Applicant's pleadings and the evidence on record, they had raised serious issues for constitutional interpretation. They strongly argued that the case for the Petitioner/Applicants established a status quo that warranted the grant of a mandatory injunction. To them, the balance of convenience lay in favour of the Petitioner/Applicants to whom a greater risk of injustice, if the remedy applied for was not granted, lay as opposed to the 2<sup>nd</sup>, 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> respondents.

20 In conclusion, counsel submitted that the Petitioner/Applicants had satisfied all the necessary conditions for the grant to them of the mandatory injunction they had prayed for.

**Submissions for counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents in Constitutional Application 14 and 21 of 2013 and counsel for the Petitioner in Constitutional Petition No. 25 of 2013**

Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents, with whose submissions counsel for the Petitioner in Constitutional Petition No. 25 of 2013 associated himself, vehemently opposed the application. They contended that mandatory injunctions were unknown in the constitutional jurisprudence of this country. Counsel submitted that if granted, the mandatory injunction would wholly settle the matters in controversy between the parties in the instant Petitions and Applications yet, all that was left was for the court to come out with its judgment in the matter. They contended further that the Petitioner/Applicants had not pleaded the mandatory injunction they prayed for. To them, there was no status quo for the court to preserve.

It was counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents' further submission that the said respondents are accountable to Parliament and not to the NRM party and it would be wrong to require them to temporarily vacate their seats in Parliament.

To counsel, the Petitioner/Applicants had failed to establish any of the required conditions that would justify court in granting them the injunction they prayed for.

They prayed court to dismiss the Applications.

20

**The Court's further reasons**

The following are the further reasons for our decision.

We were satisfied that the remedy of a mandatory injunction was no stranger to the law of this land. We found that **Sections 64 and 98 the Civil Procedure Act, Cap 71 of the laws of Uganda and Rule 2 (2) of the Judicature (Court of Appeal Rules directions) S.I.13-10** are a sufficient legal basis for the entertaining by  
5 court, of the applications which were also properly brought before Court.

We were then, as we are now, acutely aware that this court in **Constitutional Application No.29 of 2011 Nasser Kiingi Vs Kampala Capital City Authority and the Attorney General** had given a mandatory injunction to the applicant to restore the peaceable status quo that existed before it had been ousted by the  
10 respondents and their agents. But even if the remedy of the mandatory injunction the respondents prayed court for was to be granted by court for the first time in the history of the constitutional jurisprudence in this jurisdiction, that should be no reason for court to refrain from granting the remedy if court considered it  
15 appropriate to do so. There is, in our view, always a first time and that is how precedents are set and how jurisprudence evolves.

We were, therefore, satisfied, that there was then need to bar the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents from their continued unconstitutional acts of stay in Parliament and participation in its activities given the clear provisions of **Article 83 (1) (g)** of the Constitution. The said continued stay and participation undermined then, as it still  
20 undermines to-day, the peoples' sovereignty and the supremacy of the Constitution contrary to the provisions of **Articles 1 and 2** thereof.

We accepted the Petitioner/Applicant's counsel's contention that the Rt. Hon. Speaker of Parliament, having participated in the proceedings of the National Executive Committee, NEC, of the NRM party which determined the fate of the  
25 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents by dismissing them from the party, should have

disqualified herself from presiding over the proceedings in Parliament where she eventually ruled as she did on the 2<sup>nd</sup> day of May 2013.

The Rt. Hon Speaker of Parliament by so presiding over the matter the subject of the instant Constitutional Petitions/ Applications was in effect, a judge in her own  
5 cause, contrary to the principles of natural justice. This offended **Articles 28** and **42** of the Constitution.

We were satisfied, therefore, that the Petitioner/Applicants had, even only that far, established a strong prima facie case with a high probability of success. See **Humphrey Nzeyi v Bank of Uganda & others Constitutional Application**  
10 **No.39 of 2012** and the decision of Supreme Court of Canada in **R.J Macdonald Inc Vs Canada Attorney General) R.J.R** which cases are binding and highly persuasive respectively. The decision that the Rt. Hon Speaker of Parliament reached and pronounced in the matter in those circumstances could be successfully challenged as being no decisions at law. See **De Souza Vs Tanga Town Council,**  
15 **Civil Appeal No. 89 of 1960** reported in 1961 EA 377 at page 388 where the East African Court of Appeal held;

**“If the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. That decision must be declared to be no decision.”**

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The controversy between the parties to the consolidated Constitutional Petitions and the two application Nos. 14 and 23 of 2013 have raised serious issues of  
25 constitutional interpretation as to whether, when the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents

were expelled from the NRM political party, the party for which they stood as candidates for and for which they were elected as members of Parliament, or when they ceased to be members thereof, they left Parliament and therefore vacated their seats. The constitutionality of the acts of the Rt. Hon. Speaker of Parliament is also questioned. These, together with other matters involved in the instant Petitions and Applications before the court, we found to be serious matters and that the applications were neither frivolous nor vexatious.

Whether the injunction granted is classified as prohibitive or mandatory, we find arguments in that direction barren. What matters is of what practical consequence the injunction is likely to be. See **Films Rover International Ltd Vs Cannon Films Sales Ltd 1987 I WLR 670**.

The principle to guide court in whatever course to take was what is likely to cause the least irremediable prejudice to one party or the other. See **National Commercial Bank Vs Orient Co-operation Ltd Jamaica of 2009 UKPC**. See also **American Cynamid [1975] AC 396**. The most important consideration for court to bear in mind in cases of this nature is as to which of the parties bore the greater risk of suffering injustice if the remedy sought was to be withheld by court.

We gave full attention to the question of whether there was a status quo that the issuing of a mandatory injunction would preserve. At the time of the granting of the injunctive order, we held that view. The peaceable status quo immediately prevailing before the situation giving raise to the dispute among the parties herein was that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents had vacated their seats in Parliament by operation of the law. Since the said vacation of seats, the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents had remained in Parliament in highly constitutionally questionable circumstances. We found it necessary to grant a mandatory injunction to restore



the said peaceable status quo as at the said material time. See **Shepherd Homes Ltd vs Sandham [1971]CH 340 at 404**. We went ahead and did exactly that on the 6th September 2013. It is, in our considered view, and we so hold, that it is immaterial that the mandatory injunction we granted substantially addressed the matter in controversy between the parties. This is permissible in law. In proper cases, mandatory injunctions do that. In the case of **Woodford & Anor v Smith & Anor [1970] 1 All ER1091** Megarry J held:

**“I do not think that there is anything to prevent the court in a proper case from granting on motion substantially all the relief claimed in the action. It is true that in *Dodd v Amalgamated Marine Workers’ Union(1923)93 LJCh at 66,129 LT at 402* it was said in the Court of Appeal that it was not the ‘usual practice’ or the ‘general rule of practice’ to grant on motion all the relief claimed in the action. But this language is general rather than absolute, the judgments are very brief, no reasons are given, and there have been later decisions. Thus in *Bailey (Malta) Ltd v Bailey [1963] 1 Lloyd’s Rep 595 at 598*, Lord Denning MR flatly said that it seemed to him that there was ‘no such rule’. In this, he based what I may call a reasoned demolition of the supposed rule, the basis of which seems to have been an objection to trying the same point over. In the *Bailey* case Harman LJ referred to the supposed rule as a theory which had in his view ‘long been exploded’...Plainly in the present case the objection which counsel for the defendants raised but did not press is no obstacle to granting the injunction**

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sought. In my judgment, looking at the case as a whole, there are no grounds on which the court should refuse to grant an injunction.”

Also, in the case of **Despina Pontikos [1975]1 E.A 38**, the Court of Appeal of Kenya cited the case of **Bailey (Malta) v Bailey [1963]1 Lloyd Rep.595**, holding that a mandatory interlocutory relief can be granted even if it is in substance a settlement of the whole relief claimed in the main action.

We felt sufficiently fortified by the above authorities in our deliberate demolition of the general restrictive rule on injunctions as a theory that had been long exploded and had no place in the instant Constitutional Petitions and Applications. We, therefore saw no ground on which the court should have refrained from granting the mandatory injunction prayed for.

We were persuaded by the submissions of counsel for the Applicant/Petitioners and that of the Petitioner in Constitutional Petition No. 19 of 2013 that the acts and the conduct of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents and the acts, of the Rt. Hon. Speaker of Parliament complained of, those of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents and their conduct would set a wrong precedent and promote indiscipline, mayhem, impunity, hypocrisy, opportunism, lack of accountability to the people, all of which amount to an affront on the sovereignty of the people and supremacy of the Constitution as provided for in **Articles 1 and 2** of the Constitution.

The voting pattern of the NRM party in Parliament was also distorted. We found it immaterial that the distortion was due to a mere 4 errant members of that party in Parliament. In a multiparty political dispensation, even a distortion caused by a single vote is grave harm to the affected political party. The New Zealand case of **SC CUV 9/2004; Richard William Prebble, Ken Shirley, Rodney Hide &**

**Muriel Newman & Donna Awatere Huata** is very pertinent and instructive. The cumulative effect of all this, we were satisfied, was more than harm and irreparable damage to the NRM party.

Another most compelling reason that persuaded us to grant the  
5 Petitioner/Applicant's the rare remedy of a mandatory injunction they prayed for even when all that was left was for Court to pronounce its final judgment in the Constitutional Petitions before it, was the glaring illegality of an unconstitutional nature that was so clearly exhibited in the impugned acts and omissions of the Rt. Hon. Speaker of Parliament, those of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents and their  
10 conduct directed against the sovereignty of the people and the supremacy of the Constitution. The impugned acts, omissions and conduct signified to court a possible beginning of a most dangerous and highly undesirable development that could lead to an effective overthrow of the constitutional order that the people of Uganda established for themselves and their posterity through the promulgation of  
15 the 1995 Constitution. A constitutional order established by the people recalling their history that had been characterized by grave political and constitutional instability. A people that recognized their bitter struggles against the forces of tyranny, oppression and exploitation in their society. A people who ordained for themselves the duty, at all times, to defend their Constitution. In our very  
20 considered opinion, this court would not sanction such an illegality once it was brought to its attention, see **Makula International Vs Cardinal Nsubuga Wamala [1982] HCB 11**. For each day that would go by without court curbing that illegality would, in our view, be a day too many. The situation, in our very considered opinion called for immediate containment in the most cost effective  
25 manner through appropriate judicial orders, if only to forestall, even the mere contemplation by anybody, of exploring other possible ways of defending the

mutually agreed upon constitutional order of this country as envisaged in **Article 3(4)** of Constitution. We found it necessary to instantly stop that illegality which to us signaled a possible return to anarchy, impunity and lack of accountability by the leaders in our society to the people. This prompted us to grant the rare remedy  
5 of a mandatory injunction, even though in the interim.

The above are our full reasons for the orders of the 6<sup>th</sup> September 2013. We find those reasons valid today and sufficient to warrant our answering issue No.7 in the affirmative, as we indeed hereby do.

Following our findings, on the above 13 issues, and since our sister Lady Justice  
10 Faith Mwendha JA/CC agrees, with only our brother Justice Remmy Kasule dissenting, we, by a majority of four to one grant Constitutional Petition Numbers 16, 19, 21 and the Cross Petition in Constitutional Petition No. 25 of 2013. Constitutional Petition No. 25 of 2013 is dismissed.

On the 6<sup>th</sup> September 2013 we granted Constitutional Applications No. 14 and 25  
15 of 2013 for which we have given our full reasons above.

In the result, we declare that:

- 20 **1. The expulsion from a political party is a ground for a member of Parliament to lose his/her seat in Parliament under Article 83(1)(g) of the Constitution.**
  
- 2. The act of the Rt. Hon. Speaker in the ruling made on the 2<sup>nd</sup> of May 2013, to the effect that the four Members of Parliament who were**

expelled from the National Resistance Movement (NRM), the party for which they stood as candidates for election to Parliament should retain their respective seats in Parliament is inconsistent with and in contravention of Articles 1(1)(2)(4), 2(1) 20(1)(2), 69, 71, 72, 74, 78(1), 79(3), 81(2), 83(1)(g),83(3) of the Constitution of the Republic of Uganda.

3. The Rt. Hon. Speaker of Parliament in her communication to the House on the 2<sup>nd</sup> day of May 2013, created a peculiar category of Members of Parliament unknown to the Constitution and contrary to Articles 1(1)(2)(4), 2(1)(2), 20(1)(2), 21, 43(1)(2)(c), 4, 69, 7, 73, 77(1)(2), 78(1), 79(3), 80, 81(2), 83(1)(g)(h), 83(3) of the Constitution.

4. The continued stay in Parliament of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents as Members of Parliament after their expulsion from the NRM party on whose ticket they were elected is contrary to and inconsistent with Articles 1(1), 2(1), (2)(4), 29(1)(e), 69(1), 72(1), 72(4), 78(1)(a) and 79(3) of the Constitution.

5. The said expelled Members of Parliament who left and or ceased being members of the Petitioner (Constitutional Petition No. 21/2013) vacated their respective seats in Parliament and are no longer members of Parliament as contemplated by the Constitution.

6. The Rt. Hon. Speaker had Jurisdiction and a duty to make a ruling on the matter before the House but she discharged the said duty

**unconstitutionally in contravention of the Constitution notably Articles 28 and 42 thereof.**

- 5           **7. The act of the Attorney General of advising on persons who can sit in Parliament under a multiparty political system, in the context and peculiar circumstances of the instant Constitutional Petitions was not inconsistent with nor in contravention of Article 78 of the Constitution.**
- 10           **8. The act of the Attorney General of advising that after their expulsion from the NRM party, Hon. Theodore Ssekikubo, Hon. Wilfred Niwagaba, Hon. Mohammed Nsereko and Hon. Barnabas Tinkasimire are no longer members of Parliament, is neither inconsistent with nor in contravention of Article 83(1) (g) of the Constitution.**
- 15           **9. The act of the Attorney General of advising the Right Honourable Speaker of Parliament to declare the seats of Hon. Theodore Ssekikubo, Hon. Wilfred Niwagaba, Hon. Mohammed Nsereko and Hon. Barnabas Tinkansimire in Parliament, became vacant on their expulsion from the NRM party was neither inconsistent with nor in contravention of**
- 20           **Article 86 (1) of the Constitution.**
- 25           **10. The act of the Attorney General of advising the Right Honourable Speaker of Parliament to reverse her ruling regarding the seats of Hon. Theodore Ssekikubo, Hon. Wilfred Niwagaba, Hon. Hon. Mohammed Nsereko and Hon. Barnabas Tinkansimire in Parliament was neither**

**inconsistent with nor in contravention of Article 119 of the Constitution.**

5 **11. The act of the Attorney General of advising the Rt. Hon. Speaker of Parliament to reverse her ruling on whether the seats of Hon. Theodore Ssekikubo, Hon. Wilfred Niwagaba, Hon. Mohammed Nsereko, and Hon. Barnabas Tinkansimire, are vacant when the said ruling was the subject of the court's interpretation in Constitutional Petition No. 16 of 2013, where the Attorney General is the first respondent was neither**  
10 **inconsistent with nor in contravention of Article 137 of the Constitution.**

### **Court Orders**

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The court orders as follows:

- 20 **1. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents are hereby ordered to vacate their seats in Parliament forthwith.**
- 2. The Electoral Commission is directed following the service to it of a copy of this judgment by the 1<sup>st</sup> respondent to conduct by elections in**  
25 **the constituencies hitherto represented by Hon. Theodore Ssekikubo, Hon. Wilfred Niwagaba, Hon. Mohammed Nsereko, and Hon. Barnabas Tinkansimire in accordance with the electoral laws of this Country.**

3. A Permanent Injunction is hereby issued restraining the Rt. Hon. Speaker and the Rt. Hon. Deputy Speaker of Parliament from allowing the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to continue sitting in Parliament or to take part in any parliamentary activity or any of its committees and to stop payment to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> respondents of any salaries, allowances, other emoluments and entitlements, save those that may have accrued to them immediately before the issuance of these orders.

4. The mandatory injunction issued by this court on 10<sup>th</sup> September 2013 is hereby vacated.

5. We grant costs to the successful parties in the consolidated Constitutional Petitions and applications with a Certificate for two Counsel.

We so order.

Dated at Kampala this 21<sup>st</sup> day of February 2014.

**Hon. S.B.K Kavuma**  
**AG. DEPUTY CHIEF JUSTICE/PCC,**

**Hon. A.S Nshimye**  
**JUSTICE OF APPEAL/JCC,**



**Hon. Remmy Kasule**  
**JUSTICE OF APPEAL/JCC,**

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**Hon. Faith Mwendha**  
**JUSTICE OF APPEAL/JCC,**

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**Hon. Richard Buteera**  
**JUSTICE OF APPEAL/JCC,**

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**THE REPUBLIC OF UGANDA**

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA.

**(1) CONSTITUTIONAL PETITION NO. 16 OF 2013**

1. HON. (RTD) SALEH M.W.KAMBA

2. MS. AGASHA MARY

.....PETITIONERS

VERSUS

(1) ATTORNEY GENERAL

(2) HON. THEODRE SSEKIKUBO

(3) HON. WILFRED NIWAGABA

(4) HON. MOHAMMED NSEREKO

(5) HON. BARNABAS TINKASIMIRE

.....RESPONDENTS.

**(2) CONSTITUTIONAL PETITION NO. 21 OF 2013**

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NATIONAL RESISTANCE MOVEMENT ::::::::::::::::::::PETITIONER

VERSUS

(1) ATTORNEY GENERAL

(2) HON. THEODRE SSEKIKUBO

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(3) HON. WILFRED NIWAGABA

::::::::::::::::::RESPONDENTS.

(4) HON. MOHAMMED NSEREKO

(5) HON. BARNABAS TINKASIMIRE

**(3) CONSTITUTIONAL PETITION NO. 19 OF 2013**

JOSEPH KWESIGA ::::::::::::::::::::PETITIONER

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VERSUS

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

**(4) CONSTITUTIONAL PETITION NO. 25 OF 2013**

HON. ABDU KANTUNTU ::::::::::::::::::::PETITIONER

VERSUS

15

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

CORAM: HON MR. JUSTICE S.B.K KAVUMA AG. DCJ/PCC

HON. MR. JUSTICE A.S NSHIMYE JA/JCC

HON. MR. JUSTICE REMMY KASULE JA/JCC

HON. LADY JUSTICE FAITH E.K. MWONDHA JA/JCC

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HON.MR.JUSTICE RICHARD BUTEERA JA/JCC

## **JUDGMENT OF MWONDHA ,JA/CC**

Although I agree with my learned brother Justices of the Court in the majority Judgment, declarations and orders made therein, I came to the same conclusion for different reasons in respect of issues, 1, 4, 5&6.

5 For clarity I will reproduce the issues 1, 4, 5 & 6.

(1) Whether the expulsion from a political party is a ground for a Member of Parliament to lose his or her seat in Parliament under Article 83(1) (g) of the 1995 Constitution.

(4) Whether the continued stay in Parliament of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents  
10 after their expulsion from the NRM party on whose ticket they were elected is contrary to and or inconsistent with **Articles 1(1)(2)(4) ,2(1), 21(1),(2),29(1) (e),38(1),43(1),45,69(1),71,72(1),72(2),72(4),78(1),79(1)(3) and 255(3)** of the Constitution.

(5) Whether the said expelled MPs who left and or ceased being members of the  
15 Petitioner vacated their respective seats in Parliament and are no longer Members of Parliament as contemplated by the Constitution.

(6) Whether the said expelled MPs vacated their respective seats in Parliament and are no longer Members of Parliament as contemplated by the Constitution.

I, also agree that the gist of the issues was whether the expelled members of Parliament left the party for which they stood and were elected to Parliament and whether they vacated their seats.

As a Court of first instance in Constitutional matters, I found it important to state the substance of the Petition Nos. 16, 21/2013, CP No. 19/2013 CP No. 21/2013, C.P No.25/2013 Cross Petition in CP No. 16/2013, and the responses. All Petitions were brought under **Article 137** of the Constitution, and the Constitutional Court (Petitions & Reference) Rules S.1 91 of 2005 and all enabling laws. They were consolidated by Court after having been filed separately by the individual Petitioners. Petition No. 21/2013 was filed on 20<sup>th</sup>May 2013 by the Petitioner's counsel, Mugisha & Co. Advocates & M/s Bakiza & Co. Advocates & M/S Twinobusingye Severino & Co. Advocates.

It was stated that the Petitioner is a Political party organization established and registered under the Political parties and organizations Act 2005 and is the Ruling National Political Party and thus having interest in or aggrieved by the following matters being inconsistent with and/or in contravention of the Constitution of the Republic of Uganda and contented as follows;-

- (1) That the Petitioner has suffered and shall suffer the infringement of its rights and contravention of the Constitution by the act of the Rt. Hon. Speaker of

Parliament of the Republic of Uganda in the Ruling made on 2<sup>nd</sup> May ,2013 to the effect that the four Members of Parliament to wit Hon. Theodre Ssekikubo, Member of Parliament for Lwemiyaga County, Hon. Wilfred Niwagaba, Member of Parliament for Ndorwa East Constituency, Hon. Mohammed Nsereko, Member of Parliament for Kampala Central Constituency and Hon. Barnabas Tinkasimire, Member of Parliament for Buyaga West Constituency (expelled MPs) who left the National Resistance Movement, a party for which they stood as candidates for election to Parliament, should retain their respective seats in Parliament is inconsistent and in contravention with **Articles 1(1)(2)(4), 2(1)(2), 20(1)(2)21,43(1)(2)(c), 45, 69, 70,71,72, 73, 74,77(1)(2),78(1),79, 80,81(2),83(1)(g)(h) and 83** of the Constitution of the Republic of Uganda.

(2) That the act of the Rt. Hon. Speaker culminated in the creation of a peculiar category of members of Parliament unknown to the Constitution and was inconsistent with and or in contravention of the above stated articles and ipso fact null and void.

(3) That the expelled MPs who left and or ceased being members of your Petitioner vacated their seats in parliament as contemplated by the Constitution.

(4) That the said expelled MPs who left and or ceased being members of the Petitioner are now politically wild people, aliens/anonymous/trespassers with no identity in the Parliament of the Republic of Uganda which is inconsistent with the above stated articles of the Constitution.

5 (5) That the Rt. Honourable Speaker has no jurisdiction to make a ruling on such matters and her action was inconsistent with and in contravention of the above stated Articles.

(6) That the act of the Rt. Hon. Speaker was illegal abinitio and ought not be left to stand once brought to the attention of this Court.

10 (7) That the Attorney General of Uganda had issued a legal opinion to the effect that the Rt. Hon. Speaker's Ruling is illegal and unconstitutional which is binding on her.

(8) That the impugned acts of the Rt. Hon. Speaker are inconsistent with and in contravention of the provisions of the Constitution due to the following reasons:

15 (a) That the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents who left and or ceased being members of the Petitioner vacated their seats in Parliament and are no longer members of Parliament as contemplated under the Constitution.

20 (b) That the said expelled MPs who left and or ceased to be members of the Petitioner do not have any identity, are not attached to or affiliated to

any political party recognized by the Constitution of the Republic of Uganda.

(c) That the parliamentary Seats of the said expelled members of Parliament fell vacant upon their expulsion from the Petitioner.

5 (d) That the Rt.Hon. Speaker had no jurisdiction to make the ruling as she purportedly did on such a matter.

(e) That the continued stay of the said expelled MPs in Parliament is an affront on the multiparty dispensation which was ushered in by Ugandans in 2005, National Referendum and is bound to breed, impunity,  
10 anarchy which will in the end whittle down representative multiparty democracy.

(f) That if the Rt. Hon. Speaker's ruling is left to stand, it will set a dangerous precedent as it will leave political parties as mere empty shells instead of being key institutions of representative democracy or  
15 as linch pins thereof as provided for in the Constitution.

(g) That if the Ruling of the Rt. Hon. Speaker is allowed to stand, it will lead to the withering away of political parties and multiparty democracy, the safe guard for peace, order, security and tranquility the hall mark of the rule of Law and Constitutionalism.

(h) That the act of the Rt. Hon. Speaker is illegal abinitio and ought not be left to stand once drawn to the Court's attention.

(i) That the peculiar category of members of Parliament purportedly created by the Rt. Hon. Speaker is not envisaged by the Constitution and is bound to bring confusion and encourage indiscipline among other members and shall culminate in anarchy and mayhem.

The petitioner prays that this Honourable Court grants the following Declarations and orders:

(1) That the act of the Rt. Hon. Speaker of Parliament in ruling that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents who left the Petitioner should retain their respective Seats in Parliament is inconsistent with and in contravention of **Articles 1(1)(2)(4), 2(1)(2), 20(1)(2), 21, 43(1)(2)(c), 45, 69, 70, 71, 72, 73, 74, 77(1) and (2), 78(1), 79, 80, 81(2), 83(1)(g) and 83(3)** of the Constitution of the Republic of Uganda.

(2) That the act of the Rt. Hon. Speaker of creating a peculiar category of members of Parliament unknown to the Constitution is in contravention or inconsistent with **Articles 1(1)(2)(4), 2(1)(2) 20(1)(2), 21, 43(1)(2)(c), 45, 69, 70, 71, 72, 73, 74, 77(1) and (2), 78(1), 79, 80, 81(2), 83(1)(g)(h) & 83** of the Constitution ipso facto null and void.



(3) That the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents vacated their respective seats in Parliament upon expulsion from the Petitioner.

(4) That the respective seats of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents are presently legally vacant.

5 (5) That a by-election be conducted by the National Electoral Commission to fill the respective seats.

(6) That the respondents pay costs of this petition and a certificate for two counsel be issued.

The Petition is supported by the affidavits of Yoweri Kaguta

10 Museveni, Chairman of the Petitioner and Amama Mbabazi, Secretary General of the Petitioner and supplementary affidavits with documents annexed of the saiddeponents respectively, the Petitioner stated would rely on. The affidavits essentially had the same contents, so I will state them as follows:-

15 (1) That they were male adult Ugandan citizens of sound mind and the Chairman and the Secretary General and that they swore the affidavits in those capacities.

(2) That the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents were nominated as candidates for election as members of parliament by the Petitioner who

sponsored their respective candidates in the 2011 as party Members of Parliament.

(3) That the respondents as above stated stood as candidates for the Petitioner as the Political party for which they stood for election to the 9<sup>th</sup> Parliament and they were elected as such.

(4) That on or about 14<sup>th</sup> April 2013 the central Executive Committee (herein referred to as CEC) of the Petitioner received a report and proceedings from the party Disciplinary Committee. The said Disciplinary Committee had found that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents had acted and or behaved in a manner that contravened various provisions of the party Constitution. The said party Disciplinary Committee had decided to expel them from the Petitioner and the decision was confirmed by the Central Executive Committee of the party. (Copies of the communique of the central executions committee and the Executive summary) were attached and marked Annexures "A" & A<sup>1</sup> respectively.

(5) That having been expelled the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents left the petitioner and were no longer its members representing the party nor are they independents in Parliament.

(6) That the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> Respondents left the Petitioner and they  
legally vacated their Seats in Parliament as decided by the Central  
Executive Committee. The Secretary General was directed to write to  
the Rt.Hon. Speaker informing her to direct the clerk to Parliament to  
5 declare the seats of the said members of Parliament vacant so as to  
enable the Electoral Commission to organize by –elections in their  
respective Constituencies. The copy of the said letter was attached  
and marked Annexure “B”.

(7) That on 2<sup>nd</sup> May 2013 the Right Hon. Speaker made a ruling to the  
10 effect that there is no specific Constitutional provisions on expulsion  
of members of Parliament by their Political parties leading to the  
declaration of their seats in Parliament vacant, and that they should  
therefore not vacate their seats. The copy of the Ruling & Hansard  
was attached and marked Annexure “C” & “C1” respectively.

15 (8) That they know that by being expelled from the party, the Petitioner  
for which they stood as candidates for election to Parliament, and  
which party had sponsored their nomination, candidature and election,  
the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents, ipso facto vacated their seats in  
Parliament.

(9) That the said Ruling of the Rt. Hon. Speaker and the refusal or failure to direct that they vacate their seats in Parliament, infringed on the rights of the party and its members enshrined in **Articles 1(1),(2) (4),2(1)(2),20(1)(2),21,42,43(1)(2)(c),45,69,70,71,72,73,74,77(1) & (2),78(1),79,80,81(2),83(1)(g)(h)& 83(3)**of the Constitution of the Republic of Uganda.

(10) That as a party they are deprived of their Parliamentary Seats and those four Constituencies are not currently represented, yet the electorate preferred the Petitioner's hitherto flag bearers to represent them.

(11) That they know that there is no way members of parliament who were nominated, sponsored and elected as candidates of the Petitioner on the basis of the Petitioner's manifesto and ideology can continue to represent their Constituencies which elected them after they have been expelled from the party on whose ticket they had been elected.

(12) That they know that the Attorney General has since issued a legal opinion to the effect that the Rt. Hon. Speaker's decision to allow the said expelled MPs to stay in Parliament is illegal and an abuse of the law and is inconsistent with the constitution and other

pieces of legislation made there under. That they know that the Attorney General's opinion is binding on Government and all Government institutions and agencies and must be respected and acted on without question (A copy of the Attorney General's letter was annexed and marked "D").

5  
(13) That they know that the Ruling of the Right Hon. Speaker of Parliament infringed on the Petitioners Party structures in as far as it cannot enforce strict disciplinary measures of its errant and disobedient members.

10  
(14) That they know that one of the factors of our history which led to Political and Constitutional instability and which was the mischief the Constitution sought to cure was the action of members of Parliament crossing the floor of Parliament and leaving a political party which sponsored them while entering Parliament to another party without seeking a fresh mandate.

15  
(15) That in 1962 the 1<sup>st</sup> Independent Government of Uganda was an alliance of two political parties the Uganda Peoples Congress (UPC) and Kabaka Yekka (KY) while the Democratic Party (DP) formed the opposition.

(16) That the UPC assumed power, the then Prime Minister Milton Obote realizing the danger of having a partner who could any time cross to another party and effectively bring his government to an end decided to persuade individual MPs of KY and DP to cross to UPC.

5 (17) That after 1964 the KY/UPC alliance collapsed and several KY,MPs and DP, MPs crossed from their respective parties to UPC without submitting themselves to seek fresh mandate such that by 1966 Obote's UPC had absolute majority in Parliament.

10 (18) That the then Prime Minister, Milton Obote had succeeded to build a majority in Parliament and accordingly by 1966 he felt strong enough to abolish the 1962 independence Constitution. This act plunged Uganda into Constitutional crisis and brought political instability from which Uganda has suffered for several decades and is only slowly recovering under the Constitutional dispensation ushered  
15 in by the NRM administration.

(19) That they know the people of Uganda promulgated the 1995 Constitution, mindful of the tragic period of our history and inserted clauses notably **Article 83(1)(g)** in the Constitution which ensured that a member of Parliament who leaves the party which had  
20 sponsored him and for which he stood for election to Parliament

either to join another party or to remain in Parliament as an independent should seek a fresh mandate through a bye election.

5 (20) That the act of the Rt.Hon. Speaker of Parliament to rule that the MPs remain in Parliament despite having left the party that sponsored them to Parliament was out of step with the Constitutional provisions and threaten to drag the Country back to Constitutional mayhem and political instability.

10 (21) That they know that given the Constitutional mischief of our political history and the provisions of the Constitution notably **Article 83(1)(g)** which were meant to heal that mischief there is no way the four respondents who became Members of Parliament through nominations, sponsored and elected as candidates of the petitioner on the basis of the Petitioners manifesto and ideology can continue to represent their Constituencies after they had left the NRM.

15 (22) That they know that proportionality of a party representation in Parliament is a hall mark of Multi party political dispensation which the people of Uganda adopted in 2005 Referendum on political Systems. That they know that the proportionality of Political party representation in Parliament as determined by the People of Uganda 20 through the 2011 Parliamentary Elections is distorted by the 2<sup>nd</sup>, 3<sup>rd</sup>,

4<sup>th</sup> and 5<sup>th</sup> respondents leaving the NRM, the party they stood for election and were elected to Parliament.

The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents in their filed reply affidavits to the Petition, opposed the Petition Nos. 21/2013, 16/2013, 19/2013 and the cross petition of the

5 1<sup>st</sup> respondent in all petitions. They stated among other things as follows:-

(1) They have never left the party but rather that they were forced out and have challenged that forceful eviction as distinct from the voluntary act of leaving and that they have never vacated their seats.

10 (2) That in Uganda proportionality of party representation is not a hall mark of Political party dispensation as it's that principle which is distorted by the presence of the Military in Parliament.

(3) That the rules of procedure as to sitting in Parliament among others is an internal decision by Parliament and not a Constitutional matter.

15 (4) That there was a lot of resistance in the House to the bill that sought to amend **Article 83(1) (g)** by inserting the word "expulsion" and as a result the Government withdrew the proposal.

20 (5) That they verily believe that the framers of the Constitution deliberately left out "expulsion" from the political party as a ground for vacating a seat in order to directly protect the rights of Ugandans and not political parties as per **Articles 38(1)** and **78(1)** of the Constitution.



(6) That they deny being with no known identity in the Parliament as alleged or at all and that they represent the people of their respective Constituencies in accordance with **Article 78(1)** of the Constitution and hence had not breached any provision of the Constitution.

5 (7) Hon. Theodre Ssekikubo denied having been nominated by the Petitioner to stand but by one Wamala Muzzanganda Kuwatana and Nakaala Prossy. That he had never left the Petitioner as his membership fee is being deducted.

#### **Introduction to Resolution of issues 1,4,5 & 6**

10 **(1)** It was clear from Petition No. 21/2013 that, the Petitioner is a Political Party/Organization established and registered under the Political Parties and Organizations Act 2005. It is a body corporate. This gives the Petitioner the right to allege that any act or omission by any person or authority is inconsistent with or in contravention of the provision of the  
15 Constitution and may Petition the Constitutional Court for a declaration to that effect and for redress where appropriate as per **Article 137(3)(b)**.

**(2)** Political Parties/Organizations are creatures of the 1995 Constitution.

The gist of the genesis of Political parties/organizations is evidenced from the preamble of our Constitution which states the general purpose of the  
20 Constitution. It states: **“We the people of Uganda recalling our history**

which has been characterized by **Political and Constitutional instability, recognizing the struggles against the forces of tyranny, oppression and exploitation, committed to building a better future by establishing a socio economic and Political order through a popular and durable National Constitution on the principles of Unity, Peace, equality democracy, freedom, socio justice and progress...Do hereby in and through the Constituent Assembly adopt , enact and giveourselves and our posterity, this Constitution of the Republic of Uganda this 22<sup>nd</sup> day of September, in the year 1995.**

**FOR GOD AND MY COUNTRY.**

The preamble stresses the commitment to building a better future through the popular and **durable National Constitution rooted in the principles of Democracy, Social Justice among others which should be guarded jealously by all Ugandans.**The Courts of law and the Judiciary in the administration of Justice have a duty to exercise judicialpower bearing in mind that judicial power is derived from the people and exercised by Courts established under this Constitution in the name of the people and in conformity with the law and with the values, norms and aspirations of the people. See **Article 126(1)** of the Constitution.

(3) The Constitution provides the National Objectives And Directive Principles of State Policy Part 1 is on Implementation of Objectives and provides as follows:

(i) *“The following objectives and principles shall guide all organs and agencies of the state, all citizens, organizations and other bodies and persons in applying or interpreting the Constitution or any other law and implementing any policy decisions for establishment and promotion of a just, free and democratic society.”*

Political Objectives: Part II: Democratic Principles:- It provides among others,

**(ii) “All people of Uganda shall have access to leadership positions at all levels subject to the Constitution.**

(V) Provides:- *“All Political and Civic Associations aspiring to manage and direct public affairs shall conform to the democratic principles in their internal organizations.”*

*The Constitution Article 29(1)(e) provides: “ Every person shall have the right to... (e) freedom of association which shall include the freedom to form and join associations or Unions including trade unions and Political and other Civic Organizations.”*

**Article 69** of the Constitution provides for the 3 types of Political Systems as hereunder:

5 **(1)** The people of Uganda shall have the right to choose and adopt a political Systems of their choice, through free and fair elections or refranda.

**(2)** The political System referred to in clause (1) of this article shall include:-

(a) The Movement Political system

10 (b) The Multi party political system and

(c) Any other democratic and representative Political System.”

**Article 71** provides : (1) A Political party in the multi Party Political System shall conform to the following principles (a)...(b) ...(c) **the internal Organisation of a Political Party shall conform to the democratic principles enshrined in this Constitution,** (See also ii & v Supra-Political objectives & Democratic principles).

15

**Article 72(1)** provides: “Subject to the provisions of this Constitution the right to form Political Parties and any other Organisationis guaranteed.

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

**Article 72(4)** provides: “Any person is free to stand for an election as a Candidate, independent of a political organization or political party.

5 **Article 83(3)** ‘The provisions of clauses (1)(g) and (h) and (2) of this article shall only apply during any period when the multiparty system of government is in operation.’

### **Resolution of issues:**

From the evidence on record by the Petitioner in Constitutional Petition No.

10 21/2013, and the responses of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents it was clear that the above MPs joined the Petitioner (Party) after it complied with all the Constitutional requirements as provided in **Article 71** above stated. They were flag bearers of the Petitioner in the 2011 elections based on the Democratic principles and practice as required by the Constitution. Those material facts were not disputed or challenged

15 by the four respondent MPs. They freely exercised their freedom to join the Petitioner in accordance with **Article 29 (1)(e)** and in line with the democratic principles and political objectives of the Constitution.

The submission by counsel for the four respondents that the respondents’ conduct that culminated in their expulsion from the party/Petitioner was not a matter for

Constitutional interpretation but a matter between the Petitioner and the four respondents internally, was too far fetched as it was not supported by evidence or principles of Constitutional interpretation. But even if I was to agree, which I do not, it was a matter between the petitioner and the four respondents, so the Rt. Hon. Speaker had no right to interfere with the party's internal organization, to rule that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents remain in Parliament, when the party had expelled them.

Democratic Principle (ii) is clear and for avoidance of doubt I will reproduce it:-

10 “All people of Uganda shall have access to leadership positions at all levels subject to the Constitution. “This objective is made justiciable by **Article 29(1)(e)** and **72** of the Constitution. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents, under **Article 29(1)(e)** exercised their freedom to join the party in accordance with the internal organization of the party as provided by law. By the internal organization of the  
15 Petitioner's party they accessed their respective leadership positions in the respective Constituencies as Members of Parliament.

It will be too casual to say that the contravention of the Petitioner's constitution was not of importance to the National Constitution. The internal Organisation of the Party is the agreement between the members of a party and the Party itself and

it connects both the members and the Party to the National Constitution. It is the umbilical cord of all parties concerned. Ugandans consented to be governed in accordance with the Constitution. The petitioner's party constitution was availed to Court by the 5<sup>th</sup> respondent. It provides in **article 39(2)** thereof "For every elective  
5 National and Local Government Office, there shall be primaries held within NRM to determine NRM candidates as follows:

*"Parliamentary - the NRM Parliamentary candidate for a constituency shall be elected by a college consisting of members of the sub county, Town council, Municipal Divisions and Parish conferences within the Constituency."*

10 This is how the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents accessed their candidature in elections and consequently elected to those leadership positions. The word "Access" according to Webster's Universal Dictionary means: broach (open, pierce, enter, approach, avenue, entrance, entry, passage way admission) to mention but a few. While Collins Dictionary 3<sup>rd</sup> Edition 2009, explains that "If you have access to a  
15 building or other place, you are able or allowed to go into it. If you have access to a person you have opportunity or right to see or meet them..."

The Constitutional provisions stated above put in place the three Political Systems i.e **Article 69**, and provides for Political Parties and Organizations Act and how they are regulated i.e **Article 72(2)**. **Article 73** of the Constitution regulates by way

of limiting the activities of each political system when one of the political systems has been chosen and adopted by Ugandans. It provides among others “... *during the period when any of the political systems provided for in this Constitution has been adopted, organisations subscribing to other political systems may exist* 5 *subject to such regulations as Parliament shall by law prescribe.*”

The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents after contravening their party/ petitioner’s constitution, disciplinary proceedings were commenced against them. There is evidence as contained in Annexure “A” & A1 attached on the Petition, to the effect that they were invited to attend the proceedings but they declined to attend. 10 They denied themselves the right to be heard as per **Article 28(1)** and **44(c)** of the Constitution cannot be invoked in their favour. There were 5 MPs who were invited and only one attended. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents who did not honour the invitation were found to be in breach of the constitution of the party which resulted in their dismissal and or expulsion as provided by the petitioner’s 15 constitution.

The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents in clear terms in their responses to the Petition 21/2013 denied that they do not represent the Petitioner in Parliament but represent their constituencies which constituencies lawfully elected them for representation in Parliament. They also stated that they did not voluntarily leave but forced out of 20 the party. The validity or lawfulness of their election is not in issue at all. What is



in issue for this Court to interpret whether the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents left the party for which they stood as candidates for election to Parliament within the meaning of **Article 83(1)(g)** and whether they vacated their seats.

To answer that issue, it was pleaded by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents in their responses, that the reason why expulsion was not provided in the Constitution was deliberate and was intended to protect the rights of Ugandans and not political parties as per **Article 38** and **78(1)** of the Constitution. They further stated in their responses that they filed a case against the party which is pending determination.

According to the documents they attached, the case filed was Application No. 251/2013 in the High Court brought under Article 42 of the Constitution, S.34 of the Judicature Act .and the Judicature (Judicial Review Rules) S.1.No. 11/2009. S.34 provides for habeas corpus!! It was seeking nevertheless for prerogative orders of Court and in particular sought for quashing the decisions of the respondent (Petitioner) *from initiating and prosecuting the applicants by the disciplinary committees. It was also seeking for an order of prohibition prohibiting the Secretary General of the Respondent from taking part in the disciplinary proceedings against the applicants.* The application was not challenging their expulsion at all.

Besides, they never challenged the allegations that they contravened the party/petitioner's constitution/internal organisation rules in their responses to the petition. They kept silent about it. It is trite law that; an omission or neglect to challenge the evidence in chief of a material or essential part of cross examination would lead to an inference that the witness' evidence was accepted to its being assailed to inherently or probably credible" (See **James Sawabiri and another V. Uganda SCCR Appeal NO. 5 of 1990**).

Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents submitted that the four respondents were not agents of the party (Petitioner). This did not have any merit whatsoever. By the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents' denying that they were not representing the Party on whose ticket they stood as candidates to be elected to those leadership positions, they were admitting that, they had actually left party (petitioner). This apparently explains in my view why they never honoured the invitations to the national disciplinary party proceedings and denied themselves the opportunity to be heard. Their conduct before and after expulsion manifestly showed that they left the party /Petitioner which gave them access to the Public office they held. Their physical leaving of their seats where they were sitting in Parliament as members of the party (Petitioner) whose ticket they stood for election, was an act that confirmed their voluntary leaving which act culminated in the creation of a peculiar membership in Parliament which was inconsistent with and in contravention of

the Constitution. Their pleadings in their responses that ‘expulsion’ as a ground was left out in the Constitution to protect individuals not parties under **Article 38(1)** and **78(1)** of the Constitution was a misconception on their part. **Article 38(1)** of the Constitution provides for Civic Rights and activities. It provides:

5 “ *Every Ugandan Citizen has the right to participate in the affairs of government, individually or through his or her representatives in accordance with the Law*” It is a cardinal principle of Constitutional interpretation that “ the entire Constitution has to be read as an intergral whole. No one provision of the Constitution should be segregated from the others and be considered alone, *but all provisions bearing*

10 *on a particular subject are to be brought into view and be interpreted to effectuate the greater purpose of the instrument.*” This is the rule of harmony, the rule of completeness and exhaustiveness and rule of paramountancy of the Constitution .

*See Cases Paul K. Semwogerere and 2 others V. Attorney General Constitutional Appeal NO. 1/2002, Okello Okello V. Attorney General,*

15 *Constitutional Petition No. 4/2005, Thomas Kweyalo alias Latoni, Constitutional Petition , Appeal No. 36/2011.*

**Article 78(1)** of the Constitution provides for the composition of Parliament and states: Parliament shall consist of:

- 20 (a) Members directly elected to represent Constituencies.  
(b)...

(c) ...

(d) ...

It is general in nature, as it provides for all political systems as provided in **Article 69** of the Constitution.

5 **Article 38(1)** and **78(1)** of the Constitution are fundamentally connected to other provisions like part II(ii) and (v) of the National objectives and Directive Principles of State Policy, **Article 1** and **2** of the Constitution, **Articles 29 (1)(e) & Article 43(1)(c), Article 71 (1)(c), Article 72 , Article 73, Article 74.** There is no way therefore **Articles 38(1) and 78(1)**  
10 can be segregated from **Article 83(1)(g)** of the Constitution and the others above quoted.

It is important to note that it's a cardinal principle of constitutional interpretation that the "Constitution is the Supreme law of the land and forms the standard on which all other laws are justified. Any law that is  
15 inconsistent with or in contravention of the Constitution is null and void to the extent of its inconsistency (see **Article 2** of the Constitution)

It was submitted by counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents that the word "leave" had the word voluntary embedded in it. That those respondents were forced to leave or were just dismissed by the petitioner in Constitutional Petition  
20 No.21/2013.

From the evidence on record, as summarised herein and the above foregoing, it is clear that the 4 MPs left the Party/Petitioner at their own volition in other words they left voluntarily as evidenced by their pleadings and they are bound by their pleadings and no amount of words can change them (pleadings).

- 5 'Voluntary' according to the Blacks law Dictionary 9<sup>th</sup> Edition means, free, deliberate, designed, intended discretionary, optional, willing.

The word 'leave' means, according to Webster's Universal English Thesaurus, to abandon, decamp, go quit, vacate, withdraw, desert, forsake, relinquish, renounce, consign, refer cease, desist from, discontinue, refrain stop.

- 10 The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents exercised their freedom to associate when they joined the Petitioner (Party) and they exercised their freedom to leave it when they contravened the party Constitution and refused or neglected to attend the disciplinary proceedings as per their internal organisation rules despite the invitations. They therefore chose not to associate or belong when the disciplinary
- 15 proceedings according to the Party Constitution were commenced, so they left. Joining a party is an act of association and an act of belonging in accordance with **Article 29(1) (e)** of the Constitution and it is voluntary. Their expulsion was merely a formality to formalize their having left the party to pave way for fresh elections to be held in the respective Constituencies.

“Leaving” is the object or focus of **Article 83 (1)(g)**. Expulsion is merely for effectuating the purpose or intention of the **Article**. Expulsion in my view is a preserve of the party during multiparty dispensation and it’s not exercised by parties arbitrarily or capriciously and was not exercised on the basis of sentiment.

5 A member of a party is expelled when that member violates the democratic principles and practice within the party Constitution or internal organization, in that allowing such member to remain in the party would affect negatively the promotion of a just, free and democratic society as intended by the Constitution. Counsel for the Petitioner in C.P 21/2012 and counsel for the

10 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents submitted that the word ‘leave’ was clear and unambiguous and that therefore the literal and natural meaning should be given to it. My view is that the facts of the instant Petition are different from the case of **George Owor V. Attorney General & Another Constitution Petition No.38/2010** relied on by counsel for the petitioner. In that case the members had

15 clearly left their respective parties/organization. They had subjected themselves to elections afresh in other parties and as independents which were different from the parties which provided them access to their then positions in Parliament. Those MPs had not been subjected to disciplinary proceedings and they had not been expelled from their respective parties for having contravened their parties

20 constitution. While the literal and natural principle of constitutional

interpretation could be applicable in that Petition of George Owor Supra, it's the purposive approach of interpretation which is appropriate to be adopted in the instant case.

Once the word voluntary is read in the word leave, then it follows naturally that the  
5 word involuntary can be read in it as well. This creates the ambiguity and therefore it becomes imperative to adopt the purposive approach to interpretation.

It has been held consistently by the Supreme Court and this Court that, ***“In determining the Constitutionality of legislation, its purpose and effect must be taken into consideration. Both purpose and effect are relevant in determining  
10 constitutionality of either an unconstitutional purpose or constitutional effect animated by the object the legislation intends to achieve.”*** ( See the cases already cited (Supra).

Counsel for Petitioner in Constitutional Petition No. 25/2013 cited the case of **Attorney General V. Major General Tinyefuza Constitutional Appeal No.1 of  
15 1997** and particularly the Judgment of Oder JSC. It was emphasized that, *‘the purposive rule entails the looking and understanding of the history of the enactment to know the intention of the Legislature which led to the legislation.’* Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents relied heavily on the Constitutional Commission Report Analysis and Recommendations. The affidavit

of Hon.Ssekikubo was annexed and the relevant part Annexure ‘D’, the debate of the 7<sup>th</sup> Parliament in 2005 on the Constitutional (Amendment) Bill NO.3 of the 28<sup>th</sup> July, 2005. All those were reproduced in the majority judgment, I will not reproduce them. It had been proposed by the Attorney General that expulsion be included as a ground for leaving a political organization or political party for which one stood as candidate for election to Parliament. After the debates the amendment was withdrawn. It was stated that it was opposed on the basis that (1) it would lead to dismissals and counter dismissals from Political parties and (2) that it would be used for internal strict discipline of Political parties. Others opposed it on the basis that it was redundant. It’s important to note that the history to the enactment of the Constitution and in particular **Article 83(1)(g)** started much earlier than 1995 and 2005. This is clear from the preamble to the Constitution Supra. It should also be noted that as part of the history of the enactment the Uganda Constitutional Commission was established by Statute No. 5 of 1988 and the terms of reference of the commission were provided in S. 4 and 5 of that Statute. The functions were, among others, to establish a free and democratic system of Government that will **guarantee the fundamental rights and freedoms of the people of Uganda.**

(a)(i) *To study and review the Constitution(old Constitution) with the view to making proposals for enactment of the National Constitution that will*



*create viable political institutions that will ensure maximum consensus and orderly succession.*

**(b) Formulate and structure a draft Constitution that will form the basis for the Country's new Constitution.**

5 (v) *Develop a system of Government that ensures people's participation in the governance of the country.*

**(vi) Endeavour to develop a democratic free and fair election system that will ensure the peoples representation in the legislature and at other levels.**

10 **(vii) Establish and uphold the principles of public accountability by the holders of public officers and political posts.**

The Constituent Assembly Statute 1993 (is part and parcel of the history to the enactment of the legislation) established and provided the composition of the Constituent Assembly. It also provided the functions of the Constituent  
15 Assembly in S.8 therein as follows;-

**(a) To scrutinise, debate and prepare a final draft of the Constitutional text prepared and submitted to the minister by the Uganda Constitutional Commission under the provisions of section 6 of the Uganda Constitutional Commission Statute 1988.**

20 **(b) To enact and promulgate a new Constitution of the Republic of Uganda.**

The Report And Analysis of Recommendations was just one of the working documents and was not final, neither did it contain a draft Constitution. The Constituent Assembly was tasked, under S.8 of the Constituent Assembly Statute 1993 to scrutinize, debate and prepare a final draft of the Constitutional text prepared and submitted to the Minister among others. It was also tasked to enact and promulgate a new Constitution. Again as part of the history of the enactment, **the Constituent Assembly during the consideration stage of the draft Constitution of the Republic of Uganda, chapter 8 –the Legislature, Article 135 Tenure of office of Members of Parliament**, on Thursday 23<sup>rd</sup> March, 1995 starting from page 3519 of the Constituent Assembly proceedings particularly page 3533, **Article 135** of the draft Constitution was scrutinized, debated and was passed as it was in the Draft Constitution This became the present **Article 83(1)(g)** of the Constitution which is in issue in this Petition. On page 3534 Mr. Lumala Deogratus (Kalungu West) had this to say, and I quote:

15 *“Madam Chairman, I am seeking clarification with regard to changing of parties from one to the other. In practice, someone may decide not to formerly resign from one party to another for fearing that he will not be elected if he did so. So he sits on benches of the opposition but will always vote with the other party.”*

This clarification is spot on of the purpose and intention of the enactment of

20 **Article 83(1)(g)** of the Constitution.

**Deputy Chairman:** Hon. Lumala, I think we had finished on that one. You are taking us back. Does it relate to No.(2) which we are going to. I have been very alert if you had put up your hand I would have seen you. “Hon. Mulenga.

**Mr. Mulenga:** *Perhaps to put the minds of Hon. Lumala and others at ease, the word used is leaves. He can either leave voluntarily or by expulsion. If that party notices that he is no longer supporting them, they might expel him from the party and therefore he leaves the party.”*

This answer shows that expulsion was not the object of Article 83(1) (g) as it would, stifle the establishment and promotion of a just, free and democratic society as contemplated by the Constitution. The parties are independent, that is why there is the requirement of compliance with the democratic principle as provided in the Constitution. That is why expulsion is a preserve of the party. The significance of Mr. Mulenga’s clarification is that when the party notices that a member is no longer with it, the party expels them and it was not left out to protect individual members as the four respondents replied in their pleadings. I hasten to add, that, that is why the word “leave” in **Article 83(1)(g)** is neutral to cause in my view. Since they had left the party by their conduct, to be democratic they would have just vacated their seats so that fresh elections were conducted. Since they did not do so, it is only the party which had the mandate to reject them by expelling them. The deliberations at the consideration stage of the Constituent Assembly

shows the mischief the enactment intended to cure. So the amendment which was withdrawn was actually redundant.

The 1995 Constitution was framed in that way to provide safeguards which were lacking in the independence, the Pigeon hole Constitution of 1966 and the so called  
5 Republic Constitution of 1967.

Counsel for the four MPs submitted that he was buttressed by Mr. Yoweri K. Museveni evidence in the affidavit to the effect that, he recognized that the crossing was voluntary. That “**Dr. Milton Obote merely persuaded the MPs in opposition**” this submission cannot stand in  
10 light of what has been stated in this Judgment and the history of the enactment.

The act of Dr. Milton Obote of persuading the members of Parliament from the opposition, to cross on the floor without them seeking fresh mandate from the electorate was the actual mischief that, **Article 83(1)(g)** was intended to cure. He  
15 was obviously depriving the people of Uganda of their freedom to choose leaders of their choice. . He took away their sovereignty. His acts of persuasion were out of step with the establishment and promotion of a just free and democratic society to say the least. It is therefore no wonder that the alliance he formed of UPC &

Kabaka Yekka (KY) collapsed and eventually we got into Constitutional instability as per the Petitioner's evidence.

Uganda became a one party state, which, the new order as embodied in the 1995 Constitution out laws.

5 The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents want to superficially appear to belong to the Petitioner when they made themselves defacto independents by passing off as members of the Petitioner, whereas not. The petitioner had not used unconstitutional means to throw them out of the party. On the contrary it is the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents who are suffering from the Movement Political  
10 System which has individual merit as a basis for election to political offices as per **Article 70** of the Constitution. This is inconsistent and in contravention of the Constitution. See **Article 73(1)** of the Constitution. The Cross petitioner and first respondent in all petitions pleaded that a referendum on political systems was conducted in accordance with **Article 74** of the Constitution and the people of  
15 Uganda chose and adopted the multi-party political system. During the multi-party political dispensation/period, it is the party which one subscribes to which has the key of access to the people in constituencies.

It was submitted by counsel for the cross petitioner and 1<sup>st</sup> respondent in all petitionsthat electing a candidate of a political party is an act of association which I

agree with I would add that much as the voters can vote in any way, they want a party flag bearer has no option but to follow the party's line in the manifesto and ideology during multiparty dispensation. Counsel further submitted that, **Article 29(1)(e)**, of the Constitution cited supra guarantees the right to associate. This means that if the right to associate is guaranteed along with it, flows the right not to associate. That because the four MPs had the freedom to join the NRM party, by their joining the party they associated with the party and its supporters in accordance with constitutional provisions Article **29(1) (e), 38(1), 43(1)(c) & 71(1)(c)**. That the people under **Article 1** exercising their sovereignty, expressed their will and consent on who shall govern them...through free and fair elections of their representatives...See (**Article 1(4)**).

It was further submitted that by choosing a party flag bearer or candidate, the party they support the people think that it will form a government and that candidate who is the flag bearer will influence the affairs and policies of Government by advancing the party ideology and manifesto. By electing, the people exercise their sovereignty in accordance with **Article 38(1)** of the Constitution in a multi-party political system dispensation.

By electing the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents as their flag bearers they were exercising their right to participate in the affairs of government through their representatives in accordance with the **Article 38(1)** of the Constitution.

I accept the above submission as it's in line with the evidence and the law. The party Constitution was the agreement between the four MPs which provided access or opening for them to the people in the Constituencies concerned.

The moment they contravened their party internal organisation, they legally closed  
5 the access to & from their constituencies and **Article 38** cannot not be applied in their favour. They are prejudicing the rights and freedoms of the people in their Constituencies who elected them and the party after joining the Petitioner and having access to the Public offices they held through the Party. Apparently they infringe and or contravene Article **43(1) (c)** of the Constitution and their  
10 continuous stay in Parliament becomes inconsistent with that provision and the others cited Supra.

The submission of counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents that you cannot be compelled to be an independent, cannot be sustained. He based his submissions on *Constitutional Appeal No. 2/2006 Brigadier Henry Tumukunde V. Attorney  
15 General*. He relied on the Judgment of Hon. Justice Kanyeihamba JSC as he then was, and quoted as follows: “A Member of Parliament the Supreme legislative organ of the land should never have to resign under the threat or directions of any one but in accordance with provisions of the Country's Constitution and laws made by Parliament and do so voluntarily.”

The Brigadier Tumukunde case supra is distinguishable from the facts of this case. I accept the submissions of counsel for the petitioner in constitutional petition No. 19/2013, that, in that case the petitioner was a representative of an interest group (UPDF) which is not a body corporate and not a party or political

5 Organisation. Article **83(1) (f)** is not applicable at all to the facts of this case.

The evidence embodied in the responses of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents and the evidence of the Petitioner in C.P 21/2013 show that, they voluntarily made themselves defacto independents and left the party as earlier discussed in this judgment.

10 The submissions are neither supported by evidence nor by law. To accept such submissions would be perpetuating impunity and indiscipline. This Court adhering to the judicial oath and **Article 126(1)**, is under an obligation to deter any kind of precedent which would plunge this Country into turmoil again.

The Rt. Hon. Speaker in the impugned ruling applied a precedent in the pre-  
15 Common Wealth period. She cited the incident of King Charles 1 of England in 1642 which was a time of absolute monarchy when he wanted to arrest five members of the House of Commons. My view is that it was very unfortunate as we are in the 21<sup>st</sup> Century during which the Commonwealth came into being in 1949. A precedent in an absolute monarchy cannot be a precedent to be followed in



this erasince there is nothing democratic in an absolute monarchy,to be compared with the peoples popular Constitution of 1995. The ruling to retain the expelled MPs who had left the Petitioner was inconsistentwith and was in contraventionof the provisions of the Constitution (supra).

5 Hon. Mohammed Nsereko stated in his affidavit in reply to CP 21/2013 that, there was infringement of their rights as individual MPs, but as counsel for the Cross Petitioner and for the 1st Respondent argued, the electorate in those respective Constituencies were not enjoying their right to representation in Parliament and that in interpreting **Article 83(1) (g)** there is need to balance the competing rights  
10 and interests i.e. the MPs, the voters and the party.

Some other comparable case law I found informative and persuasive was the

**Malawi Presidential Referral No, 2/2005. On the question of Crossing the floor by Members of Parliament, an authority provided by counsel for**

**Petitioner and Cross Petitioner in Constitutional Petitions 19/2013& 16/2013 -**

15 **<http://www.malawillii.org/mw/judgment/high>**

**court-general/Division/2006/22.Cite visited on 09/08/2013.** The provision the

Court was interpreting was about voluntary leaving of the party, and this is my

line of argument. The Supreme Court of Appeal of Malawi (in the Judgment of

Twea J) held that,“**the freedoms of Association, conscious and expression are**

20 **largely all embodied in the political rights under S. 40 in respect of MPs. ( S.**

*40 of the Malawi Constitution is equivalent to Article 29 (1)(e) of our Uganda*

*Constitution).* **is born out of the fact that when one decides to join a political**

**party one exercises his right to associate. The consequence of joining an**

**association is that, one becomes subject to the rules and regulations of the**

5 **association. One will exercise one's freedom of conscious and expression in**

**respect of matters pertaining to the objectives of the said associations within**

**the scope of the rules and regulations of that Association, if one is not happy**

**with the rules thereof is free to exercise his or her own right not to belong to**

**that association any more. It cannot be heard to be said that members of the**

10 **National Assembly who are members of the Political parties are denied their**

**freedoms of associations' conscious and expression. The fact of the matter is**

**that as members of political parties, which is a right exercised under S.40,**

**they have acquiesced to have the freedoms and rights limited. This**

**notwithstanding, as submitted the rights and freedoms have not been**

15 **removed. The rules and regulations of their political parties provide and limit**

**the legitimate avenues that, the restriction of the right of Members of**

**Parliament in this respect has been held to be reasonable and recognized by**

**the international human rights standards and necessary in an open and**

**democratic society: (Experte chairperson of Constituent Assembly.**

**In Re certification of Constitutions of the Republic of South Africa – 1996 (4)  
SA, 744(1) (2)...”**

The provision which was being interpreted was S.65 of the Malawi Constitution. It provides;“ **The speaker shall declare vacant the seat of a member of the**

5 **national Assembly who was, at that time of his own, or her election, a member  
of one political party, represented in the National Assembly, other than by  
that member alone, but who has voluntarily ceased to be a member of that  
party or has joined another political party represented in the national  
Assembly, or has joined any other political party, or association or organization**  
10 **whose objectives or activities are political in nature.”**

By the four MPs’ pleadings and conduct they voluntarily ceased to be members of the Petition (NRM party) and they made themselves defacto independents which compelled the party to exercise its prerogative to expel them.

The purpose of **Article 83(1) (g)** was to prohibit floor crossing in whatever form as  
15 long as the democratic principles and practice as per the Constitution were violated as shown in this Judgment. They had indirectly and voluntarily left the party and therefore they voluntarily ceased to be Members of Parliament and vacated their seats upon expulsion.

To promote multiparty democracy and to discourage disappearance of party politics the framers of the Constitution put all those various provisions above,including **Article 83(3)** of the Constitution which provides “*The provisions of clauses (1)(g) and (h) and (2) of the article shall only apply during any period* 5 *when the multiparty system of government is in operation.*”**This further explains the intention of the enactment.**

Finally I conclude that the 2<sup>nd</sup>, 3<sup>rd</sup>,4<sup>th</sup> and5<sup>th</sup> respondents voluntarily (freely, deliberately, intentionally, optionally, willingly) left the Petitioner in Constitutional Petition 21/2013,and consequently contravened the Constitution. The issues 10 therefore,1,4,5 and 6, are answered in the affirmative that the 2<sup>nd</sup>,3<sup>rd</sup>,4<sup>th</sup> and 5<sup>th</sup> respondents had actually left the party/Petitioner and they therefore vacated their seats upon expulsion.

I agree with the conclusion, declarations and orders reached by my learned brother Justices for the above reasons in resolution of issue 1,4,5,6 and agree with all the 15 resolutions on the rest of the issues.

Dated this .....day of .....2014.

**HON.LADY JUSTICE FAITH E.K.MWONDHA, JA/CC**



HON. WILFRED NIWAGABA .....RESPONDENTS

HON. MOHAMMED NSEREKO

HON. BARNABAS TINKASIMIRE

**CONSTITUTIONAL PETITION NO.25 OF 2013**

5 HON. ABDU KATUNTU ..... PETITIONER

VERSUS

THE ATTORNEY GENERAL OF UGANDA .....RESPONDENT

CORAM: HON. MR. JUSTICE S.B.K. KAVUMA, AG.DCJ.

HON. MR. JUSTICE A.S. NSHIMYE, JA/CC

10 HON. MR. JUSTICE REMMY KASULE, JA/CC

HON. LADY JUSTICE FAITH MWONDHA, JA/CC

HON. MR. JUSTICE R. BUTEERA, JA/CC

**DISSENTING JUDGEMENT OF HONOURABLE JUSTICE REMMY KASULE, JUSTICE OF THE CONSTITUTIONAL COURT**

15 I am grateful and in agreement with their Lordships of the majority judgement as to the facts constituting the background to the consolidated **Constitutional Petitions numbers 16, 19, 21 and 25 of 2013**, as well as the principles of constitutional interpretation set out in the said judgement.

20 However, with the greatest respect to their Lordships of the majority judgement, I beg to differ from some of the conclusions they have reached on some of the framed issues.

I will, as much as possible deal with the issues following the order they were submitted upon by respective counsel, even though this pattern may be departed from now and then, where the inter-relationship of the issues so demand.

**Issue 1, 4, 5 and 6:**

5 The overriding question for resolution through these four issues is whether or not under the 1995 Constitution an expulsion of a Member of Parliament by a political party from membership of that political party upon whose ticket the said member was elected to Parliament, automatically leads to that Member of Parliament to lose his/her seat in Parliament under **Article 83 (1) (g) and (h) of the**  
10 **Constitution.** The Article provides:

**“83. Tenure of office of Members of Parliament.**

**(1) A member of Parliament shall vacate his or her seat in Parliament –**

- (a) .....
- (b) .....
- 15 (c) .....
- (d) .....
- (e) .....
- (f).....

(g) **If that person leaves the political party for which he or she stood as a candidate for election to Parliament to join another party or to remain in Parliament as an independent member;**

20 (h) **If, having been elected to Parliament as an independent candidate, that person joins a political party;”**

(i) .....

**Historical Perspective:**

The history, particularly the legislative history of a country is a relevant and useful guide in constitutional interpretation:

See: **Okello Okello John Livingstone & Six Others Vs The Attorney General and Another: Constitutional Court Constitutional Petition No.4 of 2005.**

The 1995 Constitution, as is reflected in its preamble, Ugandans through a Constituent Assembly, adopted, enacted and gave to themselves and to their posterity a constitution on the basis:

**“Recalling our history which has been characterized by political and constitutional instability,**

**RECOGNISING our struggles against the forces of tyranny, oppression and exploitation;**

**COMMITTED to building a better future by establishing a socio economic and political order through a popular and durable national Constitution based on the principles of unity, peace, equality, democracy, freedom, social justice and progress; .....**”

Hence the 1995 Constitution is a result of the struggles of Ugandans against political and constitutional instability brought about by the forces of tyranny, oppression and exploitation. It is therefore through proper application and compliance with the 1995 Constitution that a society of Ugandans based on the principles of unity, peace, equality, democracy, freedom, social justice and progress has to be created.



The suppression of fundamental human rights and freedoms of conscience, expression, movement, assembly and association, particularly through a dictatorship of the political party that managed to keep itself in political power at the suffocation of other political groups and other organs of the state had to be  
5 done away with. Hence the enactment of **Article 75 of the Constitution**, that Parliament shall have no power to enact a law establishing a one-party state.

In 2005, Ugandans, through a Referendum, freely chose to govern themselves under a multi-party democracy dispensation with political parties presenting candidates for Presidential, Parliamentary and Local Government elections with  
10 the winning candidate in Presidential elections becoming President of the country and the winning party in Parliamentary elections controlling Parliament through its majority of Members in Parliament. The political party (parties) with minority seats form the opposition in Parliament. But all Members of Parliament representing constituencies as well as those representing special groups constitute  
15 the Parliament of Uganda whose constitutional mandate is to make laws to promote unity, peace, equality, democracy, freedom, social justice and progress. The same also happens, as much as possible, in respect of local governments.

Therefore from the historical perspective, the Constitution is to be interpreted in such a way that promotes the growth of democratic values and practices, while at  
20 the same time doing away or restricting those aspects of governance that are likely to return Uganda to a one party state and/or make in-roads in the enjoyment of the basic human rights and freedoms of conscience, expression, assembly and association.

The reason for the inclusion of **Article 83 (1) (g) and (h) in the Constitution** is  
25 thus, in my humble view, to address some of the wrongs identified in Uganda's

history of political and constitutional instability. The Uganda Constitutional Commission headed by His Lordship Justice Odoki, JSC, as he then was, gathered views from Ugandans as to how they wanted to be governed and made a report that was debated by the Constituent Assembly and provided the basis for the 1995  
5 Constitution.

The Commission found that since the attainment of independence, it had become a practice by Members of the political parties in opposition crossing the floor in Parliament and joining the party in Government, thus contributing to the creation of a one party state and rendering the working of multi-party democracy  
10 impossible. The Odoki Commission thus proposed as a remedy that in the case of a multi-party Parliament a member wishing to cross the floor must first resign his or her seat and seek fresh mandate from the constituency that had elected him/her to represent the people of that constituency in Parliament. Likewise, one elected as an Independent, should also seek fresh mandate on joining a political party.

15 It is of some significance, in my observation, that the recommendation of the Odoki Commission is restricted to a Member of Parliament belonging to a political party or who was elected as an independent crossing the floor in Parliament to join another party or leaving the party to become an Independent in Parliament. The recommendation does not cover a situation of that Member of Parliament being in  
20 dispute with his or her political party outside Parliament on matters having nothing to do with that member's duties and responsibilities in Parliament, that for one reason or another, may lead to the expulsion of that Member from the party. This omission, in my considered view, must also be acknowledged as missing from **Article 83 (1) (h) and (g).**

25 **Principles of Constitutional Interpretation.**

The overriding principle is that in any question relating to the interpretation or application of any provision of the Constitution, the primary aids to the interpretation must be found in the Constitution itself: See: **Supreme Court of Malawi Court Reference by the Western Highlands provincial Executive**  
5 **[1995] PG SC 6; SC 486 (20<sup>th</sup> September, 1995).**

It is a principle of constitutional interpretation that where words or phrases of the Constitution are clear and unambiguous, they are to be given their primary, plain, ordinary and natural meaning. The language must be construed in its natural and ordinary sense. Should the language of the Constitution be imprecise or  
10 ambiguous, then a liberal, generous and/or purposive interpretation should be given to it: See: **Attorney General Vs Major General David Tinyefunza: Constitutional Appeal No.1 of 1997 (SC).**

The language of the Constitution may be broad and in general terms laying down broad principles. This calls for a generous interpretation avoiding strict,  
15 legalistic and pedantic interpretation, but rather broadly and purposively; aiming at fulfilling the intention of the framers of the Constitution. One provision of the Constitution ought not be isolated from all the others. The Constitutional provisions bearing upon a particular subject should be looked at and be so interpreted as to effectuate the great purpose of the constitution: See: **Supreme**  
20 **Court of Uganda Constitutional Appeal No.1 of 1998: Attorney General Vs Salvatori Abuki.**

### **The Constitutional (Amendment) No.3 Bill, 2005:**

The debates of Members of Parliament of this Bill have some significance in resolving the framed issues under consideration because the Bill constituted a

proposed amendment by Parliament of **Article 83 (1) (g) in 2005**. The proposed amendment was:-

**“83 (1)**

**(g) If that person leaves the political party for which he or she stood as a candidate for election to Parliament to join another party or to remain in Parliament as an independent Member; or if he or she is expelled from the political organization or political party for which he or she stood as a candidate for election to Parliament.”** (emphasis is mine).

Members of Parliament from all the groups represented in Parliament extensively contributed giving various reasons either supporting or not supporting the amendment. Hon. Wandera, MP, reasoned that an MP who supports a position in the national interest, but contrary to the position of his/her party, ought not be a victim of the provision. To him issues of internal discipline in the political parties ought not be introduced in the Constitution. He reasoned that Members of Parliament were elected by the populace in the constituency including those who do not belong to the party of the MP. These should not be deprived of their MP because of that MP being expelled by his/her party. Hon. Amama Mbabazi’s stand was that in a multi-party system, once the party expels one, then such a one has no basis to speak in Parliament. Hon. Ben Wacha saw the amendment as redundant. He read it as already contained in **Article 83 (1) (g)**. Hon. Dr. Okulo pointed out that political parties can be very arbitrary in their decisions and an MP should not lose his/her seat for standing against such decisions. **Hon. Ruhindi:** Proposed that the circumstances under which an MP is to be expelled be clearly set out in the provision so that there is protection to MPs and that way the functioning of systems and institutions be strengthened.

Parliament then resolved on 07.07.05 to stand over the amendment and consult further. On 08.08.05 when Parliament re-assembled, Hon. Dr. Makubuya, the then Attorney General, proposed to delete the amendment **“in the interest of peace”** because Members had expressed serious concern over what it meant. The House  
5 unanimously approved the deleting: See: **The Hansard: 5<sup>th</sup> session: 1<sup>st</sup> meeting: 07.07.05 pp 14745 – 15066.**

From the above account as to what transpired in Parliament, I am unable to conclude that **Article 83 (1) (g) and (h)** of the Constitution was retained as it was on the understanding that it was not necessary to amend it. Its effect was already  
10 catered for. The view I take is that Parliament on considering all the reasons put forward by the Honourable Members rejected the proposed amendment by having the same deleted. I am enforced to reach this view by the words of the then Attorney General Dr. Makubuya that he proposed to delete the amendment **“in the interest of peace”** because members had expressed serious concern as to what the  
15 amendment meant.

### **Position in Other jurisdictions:**

There are other jurisdictions to look at having constitutional provisions on the lines of **Article 83 (1) (g) and (h)**.

### **Zambia:**

20 **Article 71 (2) (c) of the Constitution of Zambia** provides that a Member of the National Assembly shall vacate his/her seat:

**“(C) in the case of an elected member, if he becomes a member of a political party other than the party of which he was an authorised candidate when he was elected to the National Assembly or, if having**

been an independent candidate, he joins a political party, or having been a member of a political party, he becomes an independent;”

**Malawi:**

**Section 65 (1) of the Malawi Constitution** provides that:

5 “The Speaker shall declare vacant the seat of any Member of the National Assembly who was, at the time of his or her election, a Member of one political party represented in the National Assembly, other than by that member alone but who has voluntarily ceased to be a member of that party or has joined another political party represented in the National Assembly, or  
10 has joined any other political party or association or organization whose objectives or activities are political in nature.

(2) Notwithstanding subsection (1), all members of all parties shall have the absolute right to exercise a free vote in any and all proceedings of the National Assembly, and a Member shall not have his or her seat declared vacant solely  
15 on account of his or her voting in contradiction to the recommendations of a political party, represented in the National Assembly, of which he or she is a member.”

**India:**

The Tenth schedule to the Constitution of India, under its **Article 102 (2) and**  
20 **191 (2)** provides:

**“2. Disqualification on ground of defection:-**

**(1) Subject to the provisions of [paragraph 4 and 5] a member of a House belonging to any political party shall be disqualified for being a member of the House.....**

**(a) If he has voluntarily given up his membership of such a political party or**

**(b) If he or she votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs.....without obtaining .....the prior permission of such a political party.”**

**10 New Zealand:**

New Zealand, a commonwealth country, has a proportional representation system in Parliament. The proportion of the popular vote received by political parties determines representation in Parliament according to the Electoral Act. The proportionality of party representation is also reflected in the distribution of seats on select committees, allocation of question time and the order of call in the House.

Under **Section 55A of Electoral Act of new Zealand** a seat of a Member of Parliament becomes vacant if that member ceases to be a Parliamentary Member of the political party for which that member was elected if that member notifies in writing that he/she has resigned from the Parliamentary Membership of the political party for which the member was elected, or if the member wishes to be recognized for Parliamentary purposes as either an independent Member of Parliament or a member of another political party.

The political party also may through its Parliamentary leader in a written statement signed by the said leader stating that the Parliamentary leader reasonably believes that a Member of Parliament concerned has acted in a way that has distorted, or is likely to continue distorting the proportionality of political party representation in Parliament as determined at the last general election, after notifying and requiring the member concerned to respond, and after obtaining support of at least two thirds of the Party Parliamentary Members, notify the Speaker of the House to declare the seat of that Member vacant.

### **Interpretation of Article 83 (1) (g) and (h):**

Having considered the historical perspective, the appropriate principles of interpretation of the Constitution, the relevant Uganda Parliamentary debates on the very proposed amendment when it was tabled before Uganda Parliament in 2005 as well as the situations in some other jurisdictions other than Uganda, I now proceed to interpret **Article 83 (1) (g) and (h)**.

The Article has already been considered by this court in **Constitutional Petition No.038 of 2010: George Owor Vs Attorney General and Another** when the court held that its language was very simple and clear. It was not ambiguous and should be construed basing on the natural meaning of the English words. To the court, the provision meant that:-

**“ (i) A Member of Parliament must vacate his/her seat if he/she was elected on a political party/organization ticket and then before the end of that Parliament the member joins another party.**

**(i) He/she must vacate his/her seat if she was elected on a party ticket and elects to be nominated as an independent before the term of the Parliament comes to the end.**



(ii) If he/she was elected to Parliament on a party ticket, he/she cannot remain in Parliament as an independent member.

(iii) Common sense dictates that if one was elected to Parliament on a political party ticket and joins another party, he/she cannot be validly nominated for election on the ticket of that latter party unless he/she at the time of nomination resigned or vacated the seat in Parliament.

(iv) If one was elected to Parliament on party ticket and he/she leaves that party to become independent, he/she cannot validly be nominated as an independent unless he/she has ceased to be or has vacated the seat in Parliament.”

The court gave as the rationale for its decision, as being that one cannot, in a multiparty political system, continue to represent the electorate on a party basis in Parliament while at the same time offering oneself for election for the next Parliament on the ticket of a different political party or as an independent. It would be a betrayal of the people who elected such a one and an exhibition of the highest form of political hypocrisy and opportunism which the Article was designed to prevent. It would also be an exhibition of political indiscipline and an abuse of people’s sovereignty which is so strongly enshrined in the Constitution.

The court, in similar terms and on the same grounds as above, interpreted **Article 83 (1) (h)** as meaning that an Independent Member of Parliament who joins a political party before the end of the Parliamentary term he/she was elected to, must also resign the seat of Parliament otherwise he/she cannot be validly nominated on a political party ticket for election to the next Parliament.

However, the decision of the **George Owor case (supra)** is not, in my view, a basis for the proposition of the petitioners in **Constitutional Petitions numbers 16, 19 and 21 of 2013** that once a Member of Parliament elected to Parliament on a ticket of a political party is expelled from membership of that party by the party  
5 itself, then such a member must also automatically vacate his/her seat in Parliament.

My appreciation of the meaning of the language of **Article 83 (1) (g) and (h)** is that the Member of Parliament concerned must himself/herself, out of his/her own volition take the decision to leave and abandon the political party for which he or  
10 she stood as a candidate for election to Parliament and the same member must also, again out of his/her own volition decide to join another party or to become an Independent. Once such a member takes that decision, then, such a member's seat in Parliament becomes vacant and a bye-election has to be held.

While the member of Parliament concerned may take such a decision directly  
15 and openly by announcing in writing, or otherwise, of leaving the political party on which he/she was elected to Parliament and joining another political party or becoming an Independent or vice versa, it is also possible that such a decision can be inferred from the conduct of the concerned Member of Parliament.

In the **Supreme Court of New Zealand case of Richard William Prebble and  
20 Three others Vs Donna Awatare Huata, SC C IV 9/2004,** such a conduct was inferred from the fact, amongst others, that the concerned Member of Parliament willingly stopped paying subscription for her membership to her political party upon which she had been elected to Parliament so that her membership to that party lapsed. Since New Zealand has a proportional representation system of  
25 electing Members of Parliament whereby a political party is allotted Members of

Parliament according to the number of votes a party has got at a general election, the lapse in membership willingly caused by this Member to her political party let that party to lose its strength under the proportional representation arrangement system. Thus the political party took the procedural steps provided for in the  
5 **Electoral Act of New Zealand** to have the Speaker declare the seat of this member vacant and the same was done.

All this was done on the basis that it was this Member of Parliament who voluntarily took the step to cease Membership of her party by withholding payment of her membership subscription to the same. The Supreme Court of New  
10 Zealand thus held that the political party was justified to take the steps it took, as allowed by the law, to have this member vacate her seat in Parliament.

The facts of this case are therefore very different from the facts of the consolidated **Constitutional Petitions 16, 19, 21 and 25 of 2013** where expulsion of the Members of Parliament is already done by the political party and the  
15 Speaker of Parliament is presented with a demand by the expelling political party to declare the seats of the concerned Members of Parliament to be vacant.

Also the Malawi Supreme Court of Appeal **In the matter of the question of the crossing the Floor by Members of the National Assembly: Presidential Reference Appeal No.44 of 2006 [2007] MWSC1** interpreted **section 65 (1) of  
20 the Constitution of Malawi** and held that the section did not violate the fundamental and other human rights and freedoms of conscience, expression, assembly and association as are enshrined in the Constitution of Malawi. It is of significance that the said section 65 (1) specifically provides that the Member of Parliament concerned must have “**voluntarily ceased to be a Member of that  
25 party and has joined another political party represented in the National**

**Assembly.....”**. Further, **Section 65 (2)** removes any restrictions upon a Member of Parliament in that he/she retains an absolute right to freely vote in the National Assembly, even contrary to the recommendations of his/her political party upon which he/she was elected to Parliament.

5 The Malawi legislation therefore, while ensuring that political parties exercise discipline upon their Members of Parliament by preventing defections, Members of the Parliament of Malawi are allowed to vote freely in Parliament even against positions taken by their respective political parties on specific issues. Further still, in the case of Malawi the decision by a Member of Parliament to leave the party to  
10 join another or to become an independent must be a voluntary one.

The Supreme Court of Zambia has also had occasion to consider the meaning of **Article 71 (2) (c) of the Zambian Constitution**. This is in the case of **The Attorney General, The Movement for Multiparty Democracy (MMD) V Akashambatwa Mbikusita Lewanika Fabian and 4 Others: [1994] S.J. (S.C.)**.  
15 The issue for resolution by that Court was whether the Article as worded made a Member of Parliament elected on a ticket of the MMD political party to vacate his/her seat on that member’s announcing that he/she had left the MDD party but without stating whether he/she had joined any other political party.

The Zambian Supreme Court, in resolving the issue, adopted the **“purposive  
20 approach”** other than the rule of literal interpretation of the Constitution, so as to promote the general legislative purpose underlying the provision. The court stated:-

**“.....whether the strict interpretation of a statute gives rise to unreasonable and unjust situation, it is our view that judges can and  
25 should use their good common sense to remedy it – that is by reading**

**words in if necessary – so as to do what Parliament would have done had they had the situation in mind.”**

The court then proceeded to remedy the situation in the case by reading the necessary words so as to make the constitutional provision, which the court had  
5 found to be discriminatory, so as to make it to be fair and undiscriminatory. Consequently the court read the words “**vice versa**” in **Article 71 (2) (c)** so that the same read:

**“71 (2) A member of the National Assembly shall vacate his seat in the Assembly:**

10 **(c) In the case of an elected member, if he/she becomes a member of a political party other than the party, of which he/she was an authorized candidate when he/she was elected to the National Assembly or, if having been an independent candidate, he/she joins a political party or vice versa.”**

15 **The Zambian Article 71 (2) (c)** is in many respects similar to Uganda’s **Article 83 (1) (g) and (h)**. No Constitutional Court in Zambia has, as of now, interpreted the article to mean that a Member of Parliament automatically loses his/her seat in Parliament on being expelled from membership of that party for whatever cause, if  
20 that party is the one on whose ticket the concerned Member was elected to Parliament.

In India, where a Member of Parliament, can even lose his/her seat by reason of voting in Parliament on an issue contrary to a stand taken by his/her political party on that issue, the law specifically provides that the Member concerned shall **voluntarily** take the decision and the Constitution restricts itself to the conduct of a  
25 Member of Parliament within the House where crossing the floor primarily applies.

Having considered the history of Uganda's political development, including its legislative history giving rise to the 1995 Constitution, and later on in 2005, the rejection by Uganda Parliament of the Constitutional (Amendment) Bill No.3 of 2005 on the very point, and the decisions of courts of different jurisdictions, with constitutional provisions having a bearing on **Article 83 (1) (g) and (h)**, and some of whom too, like Zambia and Malawi, have had some aspects of history similar to that of Uganda, like the lack of democratic governance and the one party state, it is necessary to adopt the purposive approach in analyzing the meaning of **Article 83 (1) (g) and (h)**. This approach was also, in some ways, adopted by this court in the **George Owor case (supra)**.

It is necessary to address the question as to what is the mischief that the Article is there to cure.

In my considered view while the Article is there to prevent crossing on the floor of Parliament by Members who enter Parliament, and fail to stick and to pursue the policies of the party upon whose ticket the said members were elected into Parliament on the one hand, it must also be appreciated on the other hand, that a Member of Parliament represents everyone in the Constituency that elected him/her into Parliament, regardless of party affiliation on the part of the voters in that constituency and as such the Member of Parliament must be let to carry out his/her primary function as a constitutive part of Parliament under **Article 79 (1) of the Constitution**:

**“79. Functions of Parliament.**

**(1) Subject to the provisions of this Constitution, Parliament shall have power to make laws on any matter for the peace, order, development and good governance of Uganda.**

(2) Except as provided in this Constitution, no person or body other than Parliament shall have power to make provisions having the force of law in Uganda except under authority conferred by an Act of Parliament.

(3) Parliament shall protect this Constitution and promote the democratic governance of Uganda.”

5

It follows therefore that where, according to the judgement of the Member of Parliament, in situations where the position of a political party of a Member of Parliament is at variance with fulfillment of any of the constitutional functions stated above, a Member of Parliament, has by the command of the Constitution, to be let to take a stand in Parliament even if that stand is contrary to the position of his/her political party.

10

The political party concerned ought not, under the pretext of **Article 83 (1) (g) and (h)** claim to have powers to expel such a member from the party and by reason of the expulsion, to have that Member automatically vacate his/her seat in Parliament. Were that to be the case, then the mischief of elements of a one party state type of governance of suppressing basic freedoms of a Member of Parliament and over dominating organs of state, such as Parliament, that are supposed to operate independently, subject to the constitutional checks and balances, would re-surface again. This indeed would be the more reason if **Article 83 (1) (g) and (h)** is given the interpretation that would allow political parties to expel Members of Parliament from their membership to that party on grounds that do not have even any bearing on the role, duties and responsibilities of a Member of Parliament as a representative of his/her constituency in Parliament.

20

The composition of Parliament, notwithstanding its constitutional mandate of five years, would be entirely left to be changed from time to time by the political

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parties depending on how many members the parties expel from membership during that period of five (5) years. This would greatly weaken Parliament and subject the country to have by-elections whenever a political party expels a Member of Parliament.

5        There is also a likelihood that free debate in Parliament would be negatively affected as Members, under the threat of expulsion, would restrain themselves from playing their role as representatives of all the people in the respective constituencies by merely supporting what their political parties dictate to them. A Member of Parliament would be rendered to be a mere mouth piece of the party  
10 he/she represents in Parliament.

I am thus unable to infer that the framers of the 1995 Constitution intended in framing the Article in question that a Member of Parliament elected in Parliament on a party ticket of a particular party should vacate his/her seat in Parliament because that member has been expelled by his/her party for some reasons between  
15 that member and the party, but which reasons are totally outside the roles, duties and responsibilities of that member as a legislator in Parliament.

Indeed, as legislators, a number of Members of Parliament are vested with certain responsibilities and roles that may require them to take or not to take stands on issues in respect of which the political parties upon which they were elected to  
20 Parliament may be taking different stands. The case of the Speaker and Deputy Speaker of Parliament is a case in point. **Article 82 of the Constitution** provides that the Speaker and deputy Speaker of Parliament are to be elected by Members of Parliament from among their members. Under **Article 82 (7) (d)** a Speaker/Deputy Speaker vacates office on ceasing to be a Member of Parliament.  
25 No business of Parliament shall be transacted in Parliament, other than the election



of the Speaker, if the office of the Speaker is vacant. The Speaker and Deputy Speaker may, as indeed they are now, belong to a political party.

The responsibilities of the office of Speaker of Parliament dictate that the Speaker be as neutral as possible while managing the affairs of the House. This of  
5 necessity may result in the Speaker not always taking the same stand as his/her political party on whose ticket he/she is elected to Parliament. It is inconceivable to assert that the framers of the Constitution intended that the Speaker of Parliament would vacate her seat in Parliament if, for some reasons, the party to which she happens to belong were to expel her from membership of the party,  
10 asserting as it is being asserted now by the petitioners in **Constitutional Petitions 16, 19 and 21 of 2013**, that under **Article 83 (1) (g)** any Member of Parliament expelled by his/her political party has to automatically vacate Parliament.

What is stated in respect of the Speaker of Parliament is also true of the Deputy Speaker or some other Members of Parliament like Commissioners of the  
15 Parliamentary Commission under the **Parliamentary Commission Act** created under **Article 87A of the Constitution** and others serving as chairpersons and members of the various committees and organs of Parliament where, because of the special nature of the responsibilities of their respective offices, it may not be possible for them to always follow or vote or manage the affairs of Parliament in  
20 accordance with the dictates of the political parties upon whose tickets they were elected into Parliament, even when under strict instructions by those parties to do so.

Thus to interpret **Article 83 (1) (g) and (h)** as giving powers to political parties to cause Members of Parliament to automatically vacate their seats in Parliament  
25 through the avenue of expelling them from party membership would be to stifle the

workings of Parliament as an independent arm of Government and thus undermine democratic governance under a multi-party political system. Where, the Constitution of Membership of Parliament, is such that there is a dominant party forming Government, the force of the threat of being expelled from Parliament, 5 may easily bring about a near one party state type of governance that the Constitution bars under its **Article 75**. That surely cannot be said to have been the intention of the framers of the 1995 Constitution.

I appreciate that there is certainly need for legislators elected on the platform of a particular political party to advance the cause of that party, where circumstances 10 do not dictate otherwise, in Parliament and also to the electorate. There is also need to maintain discipline in political parties if they are to be effective organs promoting democracy. Democracy also demands that a Member of Parliament on changing from one political party to another, or to become an independent, the electorate in the constituency should give approval or disapproval to such a change 15 by the Member involved vacating his/her seat in Parliament and subjecting him/herself to the approval of the electorate through a by- election. But this must be through a voluntary act of the Member of Parliament involved and must be in respect of matters to do with the Member's duties and role in Parliament and not matters that have nothing to do with that role. Discipline in the whole process of 20 representation of the people, political parties inclusive, is maintainable by applying the legal process that the Constitution and other laws have put in place.

Where a Member of Parliament who through his/her voluntary conduct leaves his/her party on whose ticket the said member was elected to Parliament and joins another party or remains independent, but refuses to do so or to state publicly and 25 openly that this is what he or she has done, then in such a case, the remedy available to the political party demanding that this Member vacates his/her seat in

Parliament is in **Article 86 (1) (a) of the Constitution**. That remedy is for the political party to petition the High Court to declare the seat of the concerned member vacant. The Article provides:

**“86. Determination of question of Membership.**

5       **(1) The High Court shall have jurisdiction to hear and determine any question whether –**

**(a) A person has been validly elected a Member of Parliament or the seat of a Member of Parliament has become vacant;**

**(2) .....**

10       **(3) Parliament shall by law make provision with respect to-**

**(a) the persons eligible to apply to the High Court for determination of any question under this article; and**

**(b) the circumstances and manner in which and the conditions upon which any such application may be made.”**

15       My appreciation of the law is that the act of vacating a seat in Parliament to which a Member of Parliament was elected through a valid Parliamentary election is by its own nature an election matter. Such an act is therefore appropriately a matter that may be addressed by the **Parliamentary Elections Act [17 of 2005]**, which is an Act enacted by Parliament pursuant  
20       to **Article 76** whereby Parliament enacts laws on elections.

I come to this conclusion because there is no provision both in Article 76 of the constitution and section 86 of the Parliamentary Elections Act [17 of 2005] restricting the application of the said Article and section to a special

category of members of Parliament, say, the disabled, the workers, the youth and army representatives. The Article and the section seem to me to be of general application to a situation of a member of Parliament in respect of whom the issue of determination of a question of his/her membership to parliament arises.

**Section 86 of the Parliamentary Elections Act** is a repeat, word for word, of **Article 86 (1) (a) (b) and (2) of the Constitution**. **Section 86 (3) (4) (5) (6) and (7)** sets out a procedure as to how the High Court is to be accessed so as for that court to determine the question referred to in **Article 86 of the Constitution** and **Section 86** of the very Act. **Under Section 86 (5) of the same Act**, given **Article 86 (2) of the Constitution**, a person aggrieved by the decision of the High Court may appeal to the Court of Appeal.

The procedure under the section requires that the one or group or entity raising the issue that a particular Member of Parliament has to vacate the seat in Parliament forwards an application in writing to the Attorney General signed by not less than fifty registered voters stating that a question referred to in **Article 86 (1) of the Constitution and Section 86 (1) of the Act** has arisen stating the ground for coming to that conclusion. The Attorney General has to petition the High Court within thirty days after receipt of the application, and if he fails to do so, then those who submitted the application to the Attorney General may directly petition the High Court for determination of the question.

In my considered view the above procedure set out in **Section 86 (3) and (4) of the Parliamentary Elections Act** caters very well for a political party

5 seeking to have a seat in Parliament vacated because the Member of Parliament holding that seat and who was elected on the ticket of that political party has by his/her voluntary conduct, in carrying out his/her role as Member of Parliament, without publicly stating so, left that party upon which he/she was elected to Parliament and has joined another party or has become an Independent in Parliament.

10 The political party concerned should be able to secure the requisite number of at least fifty registered voters signing the application may be from the electoral constituency of the Member of Parliament whose seat is being sought to be vacated in Parliament. The procedure gives an opportunity to the Attorney General to study and express himself/herself on the merits of the demand of the political party requiring that its member vacates his/her seat in Parliament and as such the political party is so advised by the Hon. Attorney General about the merits of the demand. The procedure also brings  
15 in the participation of the ordinary voters, possibly from the constituency of the Member of Parliament whose Parliamentary seat is sought to be vacated, whose signatures are necessary to support the demand.

20 The above notwithstanding, should the procedure to access the High Court set out in **Section 86 (3) and (4)** be not the applicable one in the case of a political party as petitioner, the absence of such a procedure, cannot in any way affect, erode or diminish the jurisdiction vested in the High Court to hear and determine any question whether **“the seat of a Member of Parliament has become vacant”** by **Article 86 (1) of the Constitution**. If the law to provide for the proper procedure is not there, then Parliament  
25 should enact that law, but in the meantime, the High Court has to exercise the jurisdiction vested in it by the Constitution and access to the High Court

has to be done through some appropriate procedure available to access the High Court. In my considered opinion, the procedure set out in **Section 86 (3) and (4) of the Parliamentary Elections Act** is appropriate.

By having the High Court decide whether the seat of the Member of Parliament  
5 alleged to have **“crossed the floor”** has become vacant puts a burden upon the political party seeking to have the seat declared vacant to prove its case for asserting so, while at the same time the Member of Parliament concerned is heard in defence as to why his/her seat in Parliament should not be declared vacant. The court then proceeds to resolve the matter judiciously by taking into consideration  
10 all the relevant factors necessary to reach a just decision, with a right of appeal to the Court of Appeal by whoever is dissatisfied with the decision. Such a court process of determination by the High Court of whether or not a vacancy of a Member of Parliament has become vacant would result in creating discipline between the Members of Parliament and their political parties upon whose tickets  
15 they are elected to Parliament.

It has been submitted for the petitioners in **Constitutional Petitions 16, 19 and 21 of 2013** that given that the ordinary meaning of the word to **“leave”** is **“to go away from”**, **“cease to live at a place or house”**, **cease to belong to a group”**, **to go away”**, **“to stop living in”** **“to stop working for”**, **“to stop belonging to”**,  
20 therefore when used in **Article 83 (1) (g) and (h)** the word **“leave”** is neutral, and as such there is no difference between a Member of Parliament who voluntarily decides to leave his/her political party upon which he/she was elected to join another political party or to remain an Independent in Parliament, and the one who is forced to leave by being expelled from his/her political party.

With the greatest respect I do not agree with that interpretation. The word **to expel** is **to be sent away by force or to force someone to leave or to dismiss officially from an institution, school, club or body**: See: **Longman Dictionary of Contemporary English: New Edition, 1987 page 354.**

5        There is surely a difference between someone who voluntarily and through personal choice takes a decision to go away from or to cease to live at a place or to belong to a group and the one who by force is made to go away or to cease to live at a place or to belong to a group. There is no free will on the part of the doer in the case of the latter, while it is there in the case of the former.

10        It follows therefore that in terms of **Article 83 (1) (g) and (h)** the Member of Parliament to fall under the ambit of that article has to, by exercise of his/her free will, to decide to leave the political party for which he or she stood as a candidate for election to Parliament, the same Member of Parliament has also, by exercise of his/her free will, decide to join another party or, remain as an independent member,  
15 or if elected as an Independent, to join a political party. Once these choices are made by the Member of Parliament concerned, by the exercise of his or her free will, and the member so communicates to the Speaker of Parliament and whoever else is concerned, then the seat of this Member of Parliament becomes vacant.

20        On the other hand, in my considered view, if the political party upon whose ticket the Member of Parliament concerned was elected to Parliament, comes to the conclusion, on the basis of the evidence the party has, that this Member of Parliament through the exercise of his/her free will has left the said political party and has joined another one or has decided to remain in Parliament as an Independent, and therefore by reason thereof, the seat of this Member of  
25 Parliament should be declared vacant, then the political party under **Article 86 (1)**

**and Section 86 (1), (3) and (4) of the Parliamentary Elections Act** takes steps to have the High Court declare the seat of the concerned Member of Parliament vacant.

In conclusion, in disagreement with my Lords of the majority judgement, I  
5 answer issues 1, 4, 5 and 6 as hereunder:

**Issue 1:**

My answer is that expulsion of a Member of Parliament by and from the political party upon whose ticket the said Member of Parliament was elected to Parliament is not an automatic ground for a Member of Parliament to lose his/her seat in  
10 Parliament under **Article 83** of the 1995 Constitution of Uganda.

Expulsion of a Member of Parliament by his/her political party upon whose ticket a Member was elected into Parliament may however be part of the evidence of the grounds of the political party, where circumstances demand that the political party petitions the High Court to have a seat of that Member of Parliament be  
15 declared vacant under **Article 86 (1) of the Constitution** and **Section 86 (1) (3) and (4) of the Parliamentary Elections Act**.

**Issue 4:**

The answer to this issue is that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to **Constitutional Petitions 16,19 and 21 of 2013** having not declared that they left the party upon  
20 which they were elected to Parliament so as to join another political party or to remain as Independents in Parliament, as concerns their roles and duties as Members of Parliament, and the political party to which they still claim they belong to having not moved the High Court for a declaration that the seats in Parliament of these members be declared and the High Court has not declared the



said seats vacant, I find that the continued stay in Parliament of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents, after their expulsion from the NRM party on whose ticket they were elected in Parliament is not contrary to and/or inconsistent with **Articles (1) (1) (2) (4), 21 (1) (2), 29 (1) (e), 38 (1) 43 (1), 45, 69 (1) 71, 72 (1) 72 (2), 72 (4),**  
5 **78 (1) 79 (1) (3) and 255 (3) of the Constitution.**

### **Issues 5 and 6:**

The answer is that the expelled MPs who left and/or ceased being members of the National Resistance Movement political party, the petitioner in **Constitutional Petition No.21 of 2013**, but who still claim that they are members did not vacate  
10 their respective seats in Parliament and they are still Members of Parliament in accordance with the Constitution.

### **Consideration of issues 9, 10, 11, 12 and 13.**

These issues arise from and concern in the main **Constitutional Petition No.25 of 2013: Hon. Abdu Katuntu (Shadow Attorney General) Vs The Attorney**  
15 **General.** The issues revolve upon the question whether the Honourable Attorney General acted contrary to the Constitution in his advice dated 08.05.2013 to the Rt. Hon. Speaker of Parliament relating to the request by the Secretary General of the National Resistance Movement (NRM) political party that the Rt. Hon. Speaker declares the Parliamentary seats of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to  
20 **Constitutional Petitions 16, 19 and 21 of 2013** to be vacant by reason of the said respondents having been expelled from the NRM political party. The Rt. Hon. Speaker had in a statement to Parliament on 02.05.2013 stated that because of the absence of a “**clear unambiguous and unequivocal provisions of the law**” to empower her to make such a declaration she had restrained herself from acceding  
25 to the request of the Secretary General of the NRM Party.

The Honourable Attorney General after considering the decision taken by the Rt. Hon. Speaker of Parliament and pointing out the relevant laws that, according to him, applied to the situation, came to the conclusion that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents, having been expelled from the NRM political party, cannot legally  
5 hold their seats and were now “**Aliens**” in the 9<sup>th</sup> Parliament, their continued stay in Parliament being illegal and an abuse of the law. The Hon. Attorney General then advised, in his capacity as the Principal Legal Adviser of the Government, the Rt. Hon. Speaker to reverse her decision of not declaring vacant the seats of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents because it was unconstitutional.

10        **Constitutional Petition No.25 of 2013** faults the Attorney General that his advice contravenes the Constitution in that it wrongly advises that only members of political parties and representatives of the army are the only ones who sit in Parliament, that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents are no longer Members of Parliament by reason of their expulsion from NRM party and therefore their seats  
15 are vacant, that the Attorney General cannot advise the Speaker to reverse her ruling. The petition seeks declarations that the said acts are unconstitutional.

The Attorney General as respondent maintained he acted in accordance with the Constitution.

No evidence was adduced to this court as to what action, if any, had been taken by  
20 the Rt. Hon. Speaker or Parliament on the advice the Hon. Attorney General had rendered to the Rt. Hon. Speaker. The advice thus remains not acted upon.

Under **Article 119 (3)** The Attorney General is the principal legal adviser of the Government, and carries out under **Article 119 (4)** the functions of giving legal advice and legal services to the Government on any subject, draws and peruses  
25 agreements, contracts, treaties, conventions and other documents to which the

Government is a party or in which the Government has an interest, represents the Government in courts of law and in other proceedings to which the Government is a party and performs other functions assigned to him/her by the President or by law. Every agreement, contract, treaty, convention or any document relating to a transaction in which the Government has an interest must be concluded with legal advice having been obtained from the Attorney General, unless Parliament by law directs otherwise.

Courts in Uganda have pronounced themselves as to the effect and import of the legal advice that the Attorney General renders to Government its institutions and agencies.

While the Attorney General has a dual role as the Government principal legal adviser on both political and legal issues, as adviser on legal matters the Attorney General is a law officer and as such his/her advice on legal matters must be geared towards advancing the ends of justice. It is thus the duty of the Attorney General in discharging such responsibilities, to consult and access relevant information and advice from legitimate sources, including appropriate relevant advisers, so that the Attorney General informs himself/herself of all circumstances relevant to the advice and decision he/she is to render: See: **The attorney General, Politics and the Public interest, 1984, by John L.J. Edwards**, referred to in the judgement of G.W. Kanyeihamba, JSC, as he then was, in **Bank of Uganda V Banco Arabe Espanol: Civil Appeal No.1 of 2001 (SC)**.

The opinion of the Attorney General authenticated by his/her own hand and signature about the laws of Uganda and their effect, binding nature of any agreement, contract or other legal transaction in as much as the same concern the Government, ought to be accorded the highest respect by government, public

institutions and their agents and unless there are other agreed conditions, third parties are entitled to believe and act on that opinion without further enquiries or verification.

Where the Government, any other public Institution or body in which the Government has an interest treats and deals with the advice of the Attorney General in such a way that on the basis of the said advice the rights and interests of third parties are affected, then the Government or public institution or body in which the Government has interest is estopped, as against those third parties, from questioning the correctness or validity of that Attorney General's legal opinion:  
10 See: **Bank of Uganda V Banco Arab Espanal (supra)**.

Where, as one representing the Government in a court of law or Tribunal, the Attorney General decides to take a certain action or not to take action, in the case before the court or Tribunal such a decision of the Attorney General cannot be challenged by another Government department, public Institution or body in which  
15 government has an interest: See: **Gordon Sentiba And 2 Others V Inspectorate of Government: Civil Appeal No.6 of 2008 (SC)**.

Public institutions created under the 1995 Constitution such as the Electoral Commission, Judicial Service Commission and others that are mandated under the Constitution to carry out their work independently without being subjected to the  
20 control of any one, can be advised by the Attorney General, and while they must respect and take such advice as very persuasive, they are not bound to follow the advice of the Attorney General if to do so would compromise their constitutional role to act independently and without being subjected to the control or direction of any one authority. In this regard courts of law as the third arm of the state are not  
25 bound by the advice of the Attorney General: See: **Constitutional Court**

**Constitutional Petition No.1 of 2006: Kabagambe Asol And 2 Others Vs The Electoral Commission And Dr. Kizza Besigye.**

From the ordinary natural meaning of the English words: “**advise, advice and advisor**” an advice is never binding on the entity being advised. Therefore  
5 although the Attorney General is principal advisor of Government, the Constitution does not provide anywhere that such advice amounts to a directive that must be obeyed. Such advice while persuasive is subject to the Executive or Cabinet decision. See: **Kabagambe Asol case (supra)**

From the above analysis of the law as to the import and effect of the legal  
10 advice from the Attorney General, it is to be appreciated that Parliament, as the second Arm of Government, is part of Government and therefore has the Attorney General as principal legal adviser under **Article 119 (3) of the Constitution.**

I therefore, in agreement with their Lordships of the majority judgement, hold that the Honourable Attorney General acted within his constitutional powers to  
15 offer legal advice dated 08.05.2013 to the Rt. Hon. Speaker of Parliament.

The Speaker is the head of Parliament which is the second arm of Government, the first being the Executive and the third the Judiciary. Parliament is created by **Article 77 of the Constitution** and consists of Members directly elected representing constituencies, one woman representative from each district,  
20 representatives of the army, the youth, workers and persons with disabilities, as well as the Vice President and Ministers.

The main function of Parliament is that it is vested by the constitution with power to make laws on any matter for the peace, order, development and good governance of Uganda: See: **Article 77.** In exercising that power, Parliament is  
25 only subject to the Constitution. It follows therefore that Parliament acts

independent of any other authority or body, except the Constitution. It is therefore only in instances where the constitution provides that the exercise of power of Parliament be subjected to some other authority that that other authority may interfere with the work of Parliament. For example under **Article 137 of the**  
5 **Constitution**, the constitutional court may determine whether or not an Act of Parliament was enacted by Parliament in accordance with the constitution.

Therefore Parliament, while it must give all the respect to, cannot be bound by the advice of the Attorney General because no provision of the Constitution provides so. It follows therefore that as head of Parliament, the Rt. Hon. Speaker  
10 of Parliament, while bound to give the highest respect to the advice of the Hon. Attorney General, was not bound to follow the Hon. Attorney General's advice that she reverses her decision of retaining in Parliament the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to **Constitutional Petitions numbers 16 and 21 of 2013** after they had been expelled from membership of the NRM party upon whose ticket they had  
15 been elected to Parliament.

Specifically in answer to issue number 9, I too, like the majority judgement, find that the Honourable Attorney, through possibly a slip of the pen, mistakenly stated in his advice on page 6 thereof that the only members provided for to constitute Parliament are Members of political parties and representatives of the  
20 army; and then later on the same page at the bottom, he mentioned the categories as being only Members of Parliament representing political parties, representative of the army and Independents. The Honourable Attorney General went on to explain on page 7 of his advice why the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents had become  
"Aliens" in the Parliament of Uganda after they had been expelled from the NRM  
25 political party.

The Honourable Attorney General properly referred to **Article 78 of the Constitution** which clearly sets out the categories of those who constitute parliament. He would not have referred to the Article if his intention was to distort, contrary to the Constitution, the categories of members that constitute the composition of Parliament. I am satisfied that it was a mere mistake on the part of the Honourable Attorney General not to set out in his advice all categories that constitute Parliament as **Article 78** provides. I therefore hold that issue Number 9 does not raise a question for constitutional interpretation. It was framed basing on an obvious mistake by the Honourable Attorney General in failing to set out in his advice all the categories of members that constitute Parliament as set out in **Article 78 of the Constitution**.

As to issues 10, 11, 12, my resolution of issues 1, 4, 5 and 6 has a bearing on these issues. This resolution, which is contrary to the resolution of the majority judgement, is that the expulsion of a Member of Parliament by the political party upon whose ticket that member was elected to Parliament does not automatically result in that member vacating his/her seat in Parliament. The seat of a Member of Parliament may be vacated under **Article 83 (1) (g) and (h)** only under circumstances I have already set out while dealing with issues 1, 4, 5 and 6 earlier on in this judgement.

Further, as already held above, the advice of the Honourable Attorney General, though deserving all the highest respect possible is not binding upon the Rt. Hon. Speaker of Parliament, since Parliament of which the Rt. Hon. Speaker is head, carries out its functions as the second arm of Government only subject to the Constitution. The Constitution does not provide that the advice of the Attorney General shall be binding upon Parliament. To the extent therefore that issues 10, 11 and 12 arise from the advice of the Hon. Attorney General to the Rt. Hon.

Speaker of Parliament, which advice has no binding effect upon the Rt. Hon. Speaker of Parliament, and which advice was never acted upon the said issues do not deserve any further consideration by way of interpreting the Constitution.

Issue number 13 questions whether the Honourable Attorney General's advice  
5 to the Honourable Speaker to reverse her decision retaining in Parliament the four expelled Members of Parliament, was not inconsistent and/or contrary to **Article 137 of the Constitution** given the fact that the Honourable Attorney General rendered the said advice on 08.05.2013 after **Constitutional Petition No.16 of 2013** to which the Attorney General was the first respondent, had already been  
10 lodged in this court.

I find that **Article 119 of the Constitution** does not prescribe as to when or under what circumstances the Attorney General is supposed to give legal advice and legal services to the Government or an arm of Government like Parliament on any subject. The Constitution makes this to be a preserve of the Attorney General.

15 **Constitutional Petition Number 16 of 2013** was lodged in the Constitutional Court on 06.05.2013 and the advice of the Attorney General to the Speaker was rendered on 08.05.2013. The petitioner in **Constitutional Petition No.25 of 2013** did not adduce evidence to this court to show whether by the 08.05.2013 the Honourable Attorney General had already been served with **Constitutional**  
20 **Petition No.16 of 2013**. What is obvious is that the said petition was merely pending in the Constitutional Court by the time the Attorney General rendered his advice to the Speaker and as such there was no inconsistency with or contravention of **Article 137 of the Constitution** by the Honourable Attorney General in rendering the said advice. I so resolve.



**Constitutional Petition No.25 of 2013** has issues arising out of the Hon. Attorney General's advice dated 08.05.1013. As I have already resolved, the said advice is not binding upon the Rt. Hon. Speaker of Parliament or Parliament itself. Further the **Constitutional Petition No.25 of 2013** does not assert that any action  
5 has been taken by anyone with regard to that advice. In my considered view, no cause of action arises out of such advice to give the petitioner locus to petition the Constitutional Court for declarations relating to contents of such advice.

**Issues 2, 3 and 8:** I will consider these issues together as they are interrelated. Issue number 2 is whether the act of the Speaker in ruling on 02.05.2013 that the  
10 four Members of Parliament expelled from the NRM political party for which they stood as candidates for election to Parliament, are to retain their respective seats in Parliament is inconsistent with or in contravention of the Constitution. Issue number 3 is whether by ruling as she did the Right Honourable Speaker created a category of Members of Parliament, peculiar to and thus inconsistent with and/or  
15 contrary to the constitution. Issue 8 is whether the Right Honourable Speaker of Parliament had jurisdiction to act as she did.

Specifically in respect of issue number 3, I have already resolved, while dealing with issues 1, 4, 5 and 6 that, under **Article 83 (1) (g) and (h) of the Constitution**, expulsion of a Member of Parliament from membership of and by the political  
20 party on whose ticket the said member was elected to Parliament does not, per se, automatically result in that Member of Parliament vacating his/her seat in Parliament. The Right Honourable Speaker, therefore, in my considered view arrived at the correct decision consistent and not in contravention of the Constitution.

As to whether the Right Honourable Speaker was seized of jurisdiction under the Constitution to act as she did (issue No.8), **Article 82 of the Constitution** provides that:

**“82. Speaker and Deputy Speaker of Parliament.**

5       **(1)**.....

**(2)**.....

**(3)**.....

**(4) Subject to article 81 (4) of this Constitution, no business shall be transacted in Parliament other than an election to the office of Speaker at anytime that office is vacant.”**

10

**Article 81 (4)** requires every Member of Parliament to take and subscribe to the oath of allegiance and that of a Member of Parliament.

**Article 79** provides for the business that Parliament transacts and only when the office of Speaker is not vacant, namely: to make laws on any matter for the peace, order, development and governance of Uganda. Parliament also protects the Constitution and promotes democratic governance of Uganda.

15

The Rt. Hon. Speaker therefore is vested with jurisdiction under the Constitution to handle, deal with and give directions on any matters that relate to the business of Parliament as is vested in Parliament by **Article 79**. In exercising those powers the Rt. Hon. Speaker is subject to the Constitution, the laws that Parliament may enact under the Constitution and to the **Rules of Procedure of Parliament of Uganda**.

20

Under **Rule 7 of the Rules of Procedure of Parliament**, the Speaker presides at any sitting of the House, preserves order and decorum in the House. In case of any doubt for any question of procedure not provided for in the Rules, the Speaker decides on that issue, having regard to the practices of the House, the  
5 Constitutional provisions and practices of other Commonwealth Parliaments in so far as they may be applicable to Uganda's Parliament.

It is a fact that on 16.04.2013 the Secretary General of the NRM political party, Hon. Amama Mbabazi, requested in writing the Rt. Hon. Speaker to declare the seats of the four expelled MPs vacant because the NRM political party upon whose  
10 ticket each of the said MPs had been elected to Parliament, had expelled each of the four MPs from membership of the party.

The request in my considered view, is a matter that constituted business of Parliament in terms of **Articles 79 and 82 of the Constitution** and also falls under the ambit of the **Rules of Procedure of the Parliament of Uganda**.

15 The Rt. Hon. Speaker had to deal with the request made to her office by the Hon. Secretary General of the NRM party. The way the Rt. Hon. Speaker chose to handle the request is as per her statement to Parliament on 02.05.2013. Parliament received the statement of the Rt. Hon. Speaker and no further action was taken upon it by Parliament there and then or thereafter. The issue then came to the  
20 Constitutional Court through the consolidated Constitutional Petitions, the subject of this judgement.

It is my finding, given the state of the law as applied to the facts before this court, that the Rt. Hon. Speaker had the jurisdiction to act as she did and as such her act was not inconsistent or in contravention of the Constitution.

Whether by ruling that the four expelled MPs remain in Parliament, the Rt. Hon. Speaker of Parliament created a peculiar category of MPs in Parliament unknown to and being inconsistent with and/or in contravention of the Constitution, I note that **Article 78 of the Constitution** sets out those who  
5 constitute Parliament. These are: Members directly elected to represent constituencies, one woman representative for every district, representatives of the army, youth, workers and persons with disabilities, the Vice President and Ministers, who if not already elected Members of Parliament, are ex officio Members of Parliament with no right to vote on an issue requiring a vote in  
10 Parliament.

While **Rule 9 of the Rules of Procedure of Parliament** provides that in the House, the seats to the right hand side of the Speaker are for Members of the political party in power and those on the left are for the members of parties in opposition, the said Rule must be applied and interpreted subject to the  
15 Constitution. **Article 78** mandates the Rt. Hon. Speaker to seat in the House any member directly elected to represent a constituency in the House. Indeed **Rule 9 (1) of the Rules of Procedure of Parliament** provides that:

**“9. Sitting arrangement in the House.**

**(1) Every Member shall, as far as possible, have a seat reserved for him or  
20 her by the Speaker.”**

The Rt. Hon. Speaker, after having considered the request of the Secretary General of the NRM party to declare the seats of the four Members of Parliament expelled by the party vacant, arrived at the conclusion that the law did not give her powers to do so. The Rt. Hon. Speaker then ruled that the four MPs remain in Parliament  
25 and found places for them where to sit and transact business of Parliament as

5 elected Members of Parliament representing constituencies on the basis that, according to the Rt. Hon. Speaker, ( and now as I have held in this Judgement), the expulsion of the said Members of Parliament from membership of the political party upon which the said member were elected to Parliament did not automatically result in having their seats declared vacant.

I therefore hold that the Rt. Hon. Speaker of Parliament acted within and not in contravention of the Constitution when she ruled that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents remain in Parliament as members directly elected to represent constituencies. It is up to those members to transact their Parliamentary business in compliance with the dictates of the party they claim they still belong to, upon which they were elected to Parliament, or on the other hand, it is up to the said political party to petition the High Court under **Article 86 (1)** to have the seats of the said Members of Parliament declared vacant on the basis that the party upon which they were elected in Parliament has expelled them. It is not the Rt. Hon. Speaker to resolve that dispute between the said four MPs and the political party upon which they were elected to Parliament. The responsibility of the Rt. Hon. Speaker under **Rule 9 of the Rules of Procedure of Parliament** is to “**have a seat reserved**” for the said four Members of Parliament.

### **Issue No.7**

20 This is whether the court should grant a temporary injunction stopping the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to **Constitutional Petitions numbers 16, 19 and 21 of 2013** from sitting in Parliament pending determination of the consolidated petitions or as a permanent injunction.

25 On 06.09.2013 in a dissenting ruling, I declined to entertain the issue of granting or not granting a temporary injunction at that stage of the court

proceedings when only what remained was delivery of the final judgement in the consolidated petitions. Their Lordships of this Court in a majority decision issued the prayed for temporary injunction.

I now deal with the issue whether or not a temporary injunction ought to have  
5 been granted to the petitioners in **Constitutional Petitions 16 and 21 of 2013** stopping the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents as members expelled by the political party upon which they were elected to Parliament from sitting in Parliament pending determination of the consolidated constitutional petitions.

The petitioners in **Constitutional Petitions 16 and 21 of 2013** through  
10 **Constitutional Applications numbers 14 and 23 of 2013** applied for the above stated injunction first as against the Attorney General only, but later on application of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents, they too were added on the applications as respondents. For reasons already given in my ruling of 06.09.2013 the Constitutional Court ordered that the two **Constitutional Applications 14 and 23**  
15 **of 2013** be heard and disposed of together with the consolidated petitions.

A court injunction is an order which either prohibits (a prohibitory injunction) or requires one to do (a mandatory injunction) a particular act or thing. A breach of a court injunction is punishable as contempt of court and may, in some circumstances, lead to imprisonment.

20 The grant of an injunction by court is within the discretionary powers of the court. The test for consideration by court whether or not to grant an injunction is whether the applicant has made out a case as to whether there is a fair and bonafide question to be tried, whether damages would be an adequate remedy and, in case of doubt as to these two, whether the balance of convenience favours the grant of an  
25 injunction. See: **Giella V Cassman Brown and Company [1973] EA 358** and

also : **Noormohamed Jan-Mohamed Vs Kassamali Virjl Madhani [1963] 1 EACA 8.**

In practice, however, an applicant for a mandatory injunction has a higher burden to establish his/her case to be granted such an injunction than the one seeking a  
5 prohibitory one. This is because a mandatory injunction, if granted, imposes an additional degree of hardship or expense on the victim of the injunction. Therefore the jurisdiction as to a mandatory injunction is such that:-

**“It is a jurisdiction to be exercised sparingly and with caution but, in the proper case, unhesitatingly.”** See: **Redland Bricks Ltd V Morris [1970] AC**  
10 **652.**

The injunction sought in **Constitutional Applications 14 and 23 of 2013** was mandatory in nature in that it required, if granted by Court, the Rt. Hon. Speaker of Parliament not to implement her ruling of 02.05.2013 whereby she retained in Parliament the four MPs expelled by their NRM political party, by restraining  
15 those same MPs from entering; sitting in Parliament or participating in any parliamentary proceedings or accessing premises, precincts of Parliament until the disposal of the consolidated constitutional petitions or until further orders of the court.

The application for the mandatory injunction was based, according to the  
20 applicants, on the fact that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents, having been expelled by the NRM political party from membership of that party, each one of them had ceased to be a Member of Parliament and by reason thereof their respective seats in Parliament had been vacated and so each one ought not to be in Parliament.

Obviously therefore the application for the temporary injunction, mandatory in nature, was based upon the very issues to be resolved by the Constitutional Court in the consolidated **Constitutional Petitions numbers 16, 19, 21 and 25 of 2013**.

In my humble view, given the fact that the issues to be resolved in the consolidated **Constitutional Petitions, particularly numbers 16 and 21 of 2013**, were not straight forward and clear cut but were complicated issues involving interpretation of the Constitution and being determined, on their special facts, for the first time by the Constitutional Court, the applicants for the injunction never made out a case, that this was the nature of the case where an application for a mandatory injunction should have been made.

Further, the overriding consideration for an injunction is to preserve the status quo, but not to create a new one. The status quo in this case was that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to **Constitutional Petitions 16 and 21 of 2013** were and are sitting Members of Parliament representing their respective constituencies having been validly elected as such on the NRM political party ticket. The petitioners in the consolidated **Constitutional Petitions numbers 16, 19 and 21 of 2013** assert that this status of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents should now change to a new status whereby the said respondents, not being Members of Parliament because of their having been expelled by and from the political party upon whose ticket they were elected to Parliament, have to vacate Parliament and their seats declared vacant so that fresh elections are held in their respective constituencies. It is in effect because there is a dispute as to whether or not the alleged new status is valid or not under the Constitution that this Constitutional Court is being called upon, to resolve the dispute through the said consolidated constitutional petitions. It was therefore not proper, in my view, for the petitioners in **Constitutional Petitions numbers 16 and 21 of 2013**, to seek to obtain a mandatory injunction purporting



to preserve a status whose constitutional legitimacy was the very issue the very petitioners were calling upon the Constitutional Court to pronounce upon through **Constitutional petitions 16 and 21 of 2013.**

For the above reasons I would not have granted a temporary injunction prayed  
5 for in **Constitutional Applications 14 and 23 of 2013.**

Now in this judgement, by reason of the findings and holdings I have made in respect of the framed issues, particularly my holding that the expulsion of a Member of Parliament by his/her political party, on whose ticket he/she was elected to Parliament does not automatically result in the Parliamentary seat of that  
10 member becoming vacant, I refuse to grant the prayed for injunction.

**In conclusion by way of remedies I hold that:**

1. The expulsion from a political party is not an automatic ground for a Member of Parliament to lose his or her seat in Parliament under **Article 83 of the 1995 Constitution** but

15 (i) Where a Member of Parliament elected to Parliament on the ticket of a political party voluntarily leaves that party to join another political party or to remain an Independent in Parliament or having been an Independent in Parliament joins a political party, then that member vacates Parliament under **Article 83 (1) (g) and (h).**

20 (ii) In any other cases, where the political party upon whose ticket a Member of Parliament was elected to Parliament, asserts that the said Member of Parliament through his/her voluntary conduct, has left that party and joined another one or has remained an Independent in Parliament, or having been elected as an Independent he/she has

joined a political party, but that the said member has refused to declare to that effect, the issue whether the seat of that Member of Parliament has become vacant must be resolved upon by the High Court under **Article 86 (1) of the Constitution**. The political party concerned may use the evidence of the expulsion of such a member as part of the evidence in establishing a case against the Member of Parliament in a question as to why his/her seat should not be declared vacant by the High Court.

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2. The Ruling of the Right Honourable Speaker of Parliament dated 02.05.2013 that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to **Constitutional Petitions numbers 16, 19 and 21 of 2013**, remain in Parliament did not contravene any provision of the Constitution.
3. The Rt. Hon. Speaker of Parliament did not create a peculiar category of MPs, unknown and contrary to the Constitution by ruling as she did in (2) above.
4. The continued stay of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents after their expulsion from the NRM political party on whose ticket they were elected to parliament is not contrary to or inconsistent with the Constitution.
5. The said 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents did not vacate their seats in Parliament. They are still Members of Parliament under the Constitution.
6. No temporary injunction or any injunction at all stopping the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents from sitting in Parliament should be granted.
7. The Rt. Hon. Speaker of Parliament had the jurisdiction to make the orders she made and she acted within and in compliance with the Constitution.

8. The Act of the Hon. Attorney General of advising the Speaker and Parliament is not inconsistent or contrary to the Constitution, but the said advice, while deserving all the respect from the Rt. Hon. Speaker is not binding upon the Speaker, let alone Parliament, as the second arm of Government. To this extent, it is unnecessary in this case for court to determine the constitutionality or unconstitutionality of the nature of advice the Hon. Attorney General gave the Rt. Hon. Speaker, except in as far as that advice was part and parcel of the independent issues arising from **Constitutional Petitions numbers 16, 19 and 21 of 2013** which have been resolved upon separately in this judgement.

Having resolved the issues as above I decline to grant the declarations prayed for in **Constitutional Petitions numbers 16, 19 and 21 of 2013, Constitutional Applications numbers 14 and 23 of 2013** as well as the first respondent's (Attorney General) cross petition to **Constitutional Petition No.21 of 2013**. The said Constitutional Petitions, cross-petition and applications stand dismissed.

As to **Constitutional petition No.25 of 2013**, to the extent that the advice of the Attorney General is not binding upon the Rt. Hon. Speaker and Parliament as the second arm of Government, I find that on the mere basis of securing a copy of the said advice, which advice has not been acted upon, does not vest in the petitioner to that petition a cause of action to petition the Constitutional Court for the declarations he prays for which are all about the contents of such advice. Accordingly **Constitutional Petition No. 25 of 2013** is also dismissed by reason thereof.

As to costs, the consolidated petitions raised issues of great public importance as regards the constitutional inter-relationship of political parties and Parliament, the office of Attorney General and that of the Speaker of Parliament and the functioning of the three arms of Government: The Executive, the Legislature and the Judiciary. It is therefore only fair and fitting that no particular party to the consolidated petitions and applications be punished by way of costs. I accordingly order that each party bears its own costs of all the proceedings in the consolidated constitutional petitions, cross petition and the applications.

Lastly I wish to thank counsel of all parties for the detailed research, exposition and clarity of submissions. This court was very much assisted by such. Thank you so much.

Dated at Kampala this 21<sup>st</sup> day of February, 2014.

Remmy Kasule  
**JUSTICE OF CONSTITUTIONAL COURT**

