

UGANDA / JUDGMENT

Karuhanga & Another v The Parliamentary Commission & Another (Miscellaneous Cause 78 of 2020) [2020] UGHCCD 229 (15 June 2020)

[2020] UGHCCD 229

COURT

HC: Civil Division (Uganda)

BEFORE

Elubu, J

CASE / FILE NUMBER

Miscellaneous Cause 78 of 2020

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA CIVIL DIVISION

MISCELLANEOUS CAUSE No. 78 of 2020

AN APPLICATION FOR JUDICIAL REVIEW IN THE MATTER OF JUDICATURE
(JUDICIAL REVIEW) RULES S. I. 11 OF 2009

1. HON GERALD KARUHANGA

2. HON JONATHAN ODUR ::::::::::: APPLICANTS

Versus

1. THE PARLIAMENTARY COMMISSION 2. THE ATTORNEY GENERAL :::::::::::
RESPONDENTS

BEFORE: HON. JUSTICE MICHAEL ELUBU

RULING

The applicants, HON GERALD KARUHANGA and HON JONATHAN ODUR lodged this Miscellaneous Cause seeking prerogative orders against the respondents (THE PARLIAMENTARY COMMISSION and THE ATTORNEY GENERAL).

Both applicants are Hon. Members of Parliament of the Republic of Uganda. The specific reliefs they seek are:

- a. A declaration, that the purported amendments to the Report of the Budget Committee on the Supplementary Expenditure Schedules No. 2 Addendum I and 2 for the Financial Year 2019/2020 made on the floor of the Parliament of Uganda by the Chairperson to the Budget Committee on Tuesday 7th April 2020 were illegal, and null and void for offending Rules 156, 170(3), 195, 198 and 200 of the Rules of Procedure of the Parliament of Uganda, and for being irrational and unconscionable;
- b. An order of Certiorari to quash the purported amendments of the Report of the Budget Committee on the Supplementary Expenditure Schedules No. 2 Addendum I and 2 for the Financial Year 2019/2020 by which, inter alia, page No. 23, Annex No. 2 under Vote 014: Ministry of Health was adjusted from the duly appropriated figure of UGX 50,009,794,724.00 (Fifty Billion Nine Million Seven Hundred Ninety Four Thousand Seven Hundred Twenty Four Uganda Shillings) to UGX 40,083,434,724.00 (Forty Billion Eighty Three Million Four Hundred Thirty Four Thousand Seven Hundred Twenty Four Uganda Shillings) and another line of expenditure was created under Vote 104, being a statutory charge on the Consolidated Fund under the Parliamentary Commission in the sum of UGX. 10,000,000,000 (Uganda Shillings Ten Billion) which amendments were not presented, discussed, scrutinized and/or approved by the Budget Committee contrary to Rules 156, 170(3), 195, 198 and 200 of the Rules of Procedure of the Parliament of Uganda;
- c. A declaration that the guidelines issued by the Rt. Hon. Speaker on the 23rd day of April 2020 to all Members of Parliament directing them to disburse at their discretion the sum of UGX 20,000,000 (Uganda Shillings Twenty Million) to the district local governments of their respective constituencies were illegal, null and void for offending Section 2 (l) (a) of **the Public Procurement and Disposal of Assets Act of 2003**, sections 12(2), 20, 25, 33(2) and 45 of **the Public Finance Management Act, 2015** and for being irrational and unconscionable; and
- d. Costs of this Application be provided for.

Representation

Mr David F. K. appeared for both applicants.

Mr Solomon Kirunda and Ms Sitina Cherotich were Counsels for the the 1st Respondent

Ms Christine Kaahwa and Mr Philip Mwaka were for the 2nd respondent.

Background

According to the pleadings and the Hansard (attached to the pleadings), on the 31st of March 2020, the Hon Minister of Finance, Planning and Economic Development presented before Parliament supplementary estimates for additional funding to cater for the combating the Covid – 19 pandemic. The supplementary estimates were sent to the standing committee of parliament on Budget. The committee duly considered the proposals and its chairman presented his report to the whole house on the 7th of April 2020.

During the presentation of his report on the floor the Chairman of the Budget committee informed the house that new information had been obtained which necessitated an amendment of the original report.

It was at this point that the second applicant Hon Jonathan Odur sought the permission of the Hon Speaker to interject. He stated that the amendments were coming after the Budget committee had sat to consider the proposals. The amendments being made did not therefore have the blessing of the members of the committee and that would meet serious legal challenges if the house proceeded since the report did not meet the standards of the Parliaments Rules of Procedure. He was overruled. The report with its amendments was presented. The amendment proposed was a recommendation for the reduction of the Ministry of Health budget by 10,000,000,000/- (Ten billion shillings) to be transferred to the Parliamentary Commission.

After the presentation of the report by the Chairman, a minority report by the 1st applicant, Hon Gerald Karuhanga, who is a member of the Budget Committee was given. The report, by five members of the Budget committee, was an opinion dissenting from the report of the Chairman. Hon Karuhanga stated that they were hearing of the amendments for the first time on the floor of parliament. He stated that they were unequivocally dissociating themselves from the report.

The House voted and the minority report was negatived (rejected). When the matter was put to the vote, the majority report was carried.

Following adoption of the report of the committee of supply, 20,000,000/- out of the 10,000,000,000/-, was on the 17th day of April 2020 credited on the account of each Member of Parliament, by the 1st respondent.

On the 23rd of April 2020, the Honourable Speaker of Parliament addressed the house in a Communication from the Chair and issued guidelines to the Members of Parliament on how to utilise the funds they had received from the Parliamentary Commission. That members were to spend the money on activities meant to support the national response to the Covid – 19 in their respective districts.

It was against this background that the applicants here filed this application for Judicial Review seeking the reliefs cited in their Notice of Motion.

Preliminary points

This application was set down for hearing on the 4th of June 2020. When the matter was called, Mr Solomon Kirunda, for the 1st respondent raised two preliminary points of law namely

- i) That this court lacked the jurisdiction entertain this application
- ii) That at the time of hearing, the matters under dispute have been resolved, in the result therefore this matter has been rendered moot.
- iii) A different but related matter was raised by the 2nd Respondent. Ms Kaahwa made the argument on behalf of the second respondent that *Constitutional Petition No 4/2020 Busingye Prosper & Anor vs Parliamentary Commission & Anor* had been filed in the Constitutional Court arising from the same subject matter as the instant application. In the result, this application ought to be stayed pending the outcome of the Constitutional matter.

Issues

i) That this Court lacked the jurisdiction entertain this application

Submission

The submission on behalf of the 1st respondent is that the application seeks to challenge matters that arise out of the Legislatures' Constitutional mandate of appropriation: that is the authorisation of payment of moneys out of the Consolidated Fund. His contention is that actions of Parliament can only be reviewed by the Courts where they offend the Constitution or private rights.

He relied on the Supreme Court decision in **Attorney General vs Major General David Tinyefunza Constitutional Appeal 1 of 1997** where it was held that the doctrine of separation of powers demands and ought to require that unless there is the clearest of cases calling for intervention for the clearest of purposes of determining constitutionality and legality of action, or protection of 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 is argued farther for the 1st respondent that in **CEHURD & Others vs Attorney General *Constitutional Appeal 2 of 2014*** Court emphasised that in light of the separation of powers and the political question courts would only intervene to review legislative measures or administrative actions where the rights or freedoms of individuals are threatened or infringed. It was the contention of Counsel that this was not the position in this instant case where the prayers require the Court to interrogate the procedures of the house with regard to its legislative authority of appropriation

That the impugned decisions in this case relate to a Parliamentary or Legislative mandate stemming from Article 155 (4) of the Constitution where the House may discuss review and make appropriate recommendations, on estimates, from the appropriate committee. Parliament's

actions were therefore made in line with this Article of the Constitution. It means then that the actions were not Constitutional questions to answer or infringement of personal liberty. It was instead an affront on the constitutional powers of the committees and the House of Parliament. That the house had acted on the recommendations for amendments made by the committee.

The other question is to determine whether any Article of the Constitution was contravened. If there was then that would be a question for the Constitutional Court acting under Article 137 of the Constitution and not for this Court.

Lastly the 1st respondent cited the following ruling in **Constitutional Petition No. 3/99 Paul K. Ssemogerere Zachary Olum** where it was held that,

What then is the position in Uganda? The Constitution itself is silent on the role the Courts might play in enquiry into proceedings in Parliament and simply provides in Article 94(1) that "Subject to the provisions of this Constitution, Parliament may make rules to regulate its own procedure including the procedure in its committees".

A court in Uganda faced with a plea that it should inquire into the internal proceedings of Parliament will have to call in aid the National Assembly (Powers and Privileges) Act. Cap. 249 which is existing law saved by Article 273 of the Constitution and the Rules of Procedure of Parliament. That Act provides, in short, that in the absence of relevant provisions under that Act, the usage and practice of Parliament of United Kingdom shall apply. It follows that in determining this court's jurisdiction to enquire into internal proceedings of Parliament it must apply the Rules of Procedure of Parliament of Uganda and where the point was not provided for, then the usage and practice of Parliament of United Kingdom regarding the privilege of Parliament to determine the regularity of its own proceedings, provided of course, that Parliament has not acted contrary to the provisions of the Constitution in the course of those proceedings, for in such a case this court is given jurisdiction by Article 137(3). The substance of Article 137(3) and Rule 66 have been set out earlier on in this ruling.

We conclude then that there is no jurisdiction in the court to inquire into the validity of Parliament's internal proceedings where there has been no breach of the Constitution.

The 1st respondent concludes by submitting that this Court has no jurisdiction to handle this matter. It is also stated that a challenge can only be made in the constitutional court and not the High Court.

Counsel relied on the Kenyan Court of appeal decision in **Owners Of The Motor Vessel "Lillian S" Vs Caltex Oil (Kenya) Ltd C. A. 50 of 1989**

Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

The applicant opposes these preliminary points of law.

In reply to the question of Jurisdiction, Mr Mpanga for the applicants submitted that the contention that because Parliament is Constitutionally mandated to appropriate money it cannot be the subject of Judicial Review is mistaken. That the mandate of Parliament is constitutional as is that of the Judiciary. That the Judiciary has the Constitutional authority to review the actions of both the Executive and Legislative arms.

In this instant case the prayers sought are in (i) a declaration to determine whether the proceedings of 7th of April 2020 offend the rules of procedure.

In (ii) the prayer is for an order of Certiorari premised on the contention that the decisions taken on the 7th of April 2020 violated the rules of procedure of the Parliament of Uganda

In (iii) is an assessment of the guidelines issued by the Hon Speaker of Parliament to test whether they offend Sections of the Public Finance Act.

He adds that the Constitution allows Court to test the legality of actions complained about in this application through Judicial Review under **The Judicature (Judicial Review) Rules S. I. 11 of 2009**. He relied on the decision in **Eaton Tower Uganda Limited vs AG & Another HCMC No 84 of 2019** where Hon Justice Ssekana stated that the Power of Judicial review may be defined as the jurisdiction of superior Courts to review laws, decisions and omissions of public authorities in order to ensure that they act within their given powers. In this case the application seeks to review whether Parliament acted within its power.

Mr Mpanga submitted that looking at the case of *Tinyefunza* (supra) which indicated the reluctance of the Courts to interfere, the contention is that the difference in this particular case was there was an illegality of action, it was ultra vires. He added that Judicial Review is granted on three grounds illegality, irrationality and procedural impropriety. (See *Aggrey Bwire vs Attorney General...*)

As stated in *Tinyefunza* above, the Courts are mandated to inquire into the legality of a decision through Judicial Review which power is vested in the High Court.--

Resolution

The best place to start would be on the premise for a preliminary point of law.

The East African Court of Appeal extensively dealt with the import of a preliminary point in the case of **Mukisa Biscuit Manufacturing Co. Ltd -Vs- West End Distributors Ltd [1969] EA 696**. The Court observed,

... a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

The Court went on to hold that,

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.

In **NAS Airport Services Ltd vs A. G. of Kenya [1959] EA 53**, it was held that though the objection of a preliminary objection is expedition, the point of law must be one which can be decided fairly and squarely, one way or the other, on facts agreed or not in issue on the pleadings, and not one which will not arise if some fact or facts in issue should be proved.

Both cases were cited and followed by Justice Bamwine in **TRANSLINK (U) LTD vs Sofitra Cargo Services Ltd & Others HCMA 561 of 2006**.

A challenge has been raised whether this Court can, by way of Judicial Review, interrogate the process by which the impugned amendments were made to the supplementary estimates on the 7th of April 2020.

This Court will briefly layout the legal basis for Judicial Review as it relates to this dispute.

Judicial Review in Uganda is regulated by **The Judicature (Judicial Review) Rules S. I. 11 of 2009** which are made by The Chief Justice pursuant to Article 133 (1) (b) of the Constitution and Sections 42 (1) (b) of the **Judicature Act Cap 13**.

Prerogative orders are provided for under Section 36 of the **Judicature Act** and are issued by the High Court under this law. **The Judicature (Judicial Review) Rules S. I. 11 of 2009**, as amended, by S. I. 32 of 2019, are the rules regulating the exercise of Judicial Review by which the prerogative orders are made. In Rule 7A, a Court is required to consider several factors before it proceeds to review a matter. One such factor is whether the matter before it is amenable to Judicial Review.

These same Rules define Judicial Review as the process by which the High Court exercises its supervisory jurisdiction over proceedings and decisions of subordinate courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties.

It is also described in the **Black's Law Dictionary** at page 1013 **11th Edition Thomson Reuters, 2019** Judicial review is defined as a court's power to review the actions of other branches or levels of government; especially the court's power to invalidate legislative and executive actions as being unconstitutional. Secondly, a court's review of a lower court's or administrative body's factual or legal findings

(see **Eaton Towers vs Attorney General & Jinja Municipal Council HCMC 84 of 2019**).

Indeed Rule 2 of **The Judicature (Judicial Review) Rules** includes Parliament as one of the Public bodies for purposes of the Rules.

Where prerogative orders are granted in Judicial Review, it is on the basis of proof of three grounds namely Illegality; irrationality and procedural impropriety – **Council of Civil Service Unions v. Minister for the Civil Service (1985) AC. 374**.

The first two grounds are known as substantive grounds of judicial review because they relate to the substance of the disputed decision. Procedural impropriety is a procedural ground because it aims at the decision – making procedure rather than the content of the decision itself (**His Worship Aggrey Bwire v Attorney General & Anor (Civil Appeal No 9 of 2009)**).

The other tenet I will consider here is that the remedy of judicial review is concerned with reviewing not the merits of the decision in respect of which the application for judicial review is made, but the decision making process itself (**John Kasibo vs Comm of Customs. Misc Appln. No 44/2007**).

It is against this background that I will resolve the matter at hand. It is the submission for the 1st respondent that this Court has no Jurisdiction to inquire into the proceedings of Parliament. The cited decision in **Ssemogerere** (supra) specifically states

'We conclude then that there is no jurisdiction in the court to inquire into the validity of Parliament's internal proceedings where there has been no breach of the Constitution.'

When this decision is read with the one in **Tinyefunza** it is clear that limits have been placed on the level of judicial intervention that can be made into the Legislative actions of the Parliament of Uganda. But is also clear that it was never intended to grant blanket immunity or have a bar on interrogating actions of the legislature by the Courts.

Both arms of Government derive their mandate from the Constitution. For example Article 139 of the Constitution stipulates that the High Court shall, *subject to the provisions of this Constitution*, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law.

As seen earlier the Constitutional Court in **Semogerere** had held that rules of procedure of Parliament are made pursuant to Article 94 (1) of the Constitution. It was this therefore which implied that provided no irregularity that contravenes the Constitution is shown, no judicial inquiry shall be permitted.

The question therefore is whether this is an absolute ban? It appears that the rule of law would stand in the way of an absolute ban on scrutiny especially judicial scrutiny. In fact their Lordships in the same case of *Semogerere* (supra) observed that if, on a true construction of the Constitution, some event or circumstance is made a condition precedent of the authentic expression of the will of the legislature or otherwise of the validity of a proposed law, it follows that the question whether the event or circumstance has been met, is examinable in the court.

This is also the position in Kenya, which like Uganda, has a written Constitution (see pg 13 **Review of Administrative Decisions of Government by Administrative Courts and Tribunals** by The Hon. Mr. Justice Alnashir Visram [March 2010]).

It appears to me that this is the allegation made by the applicant and denied by the respondent. That in view of the circumstances or the facts here, the authentic expression of Parliament was flouted because the Budget committee did not sit to review any amendments proposed. Therefore validity of the amendments is questionable and that can be inquired into by this Court.

Indeed even the Supreme Court had occasion to refer to its earlier decision in *Tinyefunza* (supra) when Hon Justice Bart Katureebe, JSC, stated that In my view, Kanyeihamba, JSC (as he then was) does not rule out the courts coming in to make Constitutional interpretation where the other branches of government act outside the powers granted to them by the Constitution. It would appear to me that the court would inquire into actions or omissions in question with regard to the provisions of the constitution and decide whether those actions or omissions are within the power granted by the Constitution (see *CEHURD & Others vs Attorney General SC Const. App. No 1 of 2013*)

In view of all the decisions cited above, there is no such thing as a blanket ban on Courts inquiring into legislative decisions. From the definitions of Judicial Review, it is clear that Court may inquire into the actions of the legislature in instances where they are excessive or unlawful. This is the very essence of the substantive ground of Judicial Review relating to illegality.

As Justice Mwangusya stated in *Yustus Tinkasimire & Ors V A-G and Dr Stephen Malinga Misc Appln 35 of 2012* that Illegality is when a decision making authority commits an error of law in the process of taking the decision. An exercise of power that is not vested in the decision making authority is such an instance. Acting without Jurisdiction or ultra vires are instances of illegality. A decision maker who incorrectly informs himself as to the law or who acts contrary to its principles is guilty of an illegality.

From this standpoint it is impossible to state whether there was an illegality in this case without hearing arguments. That is so because while the 1st respondent may argue this Court can not to inquire into the validity of the proceedings to amend the supplementary budget where there has been no breach of the Constitution, there is still the counter argument of whether based on the Constitution, the passing of the amendment was a true authentic expression of the entire house and whether the amendment was valid?

In essence the Court is called upon to exercise its discretion. From the authority of *Mukisa biscuits (supra)*, a matter requiring the exercise of judicial discretion cannot be settled by a preliminary objection if the Court must act by exercising its discretion.

The 9th Edition of **Black's Law Dictionary** defines judicial discretion as a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right.

There also appears to be the need to ascertain the facts regarding the proceedings of the Budget Committee. The contention of the applicants is that the amendments were introduced on the floor of Parliament. The 1st respondent on the other hand argues that the Budget Committee properly considered the amendments, and all members present and voting, appended their signatures to the report approving the amendments.

Evidently this key aspect of this case requires the ascertainment of these facts before the Court can render a decision.

It is therefore my finding that because the Court is called upon to exercise its discretion and also to ascertain key aspects of evidence, the question of Jurisdiction cannot be settled as a preliminary point of law.

The first objection is accordingly dismissed.

ii) That at the time of hearing, the matters under dispute have been resolved, in the result therefore this matter has been rendered moot.

According to Counsel for the first respondent, the prayers in this matter are intended to quash the amendments made on the report of the Budget committee and to quash the guidelines issued by the Right Honorable Speaker of Parliament.

It is argued that the Committee on Budget is not the final authority. It makes recommendations for adoption by the entire House. Those recommendations were made in this case and authority given to spend money out of the consolidated fund. Disbursements have been made and the money spent.

Counsel submitted that this Court had, on the 29th of April 2020, given a decision determining how the funds should be spent and the accountability requirements for the recipient Members of Parliament.

It is stated that all the above have had the effect of extinguishing the cause of action and no practical order can be obtained from this Court.

The 1st Respondent cited **Daniel Kaminja & 3 others (Suing as Westland Environmental Caretaker Group) v County Government of Nairobi [2019] eKLR** where it is stated that **Mootness** arises when there is no longer an actual controversy between the parties to a court case, and any ruling by the court would have no actual, practical impact.

Mr Mpanga, in reply, submitted that the orders of the Court on the 29th of April 2020 dealt with the application for a Temporary Injunction. In this case the applicant moves Court for an order of Certiorari and an assessment of the guidelines issued by the Hon Speaker of Parliament to test whether they offend Sections of the Public Finance Act.

Determination

I totally agree with definition of mootness given in the 1st respondents submissions.

This aspect can be disposed of by looking at the prayers that have been made in this application and which were summarised earlier in this ruling. For avoidance of doubt they are,

In (i) a declaration to determine whether the proceedings of 7th of April 2020 offend the rules of procedure.

In (ii) the prayer is for an order of Certiorari premised on the contention that the decisions taken on the 7th of April 2020 violated the rules of procedure of the Parliament of Uganda

In (iii) is an assessment of the guidelines issued by the Hon Speaker of Parliament to test whether they offend Sections of the Public Finance Act.

Considering the nature of the prayers made, certiorari and declaration, the prayers show that this is still a live dispute.*†*

'Certiorari issues to quash a decision which is ultra vires or vitiated by some error on the face of the record...'

A declaration is a pronouncement by Court on the legal position of a party, after considering the evidence and applying the law and that evidence to a situation. See Section 2 **The Judicature (Judicial Review) Rules**.

Up until this point this Court has not made a judicial consideration of these matters as prayed for in this application. It is only when that inquiry is done, and the facts properly ascertained, with arguments made, that a finding on whether the matter is moot will be made.

The very nature of the prerogative writ of certiorari is to call into the High Court, a decision already taken, and to quash it, where the Court determines it to be ultra vires.

Secondly the legal declaration sought is to make a pronouncement in law whether the parliamentary rules of procedure were flouted.

In view of the above, this court finds that there is a live and actual controversy between the parties for this court to determine. The matter is not moot.

The second objection is dismissed.

iii) The third question to determine is whether this Application should be stayed pending the outcome of Constitutional Petition 4 of 2020 Busingye Prosper & Another vs The Parliamentary Commission & Anor.

Before I deal with this issue, it is imperative to start with an objection raised by the 1st respondent, praying that the affidavit of the 2nd respondent be struck off. The 2nd Respondent was opposed to this prayer. The submission was premised on the fact that the affidavit was deposed by one Mr Wanyama Kodoli, A State Attorney, in the Attorney General Chambers who was giving a deposition on matters that were not within his knowledge.

This question was resolved by the Supreme Court in **Rtd Col. Kizza Besigye vs Yoweri Museveni Kaguta & Electoral Commission Supreme Court Presidential Election No.1 of 2006** in the holding of Hon Justice JWR Tsekoko who stated,

"I held that even if some paragraphs of the affidavits might contain hearsay matters and even if a deponent did not specify the source of certain information contained in the affidavit, those were not sufficient grounds for declaring a whole affidavit defective or a nullity

I will accordingly allow the affidavit in reply. Additionally the affidavit is limited almost exclusively to matters arising out of this current application and **Constitutional Petition 4 of 2020**. The Attorney General is a respondent in both matters and the affidavit is deposed on matters contained in the pleadings of all these cases.

The main point here is an application by the 2nd Respondent who by letter dated 29th of May 2020, and addressed to the Registrar of this Court, stated that **Constitutional Petition 4 of 2020 Busingye Prosper & Another vs The Parliamentary Commission & Anor** had been filed in the Constitutional Court.

It was the contention of the Attorney General that the Petition and this application arise out of the same subject matter with the reliefs sought overlapping. In the result the prayer was that this matter be stayed pending the determination of the Constitutional Petition or, in the alternative, a question be referred to the Constitutional Court for interpretation.

That the petition also contends that the motion introducing the amendments on the floor was made without the approval of the Budget Committee which flouted Rules 133, 147 (3), 171, 174 and 176 of the Rules of Procedure of Parliament.

That the instant application seeks reliefs to declare the amendments referred to as being illegal, null and void for offending Rules 156, 170 (3), 195, 198, and 200 of Rules of Procedure of the Parliament of Uganda

In addition that the 1st Respondents answer to the Petition states in Paragraph 15 that that it is true the issues raised in the Petition are under Judicial Consideration in this application.

Because of that stated overlap of issues and the subject matter, as both applications arise from the same proceedings of parliament and challenge the constitutionality of the amendments similar matters have been raised.

It is prayed that it would be in the interest of all the parties for the Constitutional matter to be determined first before this application is disposed of.

The applicant from submissions made would if it came to it, favour the parties be issued directions to frame a question for reference.

The 1st respondent is opposed to this prayer.

Counsel states that the question of a constitutional reference was never pleaded and secondly this Court must make a ruling on its jurisdiction first. He states that this did not prejudice any of the parties as the matter may be determined by the Constitutional Court which, under Article 137 (4) (a) may grant an order of redress.

Resolution

I have perused **Constitutional Petition 4 of 2020**.

The petition prays for a declaration that the introduction of the amendments on the floor of Parliament was illegal and in violation of the Parliamentary Rules of Procedure.

This prayer is very similar to the 1st declaration sought in this application which seeks for a declaration to determine whether the proceedings of 7th of April 2020 offend the Rules of Procedure. It is also akin to the second one, which is a prayer for an order of Certiorari premised on the contention that the decisions taken on the 7th of April 2020 violated the Rules of Procedure of the Parliament of Uganda.

It is the Petitioners contention in Paragraph 11 (b) of the Constitutional Petition that the passing of the resolution allowing the impugned amendments, was in contravention of, inter alia, Section 25 of **the Public Finance Act**.

The 3rd prayer in this application seeks an assessment of the guidelines issued by the Hon Speaker of Parliament to test whether they offend Sections of **the Public Finance Act** including Section 25.

It is evident therefore that there is an overlap between the two matters. In my view the Constitution has supremacy over any law in the land. Any question of interpretation of the Constitution, with regard to the actions of Parliament, would therefore take precedence in these circumstances.

It is especially pertinent here where similar questions have arisen. Although the Petition was filed by different parties, it arises out of the same subject matter. In order to avoid any inconsistency in decisions it would appear most prudent to await the outcome of Constitutional petition No 4 of 2020 before determining the instant application.

The Supreme Court held in **CHARLES ONYANGO OBBO vs ATTORNEY GENERAL CONSTITUTIONAL APPEAL No. 2 of 2002** that where a court refers a question that arises in proceedings before it, it must await the decision of the question b*y* the Constitutional Court, and dispose of the case in accordance with that decision.

Although this was a holding made pursuant to a reference in a criminal case it would apply with full force here where the Constitutional validity of the very actions impugned in this instant case are under review in the Constitution Court. The outcome of the Petition has a direct bearing on all the questions in this application.

In view of the above it is directed that the Instant Application No 78 of 2020 be stayed pending the outcome of Constitutional Petition No 4 of 2020.

In light of my findings, and the dismissal of both preliminary points, the 1st Respondent shall meet the costs.

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Michael Elubu

Judge

15.6.2020

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