

UGANDA / JUDGMENT

Parliamentary Commission v Mwesigye [2019] UGSC 11 (25 July 2019)

[2019] UGSC 11

COURT

Supreme Court of Uganda

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THE REPUBLIC OF UGANDA**IN THE SUPREME COURT OF UGANDA AT KAMPALA**KATUREEBE, CJ; ARACH-AMOKO, OPIO-AWERI. [CORAM: MWONDHA, MUGAMBA, NSHIMYE
AND TUMWESIGYE; JSC]**CONSTITUTIONAL APPEAL NO. 08 OF 2016****BETWEEN****PARLIAMENTARY COMMISSION:.....APPELLANT****AND****MWESIGYE WILSON:.....**

(An appeal from the Judgment of the Constitutional Court (Kavuma DCJ, Mwangusya, Buteera, Tibatemwa and Egonda-Ntende; JJA/JCC) dated 15th November, 2015 in Constitutional Petition No.31 of 2011.)

JUDGMENT OF THE COURT

This is an appeal by the Parliamentary Commission, the appellant, against the decision of the Constitutional Court dated the 23rd 20 November, 2015, in Constitutional Petition No. 31 of 2011, filed by Wilson Mwesigye, the respondent, declaring that:

"...section 5 of the Parliamentary (Remuneration of Members) Act, is unconstitutional and contravenes Article 93 of the

Constitution. Such declaration takes effect from the date of 25 this judgment. Henceforth no emoluments of members of

Parliament shall be determined by Parliament in disregard of S Article 93 of the Constitution."

The appellant was aggrieved by this declaration and appealed to this Court on the grounds that:

- 1. The Constitutional Court erred in law and in fact in holding that section 5 of the Parliamentary (Remuneration of Members of Parliament) Act contravened Article 93 of the Constitution.
- 2. The Constitutional Court erred in law and fact when in interpreting the effect of Article 93 of the Constitution segregated it from the other relevant provisions of the Constitution, namely Articles 84, 154 and 155.

Background

The respondent filed a petition in the Constitutional Court against the appellant and the Attorney alleging inter alia, that Parliament had, on numerous occasions, increased the emoluments of its 20 members by resolution using section 5 of the Parliamentary (Remuneration of Members of Parliament) Act. He contended that this was contrary to Article 93 of the Constitution, which requires such action to be originated by a bill or a motion on behalf of Government.

The respondent prayed for a declaration that section 5 of the 25 Parliamentary (Remuneration of Members of Parliament) Act, is unconstitutional and should be struck off.

The appellant and the Attorney General, its co-respondent, opposed the petition contending that the Parliamentary (Remuneration of

Members of Parliament) Act is in conformity with Article 85 of the 5 Constitution. They contended that the Executive cannot within the law veto a determination of the emoluments of Members of Parliament once so determined. They added that the Act ensures the independence of the Legislature and is in accordance with the doctrine of separation of powers. They averred that petition was 10 therefore frivolous and vexatious and should be dismissed.

The issue agreed upon for determination by the Constitutional Court was, whether section 5 of the Parliamentary (Remuneration of Members of Parliament) Act, Cap 259 is unconstitutional. And, if so, what remedy is available to the respondent.

The Constitutional Court answered the issue in the affirmative and made the aforesaid declaration, hence this appeal.

Representation

The appellant was represented by Mr. Solomon Kirunda, its Principal Legal Officer, while Mr. Mukasa Lugalambi continued to represent the respondent. They filed written submissions in which they argued both grounds together. Court allowed them to make brief oral highlights on the hearing day. We shall adopt the same order in dealing with the appeal.

Submissions by Counsel 25

Kirunda submitted that the learned Justices of the Constitutional Court had misconstrued the import of section 5 of the Act and misapplied it, and thereby reached the wrong decision that

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- the section is unconstitutional. According to him, the section is S constitutional and poses no problem if properly applied. He contended that where section 5 is read without bringing it into conformity with article 93, then the fault is that of the people who misapplied the section, but not the section itself.
- Regarding article 93, Mr. Kirunda contended that the learned 10 Justices of the Constitutional Court had interpreted the said article without taking into account the other articles of the Constitution that are relevant to the question of emolument namely, articles 85 which is the basis for emolument of members of Parliament and articles 154, 155 and 156 which provide for the procedure for appropriation of funds from the Consolidated Fund. He submitted that all these articles support each other. He argued that article 93 was read in isolation and section 5 was misconstrued.
- Mr. Kirunda submitted that in the process, the learned Justices of the Constitutional Court erred in reaching their conclusion that Parliament was contravening article 93 of the Constitution in determining the emolument of members of Parliament by excluding the Executive. He pointed out that the resolution of 2001 clearly showed that it was moved by Hon. Isaac Musumba, a member of the Executive and not by a private member.
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Mr. Kirunda prayed that the appeal be allowed and the judgment of the Constitutional Court be set aside.

Mr. Lugalambi opposed the appeal and fully supported the decision of the Constitutional Court. He submitted that the evidence on record

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clearly showed that Parliament has not always increased the \$5\$ emoluments of the members of Parliament that is chargeable on the Consolidated Fund and that the procedure prescribed under article 93 of the Constitution of first presenting a resolution or a motion on behalf of the Executive has not always been followed. He stated that this has been the practice as shown by the resolution that was 10 passed on behalf of the Parliamentary Commission and not the Executive, although the mover, Hon. Musumba was a Minister.

He submitted further that the resolution was alive to article 82 and 85 but was silent on article 93. He further contended that the effect of failing to state in section 5 of the Act that the increment can only be done by invoking article 93 is actually what resulted in the increments being made by Parliament without due process.

He submitted that counsel for the appellant has suggested in his submission to this Court that no resolution can be passed by Parliament for the purpose of the increment of emoluments of 20 members of Parliament if it does not emanate from the Executive, but did not adduce any evidence to the contrary to support that assertion. Mr. Lugalambi went on to say that no wonder the Attorney General had seen it right not to appeal the decision of the Constitutional Court.

He contended that even if Parliament is authorised under article 85 of the Constitution to determine their own emoluments, it is not an open cheque to obtain whatever amount they desire. He submitted that article 93 is thus the necessary check and balance to ensure

that the Consolidated Fund is not raided without applying the $\$ \backslash \mathrm{mathsf{S}} \$$ appropriate mechanism.

He further contended that the Constitutional Court did not segregate article 93 from the other relevant articles of the Constitution. He argued that the Constitutional Court was actually alive to all the relevant articles and applied the cardinal rule of Constitutional interpretation laid out in *P. K. Ssemwogerere vs Attorney General, Constitutional Appeal No.1 of 2002 (SC)*, as can be discerned from their judgment.

In conclusion, Mr. Lugalambi submitted that the appellant has not proved any of the grounds of appeal, he therefore maintained his 15 prayer that the appeal should be dismissed with costs to the respondent and the money illegally obtained from the Consolidated Fund should be refunded.

Consideration of the appeal by Court

The allegation by the respondent was that the practice by Parliament 20 of increasing the emoluments of its members by resolution, using the impugned section 5 of the Act, was rampant and that this contravened article 93 of the Constitution. The response by the appellant was that Parliament was empowered to increase the emoluments of its members by article 85 of the Constitution and the 25 Executive had no right to veto it.

Consequently, right from the very beginning of the process of determining the Petition, the Constitutional Court noted, and rightly

- so, that the pleadings, the affidavits and the scheduling conference S indicated that it was an agreed fact that Parliament had, in the past acted independently in making provision for the emoluments of members of Parliament.
- Secondly, the Constitutional Court also took note of the impugned resolution passed by Parliament in 2001, which showed how 10 Parliament had approached the subject. The only dispute before the Constitutional Court was therefore, whether, when all the provisions of the Constitution that are relevant to the matter are read together, they render the actions of Parliament unconstitutional or not. The relevant provisions are articles 85 and 93 of the Constitution. The 15 Constitutional Court also considered section 5 of the Act. After setting them out, this is how the Constitutional Court resolved the issue in its judgment:

"25. It is not in dispute that Parliament is in control of the purse so to speak and must authorise all expenditure of public funds, especially from the consolidated fund. The Constitution has provided for an elaborate system of checks and balances between the separate arms of State in the management of public resources without leaving it to only one. Each organ has been given its role to ensure that there is accountability and transparency. No one organ is entirely on its own. However, in order to secure the independence of one organ against the other, checks and balances have been provided.

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26. For instance there are detailed provisions in Articles 152 to 156 about the creation and management of the consolidated fund and how funds therein are to be appropriated. The consolidated fund is managed by the Executive arm of Government but it has no authority to spend a single cent except with consent of Parliament. The Executive must have the authority of Parliament to raise and collect taxes and non-tax revenue.

Whereas Article 85 authorises. Parliament to determine the emoluments of its members that is not the only Constitutional provision that comes into play on the subject. For as long as that determination was going to be a charge upon the consolidated fund, Article 93 comes into play, especially in light of its mandatory provisions. It would not take away the authority of Parliament to determine the emoluments of its members but in so doing it must do so in conformity with Article 93 of the Constitution. The motion or bill the subject of the emoluments of the members of Parliament must be brought, not on behalf of the Parliamentary Commission but on behalf of Government. We know that the head of Government is the President of Uganda under Article 98(1) which would mean that the Government in this case refers to the Executive arm of Government.

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28. Article 93 bars Parliament from proceeding on either a bill or a motion unless that bill or motion is introduced by Government in a specific number of cases which include, '(a) (ii) the imposition of a charge on the Consolidated Fund or other public fund of Uganda or the alteration of any such charge otherwise by reduction.'
29. The Constitution specifically bars Parliament from considering bills or motions which would include resolutions that impose a charge upon the Consolidated Fund or alteration of such existing charge other than by way of reduction. Emoluments of Members of Parliament are a charge upon the Consolidated Fund. It follows that Article 85 must be read together with Article 93 in order to achieve a harmonious reading of the Constitution that allows both provisions to take effect and achieve the greater good of an accountable Government. Where in the past Parliament has acted in disregard of Article 93, and the Executive has acquiesced to that position, both have done so in breach of the Constitution.
30. Much as Parliament is Constitutionally empowered to determine the emoluments of its members, the bill or motion or resolution which is the subject of such emoluments must originate from the Government, and Parliament would then be empowered to consider the same

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and determine the emoluments of the honourable Members of Parliament. This is the only constitutionally permissible route for Parliament to determine the emoluments of its members. In that regard, much as the Parliament can amend, by resolution, under Section 5 of the Parliament (Remuneration of Members) Act, the Schedule to the Act which contains the emoluments of members, such resolution must be on a motion brought on behalf of Government to Parliament. This is the only way to read section 5 of the Act to bring it into compliance with Constitution. Left on its own Section 5 of the Act is unconstitutional.

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32. Since section 5 of the Parliament (Remuneration of Members) Act has in the past been read, without bringing it in conformity with Article 93 of the Constitution. We are satisfied that it is null and void to the extent of its inconsistency with Article 93 of the Constitution. We would allow a declaration in those terms."

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It is clear from the above quoted paragraphs that the criticism leveled against the Constitutional Court that Parliament segregated article 93 from the other relevant provisions of the Constitution is baseless. The Constitutional Court was actually alive to all the relevant articles of the Constitution on the matter, namely article 85 that authorises Parliament to determine the emoluments of its members and articles

152 to 156 in respect of the creation and management of the \$\mathsf{S}\$ Consolidated Fund appropriation of funds.

The Constitutional Court was also alive to the restriction on financial matters imposed under article 93 of the Constitution. The Constitutional Court, while emphasising that article 85 authorises

Parliament to determine the emolument of its members, ruled that 10 for as long as the emoluments are going to result into a charge on the Consolidated Fund, the bill or motion for increasing the emoluments must be brought on behalf of the Government and not the Parliamentary Commission. This finding was based on the interpretation of articles 85 and article 93 of the Constitution which 15 in the relevant parts provide:

"85. Emoluments of members of Parliament

A member of Parliament shall be paid such \$(1)\$ emoluments and such gratuity and shall be provided with such facilities as may be determined by Parliament."

"93. Restriction on financial matters

Parliament shall not, unless the bill or the motion is introduced on behalf of Government-

(a) Proceed upon a bill, including an amendment bill, that makes provision for any of the following--- \$(i) \ldots\$

(ii) the imposition of a charge on the Consolidated Fund or other public fund of Uganda or the alteration of any such charge otherwise than by reduction.

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(b) proceed upon a motion, including an amendment to a motion, the effect of which would be to make provision for any of the purposes specified in paragraph (a) of this article."

(the underlining was added for emphasis)

The Constitutional Court held, and rightly so in our view, that the 15 emoluments of members of Parliament are a charge on the Consolidated Fund and therefore, article 85 and 93 of the Constitution must be read together to achieve a harmonious reading of the Constitution which allows both provisions to take effect and achieve the greater good of an accountable Government.

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The Constitutional Court applied the rule of harmony in *P. K. Ssemwogerere vs Attorney General*, Constitutional Appeal No.1 of 2002 (SC), which is to the effect that, the whole Constitution has to be read together as an integral whole, with no particular provision destroying the other but rather each sustaining the other. No one provision is to be segregated from the others and to be considered alone, but all provisions bearing upon a particular subject

are to be brought into view and to be interpreted so as to effectuate \$5\$ the greater purpose of the instrument.

The finding of the Constitutional Court was also based on the evidence that the respondent had adduced which showed that the resolution passed by Parliament in 2001 for the increase of the emoluments of members of Parliament was presented to Parliament by Hon. Isaac Musumba, who was acting for and on behalf of the Parliamentary Commission, not the Executive. The Constitutional Court emphasised that the head of Government is the President of Uganda under article 98(1) of the Constitution, which means that the Government referred to in article 93 of the Constitution is the Executive arm of Government. Although Hon. Musumba was a Minister and therefore part of the Executive at the material time, nevertheless, he had signed the impugned resolution on behalf of the Parliamentary Commission, not on behalf of Government.

The Constitutional Court stated as follows, regarding section 5 of the 20 Act:

> " Since section 5 has in the past been read, without bringing it into conformity with Article 93 of the Constitution, we are satisfied that it is null and void to the extent of its inconsistency with Article 93 of the Constitution. We would allow a declaration in those terms."

The Constitutional Court then proceeded to make the declaration complained of.

Section 5 of the Act reads: \$5\$

"Amendment of Schedule

Parliament may, from time to time, by resolution, amend the Schedule to this Act."

The schedule to the Act provides for the salaries and gratuities for members of Parliament. 10

The Constitutional Court found that much as Parliament can amend by resolution under section 5 of the Act, the Schedule to the Act which contains the emoluments of members of Parliament, such resolution must be brought on behalf of Government to Parliament. We agree with this finding.

In addition to that, it is important to bear in mind that there is one Consolidated Fund to which all monies of Uganda are deposited as per article 153 of the Constitution. It is the President who is charged with the responsibility of preparing or causing to be prepared, estimates of revenue and expenditure of Government to be laid before Parliament as per article 155 (1) of the Constitution. Article 155(2) states as follows:

"The head of any self- accounting department, commission or organization set up under this Constitution shall cause to be submitted to the President at least two months before the end of each financial year estimates of administrative and development expenditure and estimates of revenues of

the respective department, commission, or organization for the following year."

(the underlining was added for emphasis).

The Parliamentary Commission set up under article 87A of the Constitution must also follow this procedure. The purpose is that there is one financial authority in charge of revenues and 10 expenditure, even though expenditure must be authorised by Parliament. Anybody who wants to create a charge on the Consolidated Fund must first inform the Government and article 93 is meant to achieve that.

This is the only way to read section 5 of the Act to bring it into compliance with the Constitution. Left on its own, section 5 is unconstitutional.

This finding is in line with the principle of interpretation laid down by the Supreme Court in Attorney General vs. Salvatori Abuki,

20 Constitutional Appeal No.1 of 1998, followed in Foundation For Human Rights Initiative vs. Attorney General, Constitutional Appeal No 3 of 2009. It states that:

> "In determining the constitutionality of a legislation, its purpose and effect must be taken into consideration. If the purpose of the Act is inconsistent with the provision of the Constitution, it shall be declared unconstitutional. Similarly, if the effect of implementing a provision of the

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Act is inconsistent with a provision of the Constitution, that provision of the Act shall be declared null and void."

Clearly, the wording of section 5 of the Act allows Parliament to amend the Schedule to the Act without recourse to article 93 of the Constitution. This is inconsistent with the said provision of the Constitution. The Constitutional Court was therefore right in declaring the impugned section 5 of the Act as unconstitutional, and making the order complained of in this appeal.

The holding by the Constitutional Court is that the resolution for increase of emoluments must be moved on behalf of Government since it would create a charge on the Consolidated Fund.

We find nothing wrong with the above findings. Our view is that the provision under article 93 of the Constitution is more about the entry point when a motion, a bill or amendment that has the effect of an increase of the charge on the Consolidated Fund must be introduced on behalf of Government and not Parliament. Thereafter, the rest of the appropriation process ably described by Mr. Kirunda under

articles 152 to 156 come into play. It must pass through article 93.

It is evident that if section 5 of the Act is left on our statute books, it is bound to be used by Parliament to violate the Constitution. The idea is that the appellant should not increase the emolument of members of Parliament in disregard of the mandatory requirement under article 93 because of articles 82 and 85 of the Constitution together with the impugned section 5 of the Act. The Constitutional Court therefore made the right decision and it cannot be faulted.

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In the result, we find no merit in this appeal and dismiss it $\$ \mathbf{S} \$$ accordingly. We award the costs of the appeal to the respondent.

Dated at Kampala this..... 2019

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Hon. Justice Katureebe, **CHIEF JUSTICE**

Hon. Justice Arach-Amoko **JUSTICE OF THE SUPREME COURT**

Hon. Justice Opio -Aweri 20 **JUSTICE OF THE SUPREME COURT**

Thuandle

Hon. Justice Mwendha **JUSTICE OF THE SUPREME COURT 25**

$\$ \mathbf{\ldots R} \$$

Hon. Justice Mugamba
JUSTICE OF THE SUPREME COURT

Hon. Justice Nshimye AG. **JUSTICE OF THE SUPREME COURT**

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Hon. Justice Tumwesigye AG. **JUSTICE OF THE SUPREME COURT**

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