

Tendo & Another v Attorney General
(Constitutional Petition 8 of 2021)
[2024] UGCC 24 (22 November 2024)
[2024] UGCC 24

BEFORE

Mulyagonja, JCC, Kihika, JA /JCC, Tibulya, JA/JCC,
Kazibwe, JCC, Asa Mugenyi , JA/JCC

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2. MUSIIME ALEX MARTIN ::::::::::::::::::::::::::::PETITIONERS

AND

10 THE ATTORNEY GENERAL ::::::::::::::::::::::::::::::: RESPONDENT

JUDGMENT OF IRENE MULYAGONJA, JCC

Introduction

This petition was brought under Article L37 (1), (3) (a) and (b) and (a) of the Constitution of the Republic of Uganda, 1995, and the Constitutional Court (Petitions and References) Rules, S. I 91 of 2005. The petitioners' grievance was that certain provisions of the Police Act, Cap 303, and the Criminal Procedure Code Act, Cap 116, both of the 2000 Edition of the Laws of Uganda,¹ which enable police officers to effect the preventive arrest of persons without charge are in contravention of rights that are protected

20 by the Constitution.

Background

The background, as deduced from the petition, was that the Petitioners are Advocates of the courts of judicature in Uganda, and advocates of

¹ The 2000 Edition of the Laws of Uganda was revised and reprinted. The reprint, 7th Revised Edition of the Principal Laws of Uganda, came into force on 1st July 2024. The impugned provisions of the Police Act, now Cap 324, and the Criminal Procedure Code, now Cap L22, are still the same and the sections bear the same numbers as they did in the 2000 Edition.

human rights who believe in the rule of law and constitutionalism. The 1st Petitioner was the Secretary to the Advisory Committee of the Network of Public Interest Lawyers (NETPIL) while the 2^d Petitioner is a member thereof. They state that in December 2020 and March 2021, NETPIL commissioned research on comparative law and practice on preventive arrest and detention entitled "Perspectives on Preventive Arrests." That both Petitioners participated in the study whose report was dated 2021.

The Petitioners further state that through the study, they discovered that in several jurisdictions specific procedures on preventive arrest and detention have been enacted into law. That the police in those jurisdictions are required to produce a person arrested under preventive action before court within a specified number of days and hours, unlike in Uganda where there is no clear stipulation of the duration of preventive arrest. 10

The Petitioners went on to state that there are similar provisions in the Criminal Procedure Code Act, Cap 116, where police officers have the power to interpose and or arrest any person without a warrant but no specific duration of detention is provided for. That the Respondent's failure to prescribe the maximum period of preventive detention violates provisions of the Constitution and Article 9 (1) of the International Covenant on Civil and Political Rights. 15 20

The Petitioners further state that between 1962 and 1994, about three million people were arbitrarily arrested and detained indefinitely under the said laws in the guise of preventive detention. They thus brought this petition on the following grounds:

- a) Section 24 (2) of the Police Act, Cap 303 contravenes Articles 23 (1) & (4), 28 (1) and 44 (c) of the Constitution of the Republic of Uganda in so far as it gives police officers imprecise, wide, ambiguous and 25

archaic discretionary powers of indefinite preventive detention without a fair trial.

- b) Sections 24,26 and27 of the Criminal Procedure Code Act, Cap 116 contravene Articles 23 (1) and (4), 28 (1) and 44 (") of the Constitution of Uganda in so far as they give every police officer wide, ambiguous and discretiona-ry powers of indefinite preventive detention without a fair trial.
- c) The impugned sections in effect permit a police officer to arrest and detain a person without any charge for an indefinite period of time.
- d) The omission by the Respondent to put in place an elaborate procedure to guide on preventive detention contravenes Articles 2 (1) and (2),20 (2),23 (I) a.rd (4),28 (1), 8A and Objective XXVIII of the National Objectives and Directive Principles of State Policy of the 1995 Constitution of the Republic of Uganda.
- e) Sections 24(2) of the Police Act and sections 24, 26 and 27 of the Criminal Procedure Code contravene Article 8A and Objective XXVII of the National Objectives and Directive Principles of State Policy of the 1995 Constitution of the Republic of Uganda, Article 9(1) of the International Covenant on Civil and Political Rights and Article 6 of the African Charter on Human and Peoples Rights in so far as they give wide, ambiguous and arbitrary powers of indefinite preventive detention without a fair trial. 15 20

The Petitioners then prayed for declarations in the sanne terms as paragraphs a), b), d) and e) above and orders directing the Respondent to enact regulations andf or guidelines prescribing the procedure and duration of preventive detention. They also prayed that this court orders the Respondent to report, in open court, within the first six months of the date of judgment, the steps taken to implement the orders, and that the costs of the petition be borne by the Respondent.

The Respondent opposed the petition in the answer thereto, supported by an affidavit deposed by Mr Wanyama Kodoli, Principal State Attorney, on 24tn Awgust 2021. He denied that the impugned provisions contravened any of the stated provisions of the Constitution and in specific reply to the various grounds of the petition stated that:

- a) Section 24 of the Police Act and sections 24, 26 and 27 of the Criminal Procedure Code Act specify the instances in which a police officer must exercise the power of arrest as a preventive action. He added that preventive arrest is aimed at protecting the individual, property and the public at large from harm, and maintain law and order in society.

- b) Article 23 (1) (c) of the Constitution allows the deprivation of a person's liberty for the purpose of bringing that person before a court or upon reasonable suspicion that the person has committed or is about to commit a criminal offence under the laws of Uganda
- c) There is an elaborate procedure under section 24 (4) of the Police Act where a magistrate has the power to release the detainee on grounds of unlawful detention, upon the application by the detained person or any other person with reasonable belief that a person is being unlawfully charged.
- d) The law provides for specific periods of preventive detention of persons arrested and detained under section 24 of the Police Act and sections 24, 26 and 27 of the CPC Act.
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- e) Article 23 (5) of the Constitution provides for the rights of persons who have been restricted or detained, irrespective of the form and reason of arrest and detention.

The Respondent then concluded that the Petitioners are not entitled to any of the remedies claimed.

The Petitioners filed a rejoinder whose contents I did not deem it necessary to state here for they constituted part of the submissions of their Advocate.

Representation

5 When the petition came up for hearing on 11th June 2024, Mr Derrick Bazekuketta represented the Petitioners. The Respondent was represented by Ms Charity Nabasa, Senior State Attorney.

Both counsel filed Conferencing Notes before the hearing, as directed by the Registrar. Mr Bazekuketta prayed that his conferencing notes be adopted as his final written arguments and considered in the disposal of the petition and so did Ms Nabasa, and their prayers were granted.

Ms Bazekuketta further informed court that his clients wished to abandon the complaint about section 24 (21) of the Police Act because it was dealt with in *Foundation for Human Rights Initiative v. Attorney General*, Constitutional Petition No. 53 of 2011 and was therefore *res judicata*. Since there was no objection by the Respondent, his prayer was granted. The Petition thus proceeded in respect of the complaints about sections 24, 26 and 27 of the Criminal Procedure Code Act, hereinafter also referred to as "the CPC."

The Submissions of Counsel

- 20 Counsel for the Petitioners raised four issues for the determination of the court in his submissions, which after he abandoned the complaint about the Police Act, were as follows:
- 1. Whether the Constitutional Court has the jurisdiction to determine this petition.

- 2. Whether sections 24, 26 and 27 of the Criminal Procedure Code Act contravene or are inconsistent with Articles 2 (1) and (2), 20 (2), 23 (1) and (4), 28 (1) and 44 (a) of the Constitution of the Republic of Uganda.
 - 5 3. Whether sections 24, 26 and 27 of the Criminal Procedure Code Act contravene or are inconsistent with Article 8A and Objective XXVIII of the National Objectives and Directive Principles of State Policy, Article 9 (1) of the International Covenant on Civil and Political Rights, and Article 6 of the African Charter on Human and Peoples' Rights.
4. Whether the Petitioners are entitled to the remedies sought.

In her submissions, Ms Nabasa observed that though counsel for the Petitioners raised and responded to an issue about the jurisdiction of this court to determine this petition, they did not raise it in their reply. She asserted that the court does have the jurisdiction to dispose of the petition and so responded to the rest of the issues proposed by Mr Bazekuketta.

There is no doubt, from reading of the petition, that this court has jurisdiction to entertain this petition. I therefore saw no reason to dwell on the issue.

Counsel for the Petitioners addressed the rest of the issues raised in chronological order and counsel for the respondent submitted in similar vein. I deemed it appropriate to address the issues in the same manner, but reviewed the submissions of both counsel on each of them immediately before disposal thereof. 20

Analysis 25

Issue 2: Whether sections 24, 26 and 27 of the Criminal Procedure Code Act contravene or are inconsistent with Articles 2 (1) and (2),

20 (2), 23 (1) and (4), 28 (7) and 44 (a) of the Constitution of the Republic of Uganda.

Submissions of Counsel

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In this regard, Mr Bazekuketta for the Petitioners asserted that the impugned provisions contravene or are inconsistent with Articles 2 (1) and (2), 20 (2), 23 (1) and (4), 28 (1) and 44 (a) of the Constitution. He set out the provisions of sections 24, 26 and 27 of the CPC and then submitted that the Petitioners do not challenge the constitutionality of preventive arrests but rather, the omission to put in place specific guidelines and procedures to limit the duration thereof.

He further submitted that since the maximum period of preventive detention was not given under sections 24, 26 and 27 of the CPC, the said provisions give police officers wide, ambiguous archaic and discretionary powers of indefinite detention without trial. They are thus amenable to abuse and misuse contrary to Articles 23 (1) and (4), 28 (1) and 44 (a) of the Constitution. He

referred to the decision in *Foundation for Human Rights Initiative v. Attorney General*, Constitutional Petition No. 20 of 2006; [2008] UGCC 1, and submitted that it is trite law that ^a provision that provides for a longer period of detention than that set in Article 23 (4) of the Constitution is null and void to that extent.

Counsel also referred to *Hon Sam Kuteesa Eb 2 Others v. Attorney General*, Constitutional Reference No 54 of 2011; [2012] UGCC 2, for the principle that the preservation of personal liberty is crucial in the Constitution so that any derogation from it has to be a matter of unavoidable necessity. That the Constitution ensures that such derogation is just temporary and not indefinite. He went on to submit that where deprivation is concerned, it is particularly important that the general

principle of legal certainty is satisfied. That it is therefore essential that the conditions of deprivation of liberty under domestic law are clearly defined and that the law itself be foreseeable in its application so that it meets the standard of lawfulness. He referred to *Enhorn v. Sweden* European Court of Human Rights, Application No 56529 I OO, paragraph 36 and 55.

He concluded that the absence of clear procedures, guidelines and/or regulations on preventive arrest and the indefinite period of detention under sections 24, 26 and 27 of the CPC is unconstitutional and contravenes Articles 2 (1) and (2), 20 (2), 23 (1) and (4)', 28 (1), 44 (c), and 8A of the Constitution and Objective XVIII of the Principles of State Policy therein.

In reply, Ms Nabasa submitted that the object of preventive arrest in sections 24, 26 and 27 of the CPC is to intercept and prevent a person from doing an act that is prejudicial to himself or herself, or other persons, or the property of the general public. It is aimed at preventing a person from breaking the law. She further pointed out that Article 23 (1) (c) of the Constitution allows the deprivation of a person's liberty for the purpose of bringing that person before a court or upon reasonable suspicion that the person has committed or is about to commit a criminal offence under the laws of Uganda. She emphasised that arrest as a preventive action falls under this category or exceptions. 15 20

She went on to submit that the state is charged with the obligation of upholding the fundamental rights and freedoms guaranteed by the Constitution and the Police is one of the instruments of the state that discharge that obligation. I observed that Counsel extensively submitted about section 24 of the Police Act, whose constitutionality was settled in *Foundation for Human Rights Initiative v. Attorney General & 2 Others* 25

(supra), but she offered no specific submissions about sections 24, 26 and 27 of the CPC

She however pointed out that the Petitioners make it clear that they do not challenge the constitutionality of preventive arrest but they challenge the duration of such detention and the omission by the state to put specific guidelines and procedures in place to in that regard. She then submitted that the period of detention was provided for in Article 23 (4) (b) of the Constitution. She explained that under that provision, it is required that a person arrested or detained upon reasonable suspicion of having committed an offence or being about to commit a

criminal offence under the laws of Uganda, should, if not earlier released, be brought to court as soon as possible but in any case, not later than 48 hours from the time of his or her arrest.

She further submitted that a person unlawfully detained can bring an application for Habeas Corpus Ad Subjudiciendum under Article 23 (1) of the Constitution and section 34 of the Judicature Act, and rules 3 and 4 of the Judicature (Habeas Corpus) Rules, SI 13-6. That such proceedings are meant to ensure that a prisoner is released from unlawful detention, that is, detention lacking sufficient cause or evidence or detention incommunicado. She referred to Constitutional Reference No. 7 of 1998, In the Matter of Sheikh Abdul Karim Sentamu & Another (unreported), where it was held that the writ is to provide an assurance that personal freedom will always be protected. 15 20

Resolution of Issue 2

The Petitioners complained that sections 24, 26 and 27 of the Criminal Procedure Code Act which vest powers in police officers to effect preventive arrests contravene Articles 23 (1) and (4), 28 (1) and 44 (c) of the 25

Constitution. They explained that their complaint is not about the constitutionality of the provisions but the omission by the state to put in place Regulations or Guidelines that limit the period of such detention.

5 It is a cardinal principle of constitutional interpretation that the entire Constitution has to be read together as an integral whole, with 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 & Another v. Attorney General, Constitutional Appeal No. 1 of 2002 (SC) and Attorney General of Tanzania v. Rev

10 Christopher Mtikila (2010) EA 13). This rule or principle also applies to the interpretation of statutes.

In the interpretation of the impugned provision of the CPC vis-à-vis Articles 23 (1) and (4), 28 (1) and 44 (c) of the Constitution, the CPC has also got to be read or construed as a whole in order to bring about harmony in the meaning of its provisions. One may then ask about the basis for the interpretation of the impugned provisions of the CPC in this petition, when what is sought by the petitioners is to declare them void for inconsistency with the stated provisions of the Constitution.

In Attorney General v. David Tinyefuza, Constitutional Appeal No. 1 of 1997 (unreported), Mulenga, JSC explained the depth of Article 137 of the Constitution and the jurisdiction of this court while interpreting the Constitution when he opined, at page 20 of his opinion, that: 20

"Under clause (3) the Constitutional Court is empowered to do more than "interpret" in the sense of "giuing meaning to uords" of prouisions of the Constitution. Under para.graph (a) of Clause (3) the Constitutional Court is empouered to, and mag "interpret" prouisions of an Act of Parliament or anA other laut in order to determine uhether suchAct or other law is inconsistent utith some prouision of the Constitution euen if the latter is so clear that there is "rto question" as to its interpretation. Similarly, under paragraph (b) the

Court is empoutered and maA assess, analyse, eualuate tlrc import of an act or omission bg anA person in order to determine whether such act or omission is in contraution of a prouision of the Constitution uithout hauing to interpret or giue meaning to that prouision."

- 5 The principles espoused enable this court to interpret sections 24,26 and 27 of the Criminal Procedure Code Act in order to bring about harmony in its provisions, before it is determined whether the impugned provisions are indeed inconsistent with or in contravention of the stated provisions of the Constitution. To that end, Dewrath Anandz states that there are five rules
- for the harmonious interpretation of statutes as follows: 10
- 1. The courts must avoid a head-on clash of seemingly contradicting provisions and they must construe the contradictory provisions to harmonize them.
- 2. The provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its effort, is unable to find a way to reconcile their differences.
- > 3. When it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such a way so that effect is given to both the provisions as much as possible.
- 4. Courts must also keep in mind that interpretation that reduces one provision to a useless number or dead is not harmonious construction. 20
- > 5. To lnarrrrronize is not to destroy any statutory provision or to render it fruitless.

The rules above were instructive in my interpretation of the impugned provisions of the CPC, within their context, in order to establish whether no limits are established therein with regard to the period of preventive detention, and if not, whether the impugned provisions of the Act contravene the stated provisions of the Constitution. 25

²"Interpretation of Statutes Harmonious Construction-A Critical Analysis" Devvrath Anand Guest Faculty, Faculty of Law, Delhi University, Delhi, Volume 26, June 2023 ISSN 2581-5504; retrieved on 210212024 from <http://www.penacclaims.com/wp-content/uploads/2023l06lDewrath-Anand.pdf>

The Petitioners challenged the constitutionality of sections 24, 26 and 27 of the CPC on three grounds as follows:

- i) They give police officers wide, ambiguous and discretionary powers to arrest a person;
- ii) The preventive detention is indefinite; and
- iii) Detention is without charge and trial.

I interrogated the three provisions within the context of the CPC in order to establish whether the three statements above are correct.

Starting with section 24 of the CPC, it provides as follows:

24. Police to prevent cognisable offences 10

Every police officer may interpose for the purpose of preventing, and shall to the best of his or her ability prevent, the commission of any cognisable offence.

{Emphasis added}

The Cambridge Dictionary of English defines the word interpose to mean, "to put yourself or something in between two things, people or groups, especially in order to stop them from doing something." Similar words are given by the Thesaurus as "interupt", "interrupt" and "interfere," among others. A "cognisable offence" is defined by section 1 (b) of the CPC to be any offence which on conviction may be punished by a term of imprisonment for one year or more; or which on conviction may be punished by a fine exceeding four thousand shillings. 15 20

It is therefore not correct to state that the power given to a police officer in section 24 of the CPC is to enable him/her to arrest any person without

limits. Police officers may do anything "to the best of their ability to prevent the commission of a cognisable offence." Though no specific offences are listed in the CPC, discretion is given in order to prevent or limit excesses 25

by police by specifying that the offence prevented must fall within the ambit of a "cognisable offence" specified in section 1 (b) of the CPC.

It is therefore not correct to state that the discretion that is given to the police in section 24 of the CPC is wide and ambiguous for it is clearly limited by the definition in section 1 (b) thereof.

In addition, the functions of the Uganda Police Force (UPF) are provided for in Article 212 of the Constitution in the following terms:

212. Functions of the Uganda Police Force.

The functions of the Uganda Police Force shall include the following-

- (a) to protect life and property;
- (b) to preserve law and order;

- (c) to prevent and detect crime; and

(d) to cooperate with the civilian authority and other security organs established under this Constitution and with the population generally.

The mandate of the UPF in the provision above is also clear and unambiguous. As a result of the functions specified in Article ²¹² therefore, section 24 of the CPC is on all fours with the constitutional mandate of the UPF; and what is provided for by the Constitution cannot be held to be unconstitutional.

However, the Petitioners also complained that section 24 of the CPC violates the provisions of Article 23 (1) of the Constitution. It will therefore be useful to set down the relevant parts of the provision in order to facilitate an understanding of its relation to section 24 of the CPC. Article 23 (1) of the Constitution provides, in part, as follows:

23. Protection of personal liberty.

(1) No person shall be deprived of personal liberty except in any of the following cases-

(a) in execution of the sentence or order of a court, whether established for Uganda or another country or of an international court or tribunal in respect of a criminal offence of which that person has been convicted, or of an order of a court punishing the person for contempt of court;

(b) in execution of the order of a court made to secure the fulfilment of any obligation imposed on that person by law;

(c) for the purpose of bringing that person before a court in execution of the order of a court or upon reasonable suspicion that that person has committed or is about to commit a criminal offence under the laws of Uganda;

{Emphasis added}

While most of the exceptions provided for in this provision relate to court proceedings, the second limb of clause (c) does not. The overt intention to commit an offence under the law also attracts arrest and may result in detention. But such detention normally results in an appearance before a

court of law, as will be seen later on in this judgment. Section 24 of the CPC therefore falls within the ambit of Article 23 (1) of the Constitution and for that reason, I am unable to come to the finding that section 24 of the CPC contravenes or is inconsistent with that provision. On the contrary, I would find that it is consistent with Article 23 (1) (c) of the Constitution. 20

Section 24 of the CPC is therefore not inconsistent with Article 2 (1) and (2) of the Constitution which provide for the supremacy of the Constitution. Neither can it be said that it is inconsistent with Article 28 (1) and (2) thereof which enshrine the right to fair hearing because it does not stand alone within the CPC. However, that question will be conclusively resolved after I consider the import of sections 26 and 27 CPC vis-à-vis the stated provisions of the Constitution. 25

Going on to the question whether Section 26 CPC contravenes or is inconsistent with Articles 20 \$(2)\$, 23 \$(1)\$ and \$(4)\$ and 28 \$(1)\$ of the Constitution, the impugned provision is in the following terms:

6. Arrest to prevent offences

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A police officer knowing of a design to commit any cognisable offence may arrest, without orders from a magistrate and without a warrant, the person so designing, if it appears to the officer that the commission of the offence cannot otherwise be prevented.

The Petitioners, first of all contend that the provision is wide and ambiguous in that the offences for which persons may be arrested are not 10 specified. This point has already been taken under section 24 of the CPC. Cognisable offences are specifically defined in section 1(b) CPC. The provision is therefore clear and unambiguous and should not defy understanding.

The Petitioners further contended that arrest under section 26 CPC is 15 without a warrant and the preventive detention that follows is without charge and for an indefinite period of time, contrary to Articles 23 (1) and (4) of the Constitution. Starting with the contention that the impugned provision contravenes Article 23 (1) of the Constitution which guarantees personal liberty, clause 1 thereof provides for exceptions to the rule that \$20\$ one is not to be deprived of their personal liberty.

In particular, clause \$(1)\$ (c) of Article 23 provides that one may be deprived of their liberty;

- (c) for purposes of bringing that person before a court in execution of the order of a court or upon reasonable suspicion that that person has committed or is about to commit a criminal offence under the laws **{Emphasis added}** of Uganda;

Section 26 CPC therefore, at first blush, falls within the ambit of the exceptions provided for by Article 23 (1) of the Constitution.

It is also pertinent to note that section 26 CPC does not stand alone. With regard to arrest without a warrant, section 10 of the CPC clearly provides for instances in which such an a-rrest can be made as follows:

10. Arrest without warrant.

Any police officer m&y, without an order from a magistrate and without a warrant, arrest-

> (a) any person whom he or she suspects upon reasonable grounds of having committed a cognisable offence, an offence under any of the provisions of Chapter XIII of the Penal Code Act or any offence for which under any law provision is made for arrest without warrantl

> (bf any person who commits a breach of the peace in his or her presence;

(cl any person who obstructs a police officer while in the execution of his or her duty, or who has escaped or attempts to escape from lawful custody;

> (dl any person whom he or she suspects upon reasonable grounds of being a deserter from the Uganda Peoples' Defence Forces;

- (e) any person whom he or she finds in any highway, yard or other place during the night and whom he or she suspects upon reasonable grounds of having committed or being about to commit a felony; 20
- (f) any person whom he or she suspects upon reasonable grounds of having been concerned in any act committed at any place out of Uganda which, if committed in Uganda, would have been punishable as an offence, and for which he or she is, under the provisions of any written law, liable to be apprehended and detained in Uganda; 25
- (g) any person having in his or her possession without lawful excuse, the burden of proving which excuse shall lie on that person, any implement of housebreaking; 30

(hf any person for whom he or she has reasonable cause to believe a warrant of arrest has been issued;

(if any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may 35

reasonably be suspected of having committed an offence with reference to that thing.

The power to arrest without a warrant under section 26 CPC therefore has its criteria clearly set out in the provision above. It is therefore not wide and ambiguous, as the Petitioners would have this court believe.

As to whether the preventive detention that follows is indefinite and without a hearing/fair trial, contrary to Article 28 \$(1)\$ and 44 \$(c)\$ of the Constitution, section 14 of the CPC provides for the disposal of persons arrested as follows:

14. Disposal of persons arrested. 10

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A police officer making an arrest without a warrant shall, without unnecessary delay and subject to the provisions of this Code as to bail, take or send the person arrested before a magistrate having jurisdiction in the case or before an officer in charge of a police station.

{Emphasis added}

The provision above emphasises speed; the suspect arrested without warrant is to be taken before a magistrate "without unnecessary delay." If that is not possible, then before an officer in charge of a police station.

- In my opinion, the mischief that the provision above seems to target, though the CPC came into force in 1950, is the requirement in Article 23 (4) of the 1995 Constitution, that a person arrested or detained shall, if not released, be brought to court as soon as possible but in any case, not later than 48 hours from the time of his or her arrest.
- Section 14 of the CPC is given further meaning by section 17 thereof which 25 provides, in part, as follows:

(1) When any person has been taken into custody without a warrant for an offence other than murder, treason or rape, the officer in

charge of the police station to which the person is brought may in any case and shall, if it does not appear practicable to bring the person before an appropriate magistrate's court within twenty-four *hours* after he or she was so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person on his or her executing a bond, with or without sureties, for a reasonable amount to appear before a magistrate's court at a time and place to be named in the bond; but where any person is retained in custody, he or she shall be brought before a magistrate's court as soon as practicable.

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{Emphasis added}

The provision above again emphasises the speed with which a person arrested without a warrant is to be dealt with once in detention. Except for murder, treason or rape (and I believe defilement and robbery though not mentioned) the period within which suspects are supposed to be released on bond, if not taken before a court of law, is 24 hours. This is less than

the 48 hours that are stipulated in Article 23 (4) of the Constitution. If they are not to be released, then they are to be taken before a magistrate as soon as possible. "As soon as possible" must then be read to mean, "not later than 48 hours from the time of his or her arrest," as it is required by 20 Article 23 (4) of the Constitution.

The right to fair hearing that is guaranteed in Article 28 (1) and which is non derogable under Article 44 (c) of the Constitution is ensured by having suspects appear before courts of law. Though not through section 26 which the Petitioners challenge, the CPC has ample provision to ensure 25 that persons arrested, even without warrants appear before courts of law, in line with the provisions of the Constitution. Clearly, there is no need for any further regulation through guidelines or statutory instruments because the CPC is self-contained.

I therefore would find that section 26 of the CPC is consistent with and does not contravene Articles 23 (1) and (4), 28 (1) and 44 (c) of the Constitution.

5 As to whether section 27 of the CPC contravenes any of the stated provisions of the Constitution, the provision has terms that are similar to those in section 24 of the Act but it focuses on the protection of public property as follows:

27. Prevention of injury to public property

A police officer may of his or her own authority interpose to prevent any injury attempted to be committed in his or her view to any public property, movable or immovable, or the removal of or injury to any public landmark or buoy or other mark used for navigation. 10

It is clear that the provision does not specify that the police officer who has an obligation to prevent injury to public property has to arrest and detain a person in order to prevent injury or attempted injury to the property in his/her view. There are many methods that the police may use to prevent damage to public property and it falls under the mandate vested in the UPF under Article 121 of the Constitution. Should a police officer deem it necessary to arrest and detain any person, the provisions that have been discussed in relation to section 26 of the Act, of necessity, must apply.

I would therefore find that section 27 of the CPC is not in contravention of and/or inconsistent with Articles 23 (1) and (4), 28 (1) and 44 (c) of the Constitution. Neither is it inconsistent with nor in contravention of Articles 2(1) and (2) and 20 (2), which are all encompassing provisions about the sovereignty of the people of Uganda and the supremacy of the Constitution.

Issue 3: Whether sections 24, 26 and, 27 of the Criminal Procedure Code Act contravene or are inconsistent with Article 8A and

Objective XXVIII of the National Objectives and Directive Principles of State Policy, Article 9 (1) of the International Covenant on Civil and Political Rights and Article 6 of the African Charter on Human and Peoples' Rights.

$\mathbb{S}$ Submissions of Counsel

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Counsel for the Petitioners relied on the decision of the Supreme Court in *Uganda v Kweyolo*, Constitutional Appeal No 1 of 2012, [2015] UGSC 5, where it was held that a state that has domesticated provisions of international instruments should not shun its obligations as and when it wishes. That this is particularly true when the issue at hand is the massive violation of the human rights of its own people, whether by individuals or state actors. He submitted that the impugned provisions must therefore be interpreted in accordance with international law.

He went on to submit that in Paragraph 23 of General Comment No 35, the Human Rights Committee explained that Article 9 of the ICCPR requires compliance with domestic rules that define, inter alia, when authorisation to continue detention must be obtained from a judge or other officer, when the detained person must be brought to court and legal limits on the duration of detention. That it also requires compliance with domestic rules providing important safeguards for detained persons. 20

He referred to *Gomez Casafranca v. Peru*, Communication No 981/2001, para 7.2, where the Committee noted the author's claim that her son was held for 22 days and held that Article 9, paragraphs 1 and 3 of the ICCPR were violated. He asserted that sections 24, 26 and 27 of the CPC give powers of arrest to police officers to arrest and detain individuals for unspecified periods of time. That this is inconsistent with and in contravention of Article 8A and Objective XXVIII of the National Objectives

and Directive Principles of State Policy, and Article 9 (1) of ICCPR, as well as Article 6 of the African Charter on Human and Peoples'Rights.

For the Respondent, Ms Nabasa submitted that the impugned provisions are not in contravention of the stated human rights instruments; because the Constitution of the Republic of Uganda provides for clear and precise timelines within which a person who is arrested must either be produced before a court of law or released.

Resolution of Issue 3

In *Centre for Health, Human Rights & Development (CEHURDI & Others v The Attorney General & others*, Constitutional Petition No. 22 of 2015 (unreported) this Court observed that Article 8A of the Constitution simply entrenches the National Objectives and Directive Principles of State Policy as justiciable provisions of the Constitution to which the State can be held accountable. Article 8A of the Constitution provides that Uganda shall be governed based on principles of national interest and common good enshrined in the National Objectives and Directive Principles of State Policy. To that end, Objective XXVIII (i) (b) calls for respect of international law and treaty obligations. 10 15

Article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR) provides as follows: 20

- 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
- Pursuant to the provision above, Article 23 of the Constitution guarantees the protection of personal liberty. It specifies the exceptions to the right to personal liberty in the terms provided for in the ICCPR in minute detail. It 25

is my view that the CPC is the law that brings all the intentions of observing the ICCPR together.

As to whether the impugned provisions, sections 24,26 and 27 of the CPC, are in contravention of Article 6 of the African Charter on Human and Peoples'Rights (the Banjul Charter), the latter provides as follows:

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. [n particular, no one may be arbitrarily arrested or detained.

The terms of the provision in the Charter are a replica of Article 9 of the ICCPR. Given the findings about the challenge of the petitioners to the impugned provisions, I would find that sections 24, 26 and 27 of the CPC are not inconsistent with Article 9 (1) of ICCPR and the Banjul Charter since they are consistent with Articles 23 (1) and (4), 28 (1) ..rd 44 (cl of the Constitution of the Republic of Uganda, which domesticated the intentions of the two international instruments.

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Determination

I have had the benefit of reading the opinions of my brothers Kihika, Kazibwe Kawumi and Mugenyi, JJCC, and my sister Tibulya, JCC. Since they all agree with this opinion and the orders that I proposed, this petition substantially fails on all grounds and it is dismissed with the following declarations and orders:

- 1. Sections 24, 26 and 27 of the Criminal Procedure Code Act are not in contravention of andlor inconsistent with Articles 23 (1) and (4), 28 (1) and 44 (c) of the Constitution of the Republic of Uganda.
- 2. Sections 24, 26 and 27 of the Criminal Procedure Code Act are not inconsistent with and/or in contravention of Article 8A and Objective XXVII of the National Objectives and Directive Principles of State

Policy, Article 9 (1) of the International Covenant on Civil and Political Rights and Article 6 of the African Charter on Human and Peoples'Rights.

- 3. The Petitioners a-re not entitled to any of the reliefs sought and since the petition was brought in the public interest, there shall be no order as to costs.

Dated at Kampala this day of NoVETng €L o24. NA L?/ ²

10 Irene Mulyagonja JUSTICE OF THE CONSTITUTIONAL COURT

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

Coram: Mulyagonja, Kihika, Tibulya, Kazibwe Kawumi & Mugenyi, JJCC

CONSTITUTIONAL PETITION NO. 08 OF 2021

$\$ \backslash \mathrm{mathsf{S}} \$$

BETWEEN

1. ANNET TENDO

2. MUSIIME ALEX MARTIN ::::::::::::::::::::::::::::::

AND

THE ATTORNEY GENERAL :::::::::::::::::::::::::::::: \$10\$

JUDGMENT OF OSCAR JOHN KIHICA, JCC

I have had the benefit of reading in draft, the judgment of Lady Justice Irene Mulyagonja. I agree that the petition substantially fails and should be dismissed with no orders as to costs.

I would so order 15

Dated at Kampala this $\$22^{\{N\}} \$$ day of $\$N \$$ over $\$R \$ \$R \$ \$L \$$

OSCAR JOHN KHIKA

JUSTICE OF THE CONSTITUTIONAL COURT 20

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

Coram: Mulyagonja, Kihika, Tibulya, Kazibwe Kawumi & Mugenyi, JJCC

JUDGMENT OF MOSES KAZIBWE KAWUMI, JCC

I have had the benefit of reading in draft the Judgment prepared by my learned sister the Hon. Lady Justice Irene Mulyagonja, JCC. I agree with the reasoning and the conclusion.

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The Petition should be dismissed with no order as to costs

Dated and delivered at Kampala this...2nd day of October 2024.

Moses Kazibwe Kawumi JUSTICE OF THE CONSTITUTIONAL COURT @_

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

Coram: Mulyagonja, Kihika, Tibulga, Kazibwe Kawumi & Mugenyi, JJCC

CONSTITUTIONAL PETITION NO. 08 OF 2024**BETWEEN****1. ANNET TENDO****2. MUSIIME ALEX MARTIN ::::::::::::::::::::****3 ::::::::::::::::::::: PETITIONERS****AND**

THE ATTORNEY GENERAL ::::::::::3::::::::::::3::::::::::::: RESPONDENT

JUDGMENT OF JUSTICE DR. ASA MUGENYI. JCC

I have had the advantage of reading in draft the judgement prepared by my Learned sister, Hon. Justice Irene Mulyagonja, JCC. I agree with the reasoning and orders proposed.

Dated at Kampala this. ...2nd day ...d.2.v. F. liKeL 2024

Dr JUSTICE OF CONSTITUTIONAL COURT

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