

UGANDA / JUDGMENT

# Wakiso Miraa Growers and Dealers Association Limited v Attorney General (Constitutional Petition No. 1 of 2017) [2023] UGCC 100 (6 May 2023)

[2023] UGCC 100

## COURT

Constitutional Court of Uganda

## BEFORE

Monica K. Mugenyi, JCC, Kibeedi Mutangula, JCC, Mulyagonja, JCC, Musota, JCC, Buteera, DCJ

## CASE / FILE NUMBER

Constitutional Petition No. 1 of 2017

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## <sup>5</sup> THE REPUBLIC OF UGANDA IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Richard Buteera - DCJ, Stephen Musota, Muzamiru M. Kbeedi, Irene Mulyagonja & Monica K. Mugenyi, JJCC)

## CONSTITUTIONAL PETITION NO. 001 OF 2017

## WAKISO MIRAA GROWERS AND DEALERS ASSOCIATION LIMITED VERSUS PETITIONER

## THE ATTORNEY GENERAL OF UGANDA RESPONDENT

## JUDGMENT OF MUZAMIRU MUTANGULA KIBEEDI. JCC

## INTRODUCTION

This Petition was instituted by a charitable organisation incorporated in Uganda as a company limited by guarantee, and comprising of persons who claim to be advocates for the rights and interests of the growers of, and dealers in a plant known as *Catha edulis* (Khat) which is also

locally known in Uganda as "mirae" or "mairungl". The Petitioner claims to be aggrieved by the enactment of the Narcotic Drugs and Psychotropic substances (control) Act, 2016 which the Petitioner alleges to have been passed by Parliament without the quorum prescribed by the Constitution. 20

Further, that the impugned Act breached several provisions of the Constitution in so far as it among other things, prohibited and criminalised the cultivation, possession, consumption, sale, purchase, warehousing, distribution, transportation, exportation, importation, and other dealings in *Catha edulis* (Khat) by classifying it as "a prohibited plant" under the Third schedule of the Act and incorporating it within the definition of the term "psychotropic substance" under section 2 of the Act. t\

<sup>30</sup> The Petitioner sought the declarations which were couched in the terms below:

- a) That the back listing of *Catha edulis* (khat)- as a prohibited plant and a psychotropic substance under the Third Schedule and Section 2 of the impugned Act respectively -was inconsistent with or in contravention of the Preamble; Directive Principles IX, X, XI and XIV, and Articles 21, 24, 26, 37, 40(2) and 43 of the Constitution because it was not backed by sound scientific evidence, and because it is, in the circumstances, an arbitrary, oppressive, biased and irrational decision that will have an unduly disruptive effect on the livelihood, property, cultural and other socio-economic rights of the petitioner's stakeholders and other law abiding persons who have hitherto dealt in *Catha edulis* (khat) and for the aforesaid reasons these provisions of the impugned Act are null and void to the extent that they purport to ban *Catha edulis* (khat);
- b) That Sections 2, 4(1), 4(2)(b), 4(4), 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22(1), 23(1), 24, 26, 27, 28, 29, 30, 31, 36, 37, 38, 41, 42, 43, 45, 46, 48, 49, 50, 52, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 73, 75, 76, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 and 91 of the impugned Act, in proscribing any dealing in *Catha edulis* (khat) merely because the shrub contains "cathinone" and "cathine" are inconsistent with or in contravention of the principles of legality, rationality and proportionality guaranteed under Articles 2, 21, 24, 28(12), 43(2)(c) of the Constitution because they create offences and/or limitations on rights and freedoms that are overly broad, vague, disproportionate and demonstrably unjustifiable in a free and democratic society, and for these reasons these provisions of the impugned Act are null and void to the extent that they purport to ban *Catha edulis* (khat);
- c) That the enactment of the impugned Act by the 9th Parliament was inconsistent with or in contravention of the principle of participatory democracy guaranteed under the Preamble; Directive Principles I(i), II(i) and X; and Articles 1, 8A, 21, 29(1)(a), 38, 41, 42, 43, 45 and 79(3) of the Constitution because the petitioner, its stakeholders and other interested members of the public (especially those who would suffer conspicuous harm if the Act were passed) were not afforded adequate opportunity to participate meaningfully in the lawmaking process and influence the decisions to be taken by Parliament regarding *Catha*

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edulis (khat), and for that reason the impugned Act is null and void to the extent that it purports to ban Catha edulis (khat);

- d) That the enactment of the impugned Act by the 9th Parliament in so far as it touches on Catha edulis (khat) was inconsistent with or in contravention of the Preamble, Articles 1(1), 1(2), 1(3), 2(1), 2(2), 43, 79, BB, 259, 260 and 262 of the Constitution, and Rule 23 of the Parliamentary Rules of Procedure (2012) because the Speaker did not ascertain whether there was the requisite quorum, and in fact there was no such quorum, and for that reason the impugned Act is null and void to the extent that it purports to ban Catha edulis (khat). 60
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### **The Petitioner further prayed to Court to make Orders: -**

- a) De-categorizing Catha edulis (khat) as a prohibited plant and psychotropic substance under the Third Schedule and Section 2 of the impugned Act respectively;
- b) Permanently staying the implementation of the Narcotic Drugs and Psychotropic Substances (Control) Act, 2016 in so far as it seeks to prohibit the cultivation, possession, consumption, sale, purchase, warehousing, distribution, transportation, exportation, importation and other dealings in Catha edulis (khat); and
- c) Awarding the Petitioner, the costs of the petition.

The Petition is supported by the affidavit of Vincent Kizito sworn on the 2nd January 2017. The Petitioner subsequently filed an Affidavit in Rejoinder sworn by its Legal Officer, Ms. Isabella Nakiyonga, on 6th September 2021 and a Supplementary Affidavit in Rejoinder sworn by the said Ms. Isabella Nakiyonga on 20th June 2022. 75

On his part, the respondent filed an Answer to the Petition denying all the allegations of the Petitioner and contended that the Petition raised no issues or questions for constitutional interpretation by this court. The Respondent's Answer to the Petition was supported by the Affidavit of Mr. Brian Musota, a State Attorney in the respondent's chambers, dated 23rd July 2021. The respondent subsequently filed an additional affidavit in support of the Answer to the Petition sworn by the Deputy Clerk, Parliamentary Affairs in the Parliament of the Republic of Uganda, Mr. Paul G. Wabwire, on 6th October 2021.

### **8s REPRESENTATIONS**

At the hearing of the Petition, the Petitioner was represented by Mr. Isaac K. Ssemakadde and Ms. Sheila Namahe; while Mr. Geoffrey Madette and Mr. Franklin Kwizera, both Attorneys in the respondent's Chambers, appeared for the respondent. Leave was granted by the court to the parties to proceed by way of Written Submissions. This judgment has therefore been prepared largely on the basis of the Written Submissions.

## AGREED FACTS

In the Joint Scheduling Memorandum signed by Counsel for each one of the parties to this petition on 05th December 2021 and filed in this court on the 06th October 2021, the parties set out the agreed facts as follows:

The respondent enacted the Narcotic Drugs and Psychotropic Substances (Control) Act, 2015 through which it classified Catha edulis (Khat), for the first time in Uganda, as a "prohibited plant" under the Fourth Schedule and "psychotropic substance" under section 2.

Aggrieved by this development, the petitioner filed this petition for declarations and orders to remove Khat from the impugned classifications in the Act.

## 100 ISSUES FOR RESOLUTION:

In the same Joint Scheduling Memorandum, the parties likewise set out the issues for determination by this court as follows:

- 1) Whether the petition raises any issues for Constitution interpretation.
- 2) Whether the Parliament lacked quorum while enacting the Catha edulis (khat) related provisions of the Narcotic Drugs and Psychotropic Substances (Control) Act 2015 in

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contravention of the Preamble, Articles 1(1), 1(2), 1(3), 2(1), 2(2), 43, 79, 88, 259, 260, 262 of the Constitution, and Rule 23 of the Parliamentary Rules of Procedure (2012);

- 3) Whether the Parliament failed to ensure adequate public participation in enacting the Narcotic Drugs and Psychotropic Substances (Control) Act 2015 in contravention of the Preamble, Articles 1(1), 1(2), 1(3), in contravention of the Preamble; Directive Principles I(i), II(i) and X; and Articles 1, 8A, 21, 29(1)(a), 38, 41, 42, 43, 45 and 79(3) of the Constitution;
- 4) Whether the blacklisting of Catha edulis (khat) as a prohibited plant and psychotropic substance under the Fourth Schedule and Section 2 of the Narcotic Drugs and Psychotropic Substances (Control) Act 2015 is inconsistent with or in contravention of the Preamble, Directive Principles III(ii), IX, X, XI and XIV, and Articles 20(2), 21(2), 22, 24, 26, 37, 40(2) and 43 of the Constitution;
- 5) Whether sections 2, 4(1), 4(2)(b), 4(4), 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22(1), 23(1), 24, 26, 27, 28, 29, 30, 31, 36, 37, 38, 41, 42, 43, 45, 46, 48, 49, 50, 52, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 73, 75, 76, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 and 91 of the Act in proscribing any dealing in Catha edulis (khat) contravene the principles of equality, legality, necessity, rationality and proportionality guaranteed under Articles 2, 21, 24, 28(12), 33(a) and 44(c) of the Constitution;

- 6) Whether any remedies are available to the parties?

## RESOLUTION OF THE AGREED ISSUES:

L25 I will start with consideration of the first two issues since the outcome of their resolution determines whether it will still be necessary for this court to go ahead with the resolution of the remaining issues or not.

I have looked at the submissions of the parties. I will set them out in detail when considering the specific issue to which they relate while maintaining the order in which the issues have been set out hereinabove.

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## Issue No. 1: Whether the Petition discloses questions for Constitutional Interpretation?

In his Answer to the Petition, the Respondent contended that the Petition is misconceived as it raises no issues or questions for Constitutional interpretation by this court.

The Petitioner disagreed.

- 135 The relevance of ascertaining whether the Petition discloses questions for Constitutional interpretation lies in Article 137 of Constitution which restricts the jurisdiction of this court only to resolution of questions for constitutional interpretation. As such, this court will not have jurisdiction over any subject matter unless the Petition or Reference shows on its face that interpretation of a provision of the Constitution is required in relation to an impugned law, act or
- 740 145 omission of any person or authority, See: Attorney General Vs Major General David Tinyenfuza, Supreme Court Constitutional Appeal No. 1 of 1997; /smail Serugo Vs Kampala City Council & Another Constitutional Appeal No. 2 of ,998 [1999] UGSC 23; Charles Kabagambe vs Uganda Electricity Board Constitutional Petition No. 2 of 1999; and Centre for Domestic Violence Prevention & 8 others Vs Attorney General of Uganda, Constitutional Petition No. 13 of 2014

Article 137 of the Constitution is couched thus:

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

- (1) Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court.
- (2) When sitting as a Constitutional Court, the Court of Appeal shall consist of <sup>a</sup> bench of five members of that court.
- (3) <sup>A</sup> person who alleges that-

- (a) an Act of Parliament or any other law or anything in or done under the authority of any law; or

155 (b) any act or omission by any person or authority, inconsistent with or in contravention of a provision of this Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress where appropriate.

- (4) Where upon determination of the petition under clause (3) of this article the Constitutional Court considers that there is need for redress in addition to the declaration sought, the Constitutional Court may-

- (a) grant an order of redress; or
- (b) refer the matter to the High Court to investigate and determine the appropriate redress.
- (5) Where any question as to the interpretation of this Constitution arises in any proceedings in a court of law other than a field court martial, the court-
  - (a) may, if it is of the opinion that the question involves a substantial question of law; and
  - (b) shall, if any party to the proceedings requests it to do so,

refer the question to the Constitutional Court for decision in accordance with clause (1) of this article.

- (6) Where any question is referred to the Constitutional Court under clause (5) of this article, the Constitutional Court shall give its decision on the question, and the court in which the question arises shall dispose of the case in accordance with that decision.
- (7) Upon a petition being made or a question being referred under this article, the Court of Appeal shall proceed to hear and determine the petition as soon as possible and may, for that purpose, suspend any other matter pending before it."

I have reviewed the Petition in the instant matter. The Petitioner alleges that there was no quorum when parliament passed the impugned law and that there was no public participation in the process of the formulation and enactment of the impugned law. The Petitioner then cites the provisions of the Constitution allegedly contravened and seeks declarations to that effect. Those allegations constitute the gist of issues two and three for consideration by this court.

The Petitioner also alleges that several sections of the impugned Act contravene the provisions of the Constitution in so far as they proscribe any dealing in *Catha edulis* (khat) merely because the shrub contains "cathinone" and "cathine, and thereby create sweeping offences, restrictions

185 and/or limitations on rights and freedoms that are disproportionate and demonstrably unjustifiable in a free and democratic society. Resolution of this complaint requires interpretation of the impugned sections of the Act as to their alleged inconsistency with the principles of equality, legality, necessity, rationality and proportionality guaranteed under Articles 2,21,24,28(12), 33(2)(c) of the Constitution.

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190 In the premises, I am satisfied that the Petition meets the criteria for constitutional interpretation as out by Mulenga, JSC in Ismail Seruoo Vs. Kampala City Council Constitutional Appeal No. 2 of 1998 SC thus

"A petition brought under Article 137 (3) of the Constitution sufficiently disc/oses a cause of adion If I describes the act or omission complained of and shows the provision of the Constitution with which the act or omlsslon is alleged to be rnconsisfent or which is alleged to have been contravened by the act or omission and pray for a declaration to that effed."

lwould accordingly dismiss the preliminary objection as to the jurisdiction of this court to entertain the allegations raised by the Petition and answer issue one in the affirmative.

200 Issue 2 - Whether the 9o Parliament lacked quorum while enacting the Catha edulis (khat) related provisions ofthe Narcotic Drugs and Psychotropic Substances (Control)Act, 2016 in contravention of the Preamble, Articles 1(1), 1(2), 1(3),2(1), 2(21,43,79,88,259,260 and 262 and Rule 23 of the Parliamentary Rules of Procedure (2012).

**THE PETITIONER'S SUBMISSIONS**

205 It was the submission of the Petitioner that Parliament lacked quorum while enacting the Catha edulis (khat)related provisions of the Narcotic Drugs and Psychotropic Substances (Control) Act 2016 to wit, Section 2 and the Third schedule (formerly the Fourth Schedule in the 2007 Bill). Counselcontended that this contravened the Preamble, Articles 1(1), 1(2), 1(3), 2(1)2(2),43,79 and 88 of the Constitution, and Rule 23 of the Parliamentary Rules of Procedure (2012).

2t0 Counsel argued that Article 88 of the Constitution read together with Rule 23 of the Parliamentary Rules of Procedure (2012) required the Deputy Speaker, who was then presiding as Chairperson in a Committee of the Whole House, even without any prompting by any Member of Parliament, to ensure that the required quorum existed for the Committee to take a decision when the present day Third Schedule of the impugned 2016 Act was under consideration by the Committee of the

Whole House on 19tt November 2014. That the Speaker was prompted by Hon. Muwanga Klvumbi, Hon Alice Alaso and Hon. Ruth Nankabirwa to the effect that there was no quorum in 215

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the House. But he failed to ascertain the quorum and to ensure compliance with the provisions of Rule 23 of the Rules of Procedure of parliament. That this contravened the Constitutional provisions as to quorum of Parliament.

To support her contention, the Petitioner relied on the excerpts from the Parliamentary Hansards which were attached to the Affidavits of Ms. Isabella Nakiyonga. 220

Counsel for the Petitioner argued that as a result of the said breach, Parliament acted ultra vires the Constitution as the aforementioned omission on the part of the Deputy Speaker violated the principles of democracy in the preamble and Articles 1(1), 1(2), 1(3), 2(1), 2(2), 79 and 88(1). Furthermore, that Parliament breached its duty to protect the Constitution and promote the democracy of Uganda, and the sovereignty of the people as enshrined in Article 79(3) of the Constitution as well as the Supremacy of the Constitution entrenched in Articles 1(1), 1(2), 1(3) and 2(1) of the Constitution. Counsel prayed that this court does answer this issue in the affirmative.

### **3.0 RESPONDENT'S REPLY**

In response, the Attorney General denied that the Bill for the enactment of the Narcotic Drugs and Psychotropic Substances Control Act, 2016 was passed without quorum. Counsel submitted that quorum of Parliament is provided for by Rule 23 of the Rules of Procedure of Parliament, 2012, to be comprised of one-third of all members of Parliament entitled to vote, and was required only at the time when Parliament is voting on any question. According to Counsel, the Rules of Procedure of Parliament, 2012 were made pursuant to Article 94 of the Constitution for the 9th Parliament of Uganda.

Counsel argued that the excerpts of Hansard relied upon by the Petitioner to show that the question of quorum was raised by Hon. Muwanga Kivumbi and not addressed by the Deputy Speaker were incomplete. That the Print page 14002 to 14003 of the Hansard of 19th November 2014 shows that the point of procedure on quorum was raised when Parliament was at the stage of "Committee of the Whole House". That it was immediately after the Hon. Nankabirwa's 240

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submission that a motion for resumption of the House was made. The question was put and agreed to and upon resumption of the house, a motion for the adoption of the report of the Committee of the Whole House was adopted. Thereafter, the Deputy Speaker informed the House that the final handling of the Bill would be done on the following day. The respondent referred to page 113 of Annexure AG3

Further, the Respondent submitted that the Petitioner did not lead any evidence to support her assertion that the 9th Parliament lacked quorum when it enacted and passed the Narcotic Drugs and Psychotropic Substances Control Act, 2016, contrary to Section 101(1) of the Evidence Act, Cap.6 which provides that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

The respondent prayed that this court resolves issue two in the negative.

## 2ss RESOLUTION OF ISSUE <sup>2</sup>

The gist of the Petitioner's complaint in issue two is that in contravention of the Constitution, Parliament lacked quorum while enacting the Catha edulis (khat) related provisions of the Narcotic Drugs and Psychotropic Substances (Control) Act, 2016, namely Section 2 and the current Third Schedule of the Act.

- 260 One of the cardinal functions of Parliament is to make laws for the peace, order, development and good governance of Uganda by way of passing Bills to be assented to by the President of the Republic of Uganda. This is pursuant to Articles 74 (1) and 91(1) of the Constitution. However, in the exercise of the said mandate, Parliament must comply with the standards set out in the applicable provisions of the Constitution.
- 26s In the instant matter, the non-compliance complained about by the Petitioner relates to lack of quorum. The term "quorum" in the context of Parliamentary law is defined by Black's Law

Dictionary \5th ed. 2007) to mean "the minimum number of members (usu, a majority of all the members) who must be present for a deliberative assembly to legally transact business. "

The provisions of the Constitution of the Republic of Uganda, '1995 in respect of the quorum of the Parliament of Uganda have witnessed change. At the time of the promulgation of the Constitution in 1995, they were set out in Articles 88 and 89 in the following terms:

### 88. Quorum of Parliament

The quorum of Parliament shall be one-third of all members of Parliament

### 89. Voting in Parliament

<sup>r</sup> Except as otherwise prescribed by this Constitution or any law consistent with this Constitution, any question proposed for decision of Parliament shall be determined by a majority of votes of the members present and voting.

- z. The person presiding in Parliament shall have neither an original nor a casting vote and if on any question before Parliament the votes are equally divided, the motion shall be lost.

However, in 2005 the Constitution (Amendment) Act No. 11 of 2005 repealed and replaced Article 88 and amended Article 89 to provide for quorum of Parliament as follows:

### "88. Quorum of Parliament

- (i ) The quorum of Parliament shall be prescribed by the rules of procedure of Parliament made under article 94 of this Constitution.
- \2) For the avoidance of doubt, the rules of procedure of Parliament may prescribe different quorums for different purposes.

## 89. Voting in Parliament

Except as otherwise prescribed by this Constitution or any law consistent with this Constitution, any question proposed for decision of Parliament shall be determined by a majority of votes of the members present and voting in a manner prescribed by rules of procedure made by Parliament under article 94 of this Constitution.

The person presiding in Parliament shall have neither an original nor a casting vote and if on any question before Parliament the votes are equally divided, the motion shall be lost."

In summary, while the quorum before the 2005 amendment Act was set out in the Constitution itself to be one third of all the Members of Parliament, with the enactment of the Constitution (Amendment) Act No. 11 of 2005, the Constitution assigned the mandate of prescribing the

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quorum of Parliament to Parliament itself exercisable through its Rules of Procedure. This was the legal position that was prevailing in 2012 when the impugned Act was passed by Parliament.

As far as is relevant to the enactment of the Bill for the impugned Act, the Rules of procedure of Parliament that were in force were the Rules of Procedure of the 9th Parliament of Uganda of 2012. Rule 23 of the said Rules provided for quorum in the following terms:

### "23. Quorum of Parliament

- 1) The quorum of Parliament shall be one third of all Members of Parliament entitled to vote.
- 2) The quorum prescribed under subsection (1) shall only be required at a time when Parliament is voting on any question.
- 3) At any time when a vote is to be taken the Speaker shall ascertain whether the Members present in the House form a quorum for the vote to be taken, and if he or she finds that the number is less, the speaker shall suspend the proceedings of the House for an interval of fifteen minutes and the bell shall ring.
- 4) If on the resumption of proceedings after the expiry of fifteen minutes, the number of members present is less than the required quorum for voting, the Speaker shall proceed with other business or suspend the sitting or adjourn the House
- 5) If it appears to the chairperson in a Committee of the whole House that there is less than the required quorum for the Committee to take decisions shall be resumed thereupon and the Speaker shall act in accordance with the procedure set out in subsection 3 and 4." [Emphasis added]

- 320 Reading the above Rule together with Articles 88 and 89 of the Constitution, it becomes crystal clear that the issue of quorum was relevant only at the time when Parliament was voting on a particular question. Immediately before a vote could be taken on any question by the August House, the Speaker was under an obligation to ascertain that there was present in the August House at least one third of all the Members of Parliament entitled to vote. It was only after
- 325 ascertaining and being satisfied that the requirements as to quorum had been complied with that the Speaker could proceed to have a vote taken on the issue under consideration by the August House.

In the instant matter, the Petitioner alleged the absence of quorum in Parliament in her Petition thus:

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- 330 "At all times relevant to the enactment of the impugned Act by the th Parliament in so far as it focuses on Catha edulis (khat), the Speaker did not ascertain whether there was the requisite quorum, and in fact there was no such quorum. This conduct is thus inconsistent with the Preamble, Articles 1(1), 1(2), 1(3), 2(1), 2(2), 43, 79, 88, 259, 260 and 262 and Rule 23 of the Parliamentary Rules of Procedure (2012)."
- Having made the allegations as to the failure of the Speaker to ascertain quorum and the actual absence of quorum on the part of Parliament at the times relevant to the enactment of the impugned Act, the Petitioner bore the burden to prove the allegations to the prescribed standard. 335

In the Affidavit in Support of the Petition deposed upon by the Petitioner/s Member and Managing Director, Mr. Vincent Kizito, on 02nd January 2017, he stated in paragraph '19 that he established from the Hansard of 19th November 2014 that there was no quorum at the time the impugned Act was passed. A copy of the Hansard of 19th November 2014 was attached to the Affidavit of Mr.

Further evidence in proof of the Petitioner/s claim was by way of the Affidavit in Rejoinder sworn on 6th September 2021 by the Petitioner/s Legal Officer, Ms. Isabella Nakiyonga, and the Supplementary Affidavit in Rejoinder deposed upon by Ms. Isabella Nakiyonga on 20th June 2022. Attached to the Supplementary Affidavit was the Report of the Parliamentary Committee on Defence and Internal Affairs which was presented to Parliament on 11th November 2014, and a copy of the Hansard of 18th November 2014.

3s0 The Petitioner/s claims were denied in the Affidavit in Support of the Respondent's Answer to the Petition deposed upon by Mr. Brian Musota, a State Attorney in the Attorney General's Chambers. The denial in respect of the issue of quorum of Parliament was too general to be of any evidential value. However, the Respondent subsequently filed an "Additional Affidavit in Support of the Answer to the Petition" deposed upon by the Deputy Clerk, Parliament Affairs in the Parliament of the Republic of Uganda, Mr. Paul G. Wabwire.

In the said Affidavit, Mr. Wabwire stated that the impugned Act was duly enacted in accordance with the provisions of the Constitution of Uganda and the Rules of Procedure of Parliament of Uganda. He elaborated that the Narcotic Drugs and Psychotropic Substances Control Bill, 2007

Kizito.

360 365 was tabled for the first reading, as required by Rule 118 of the Rules of procedure of Parliament of Uganda, by the Minister of Internal Affairs on 12th March 2013 and the Bill was referred to the Parliamentary Committee on Defence and Internal Affairs for consideration. That the Bill came up for the second reading on 11th November 2014 and the Committee on Defence and Internal Affairs presented its Report, alongside the minority report authored by Hon. Muwanga Kivumbi. That on 18th and 19th November 2014, the Bill was deliberated upon by the Committee of the whole House and was adopted with amendments. That on 20th November 2014, the Parliament of the Republic of Uganda passed the Bill which subsequently received Presidential assent on 9th April 2015 and became the Narcotic Drugs and Psychotropic Substances (Control) Act, 2015.

Mr. Wabwire attached to his Affidavit copies of the Hansard for the different stages through which the Bill went until it was eventually passed by parliament on 20th November 2014. Curiously, Mr. Wabwire did not directly respond to the specific complaint of the failure or omission of the Speaker to ascertain that the Members of Parliament present at the critical times formed a quorum before the vote was taken. He likewise omitted to offer a specific answer to the Petitioner's specific complaint of actual lack of quorum.

375 I have closely examined the evidence submitted before this court. The critical proceedings of parliament relevant to the resolution of the issue of quorum as raised in the instant Petition are those of the 18th and 19th November 2014 when the Bill was deliberated upon by the Committee of the whole House, together with those of the 20th November 2014 when the August House passed the Bill for the enactment of the impugned Act.

According to the Hansard of the 18th of November 2014, the Committee of the whole House deliberated upon Clauses 1, 3 to 51 of the Bill while presided over by the Deputy Speaker. At the end of the day's deliberations, the motion for the adoption of the report from the Committee of the whole House was moved by Hon. James Baba, the Minister of State for Internal Affairs, and put to vote. What transpired at that critical phase in the legislative process leading to the impugned Act was reported in the Hansard thus:

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(The House resumed, the Deputy Speaker presiding)

38s REPORT FROM THE COMMITTEE OF THE WHOLE HOUSE

> THE MINISTER OF STATE FOR INTERNAL AFFAIRS (Mr. James Baba): Mr. Speaker, I beg to report that the Committee of the Whole House has considered the Bill entitled "the Narcotic Drugs and Psychotropic Substances Control Bill, 2007" and passed clauses 1, 3 to 51 with amendments and stood over clause 2. I beg to report.

390 MOTION FOR ADOPTION OF THE REPORT FROM THE COMMITTEE OF THE WHOLE HOUSE

> THE MINISTER OF STATE FOR INTERNAL AFFAIRS (Mr. James Baba): Mr. Speaker, I beg to move that the report from the Committee of the whole House be adopted.

395 THE DEPUTY SPEAKER: Honourable Members, the motion is for the adoption of the report of the Committee of the Whole House. I put the question to the motion.

(Question put and agreed to.)

Report adopted

THE DEPUTY SPEAKER: Thank you very much honourable members... House adjourned to tomorrow 2 O'clock.

(The House rose at 6.46 p.m. and adjourned until Wednesday, 19 November 2014 at 2.00 p.m.)

From the above, nowhere is it reflected that at the time the Minister of State for Internal Affairs moved the motion for the House to adopt the Report of the Committee of the whole House on

- 405 Clauses 1, 3 to 51 of the Bill, the Deputy speaker ascertained that indeed the Members present in the House at that time formed a quorum for the vote to be taken on the Minister's Motion. There is also no evidence on the actual number of Members present at the time of taking the vote on the Minister's Motion to enable court to verify that indeed the Report of the Committee of the full House on clauses 1, 3 to 51 of the Bill was adopted while one third of all Members of Parliament
- 470 entitled to vote were present in the August House.

I have also looked at the Hansard of 19th November 2013. On that day, the Committee of the whole House completed the deliberations on the remaining clauses of the Bill together with the Schedules to the Bill. During the debate Hon. Muwanga Kivumbi raised the issue of lack of quorum and the need for the Speaker to ascertain the existence of quorum in the House. Hon.

415 Alice Alaso took up the matter of quorum and proposed that instead of passing the Bill without

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quorum, it would be better for the Bill to be passed the following day. Hon. Alaso was supported by Hon. Ruth Nankabirwa who added that much as they all wanted to pass the law, she was 'hol comfortable with moving on in passing [the] Bill finally with those technical problems not being handled'. She then sought the guidance of the Chairman.

420 What transpired thereafter was recorded in the Hansards thus:

"MOTION FOR THE HOUSE IO RESUME

5.00

THE MINISTER OF STATE FOR INTERNAL AFFAIRS (Mr James Baba): Mr Chairman and honourable members, I beg to move that the House do resume and the Committee of the whole House repofts thereto.

THE DEPUTY CHAIRPERSON: Honourable members, the motion is for resumption of the House to enable the Committee of the whole House repoft thereto. I put the question to that motion

(Quesflon put and agreed to.)

430 (The House resumed, the Deputy Speaker presiding)

REPORT FROM THE COMMITTEE OF THE WHOLE HOUSE

5.01

THE MINISTER OF STATE FOR INTERNAL AFFAIRS (Mr James Baba): Mr Speaker, I beg to repot that the Committee of the whole House has considered the Bill entitled "The Narcotic Drugs and Psychotropic Subslances Control Bill 2007" and has passed It with amendments. All the clauses have been passed with amendments save for the com mencement c/ause, c/ause 1 -(l nterjections).

Mr Chairman, I beg to move that the Comittee of the whole House has considered the Bill entitled "The Narcotics Drugs and Psychotropic Substances Control Bill, 2001" and passed all the clauses with amendments save for the Fourth Schedule. I beg to move.

THE DEPUTY SPEAKER: No, c/ause 1; we passed the Fouth Schedule.

MR BABA: Yes

THE DEPUTY SPEAKER: So it is c/ause 1, which was being reviewed.

MR BABA: I beg to report that the Committee of the whole House has considered the Bill entitled "The Narcotic Drug and Psychotropic Substances Control Bill, 2007" and passed all the clauses with amendments save for clause 1. I beg to move

MOTION FOR THE ADOPTION OF THE REEPORT FROM

THE COMMITTEE OF THE WHOLE HOUSE

5.03

THE MINISTER OF STATE FOR INTERNAL AFFAIRS (Mr James Baba): Mr Speaker, I beg to move that the repot from the Committee of the whole House be adopted.

THE DEPUTY SPEAKER: Honourable members, the motion is for the adoption of the report of the Committee of the whole House

(Question put and agreed to.)

455 Report adopted.

THE DEPUTY SPEAKER: Honourable members, I thank you for these discussions and the steps you have taken on this Bill. We will be taking final decisions on the remaining aspects and also the final handling of this Bill tomorrow at 2.00 O'clock...

(The House rose at 5.08p.m. and adjourned until Thursday, 20 November 2014.)"

460 From the above, there is no doubt that even on the 19th of November 2014, the decision of the August House to adopt the Report of the Committee of the Whole House was bedeviled with the same shortcomings as those which had befallen it on the previous day as already highlighted in this judgment.

**I have also closely examined the Hansard of 20m November 2014 when the Bill was presented**

465 for the third reading and passed by Parliament. The situation was not any different. Below is a verbatim reproduction of the relevant part of the Hansard of 20th November 2014:

"8/tts

### THIRD READING

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL) BILL, 2007

3.57

THE MINISTER OF STATE FOR INTERNAL AFFAIRS (Mr. James Baba): ttr. Speaker, I beg to move that the Bill entitled "The Narcotic Drugs and Psychotropic Substances Control Bill, 2007" be read for the third time and do pass.

475 THE DEPUTY SPEAKER: Honourable Members, the motion that the Bill entitled "The Narcotic Drugs and Psychotropic Substances Control Bill, 2007" be read for the third time and do pass.

(Question put and agreed to.)

A BILL FOR AN ACT ENTITLED: . THE NARCOTIC DRUGS AND PSYCHOTROPIC 480 SUBSTANCES (CONTROL) ACT, 2014

THE DEPUTY SPEAKER: Congratulations Mr. Minister, congratulations Madam Chair and your committee and thank you honourable members for the diligence you have exercised in this matter."

485 From the review of the Hansards of 18th, 19th and 20th of November 2014, it is my finding that the Petitioner has a valid complaint. Before a vote could lawfully be taken by Parliament, Rule 23(3) of the 2012 Rules of Procedure of Parliament required the Speaker to "ascertain whether the Members present in the House form a quorum for the vote to be taken".

The operative word from Rule 23(3) is "ascertain". This Court had an opportunity to deal with the meaning of the word "ascertain" in *Paul K. Ssemwogerere & Another Vs The Attorney*

490 495 General, Constitutional Petition No. 3 of 1999. In that case, the court was dealing with the question as to whether quorum existed at the time Parliament passed the Referendum and Other Provisions Act No. 2 of 1999. The evidence before the court was that one of the Members of Parliament noticed lack of quorum in the House and raised the matter. The Rules of Procedure of Parliament applicable at the time provided that in such a situation, the Speaker was required to ascertain whether the objection was true. The evidence before the court by the Speaker was that once the issue of quorum was raised by the Member of Parliament, he "ascertained" that there was quorum in the House first by looking around the Chamber and supplemented this by looking at the attendance Registers of members. This court rejected that approach. Twinomujuni, JCC who wrote the lead judgment, with which all the other Justices of the court concurred, held:

s00

"The word "ascertain" is defined in Webster New World Dictionary (9th edition) as:

- (a) To find out with certainty,
- (b) To make certain or definite.

In my judgment this cannot be done by simply looking around. It must be achieved by physical counting... The procedure adopted [by the Speaker] was mere guess work. As the Constitution requires a definite figure, it cannot be ascertained by mere estimation."

I agree with the decision in the *Ssemwogerere* case (ibid) that ascertaining the quorum of Parliament by the Speaker must result into certainty or definite figures in order for the Speaker to be sure that the numbers prescribed by the Constitution or the Rules of Procedure of Parliament made under the Constitution have been met, namely, one third of all the members of Parliament

## Page 18 of 26

510 515 (before 2005 Constitutional Amendment) or one third of the Members of Parliament entitled to vote (after the 2005 Constitutional Amendment). However, the statement that "... [ascertaining] must be achieved by physical counting" should be understood only in the context of the evidence that was before the court in that case. It should not be stretched beyond that case. I do not agree that "physical counting" is the only mode of ascertaining the existence of quorum in Parliament. And my reasons for this position are below:

520 First, the phrase "physical counting" is not derived from the Constitution or the applicable Rules of Parliament. The word used by the Rules is "ascertain". To me the word "ascertain" is much wider than "physical counting". In my view, "physical counting" is simply one of the ways of ascertaining. Physical Counting is not the only way of ascertaining. As such, for the court to use the phrase "physical counting" as if it is synonymous with the word "ascertain" would unduly be restricting Parliament or the Speaker as to what method to use in order to establish with certainty the number of members of parliament required to form quorum.

525 s30 The above view is fortified by U. S. Supreme Court's decision in *United States Vs. Ballin* 144 U.S. . In that case, the United States Supreme Court was considering an Act passed by the Congress in 1890, authorizing the Secretary of the Treasury "to classify as woolen cloths all imports of worsted cloth, whether known under the name of worsted cloth or under the names of worsteds or diagonals or otherwise." The respondent's challenge of the Act on the ground, among others, that the Act had been passed by Congress sitting without quorum had been upheld by the Circuit Court of the United States for the Southern District of New York. Hence the appeal to the Supreme Court by the appellant as the aggrieved party.

It was common ground that the Constitution provided that "a majority of [the House] shall constitute a quorum to do business.", and that the Constitution prescribed no method for determining the presence of the majority. However, the Constitution empowered Congress to make its rules of proceedings. The Constitution also required the Congress to keep a Journal of its proceedings.

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With regard to the determination of presence of quorum, Congress's Rules of procedure provided as follows:

"On the demand of any member, or at the suggestion of the Speaker, the names of members sufficient to make a quorum in the hall of the house who do not vote shall be noted by the clerk and recorded in the journal and reported to the Speaker with the names of the members voting, and be counted and announced in determining the presence of a quorum to do business. "

The facts preceding the passage of the contested Act of May 9, 1890, were reported in the Journal of the House of Representatives of the fifty first Congress thus:

"The Speaker laid before the house the bill of the house (H. R. 9548) providing for the classification of worsted cloths as woollens, coming over from last night as unfinished business, with the previous question, and the yeas and nays ordered." 545

"The house having proceeded to the consideration and the question being put,

"Shall the bill pass?"

550 "There appeared

s65

"Yeas - 138,

"Nays - 0, Not

"Voting - 189.

"The said roll-call having been recapitulated, the Speaker announced, from a list noted and furnished by the clerk, at the suggestion of the Speaker, the following-named members as present in the hall when their names were called, and not voting, viz:

[Here follows an alphabetical list of the names of seventy-four members.]

"The Speaker thereupon stated that the said members present and refusing to vote, (74 in number,) together with those recorded as voting, (138 in number,) showed a total of 212 members present, constituting a quorum present to do business: and, that the yeas being 138 and the nays none, the said bill was passed. "

When dealing with the question of how to determine the presence of a quorum, the Supreme Court stated:

"But how shall the presence of a majority be determined? The Constitution has prescribed no method of making this determination, and it is therefore within the competency of the house to prescribe any method which shall be reasonably certain to ascertain the fact. It may prescribe answer to roll-call as the only method of determination; or require the passage of members between tellers, and their count as the sole test; or the count of the Speaker or the clerk, and an announcement from the

## Page 20 of 26

570 575 desk of the names of those who are present. Any one of these methods, it must be conceded, is reasonably certain of ascertaining the fact, and as there is no constitutional method prescribed, and no constitutional inhibition of any of those, and no violation of fundamental rights in any, it follows that the house may adopt either or all, or it may provide for a combination of any two of the methods. That was done by the rule in question; and all that that rule attempts to do is to prescribe a method for ascertaining the presence of a majority, and thus establishing the fact that the house is in a condition to transact business. "

580 585 The relevance of the above decision in the matter before us is that like the American Constitution which was under review by the U. S Supreme Court, our Constitution does not prescribe how the presence of quorum is to be determined. Neither did our Constitution nor the Rules of Parliament prescribe any particular method which the Speaker shall use to ascertain the presence of quorum in the August for the vote to be taken. Above all, the Constitution and the Rules of Parliament did not prescribe that "the Speaker shall ascertain quorum exclusively by physical counting". It follows, therefore, that the Speaker was left with wide discretion to determine which method or combination of methods to adopt for purposes of ascertaining the presence of quorum in the House. The role of court is simply to assess whether, from the

evidence adduced, the method allegedly used by the Speaker was reasonably certain to ascertain the fact of the presence of the numbers prescribed for quorum to have been realized by Parliament at the material time.

590 595 Lastly, the judgment of this court (in the Ssemwogerere case (op cit)) was rendered on 10th August 2000. Twenty three years later, the world has witnessed the emergency of technology as a great enabler of diverse human activities. Technology has not only created the possibility of Members attending Parliamentary and other proceedings without being physically in the Chambers, but also introduced several other options by which certainty of the numbers of those voting can be achieved which include electronic voting (e-voting) and i-voting (where the voter submits his or her vote electronically). In that context, interpreting the word "ascertain" to be restricted to 'physical counting' would deny the Speaker and Parliament the benefit of modern technology.

In the premises, it is my finding that "physical counting" can no longer be said to be the exclusive mode of ascertaining the existence of quorum. It is simply one of the ways of ascertaining it. The

## Page 27 of 26

- 600 605 method of ascertaining as such, becomes a preserve of the Speaker and by extension, Parliament. But whichever method the Speaker chooses to ascertain, the end result should reflect with certainty the number of Members of Parliament who are present in the House at the material time; how many of those are entitled to vote; and how many of those are not entitled to vote (the ex officio members). Further, it should reflect that the ratio of those members present who are entitled to vote vis a vis the number of all Members of Parliament entitled to vote does not fall below one third of all the members of Parliament entitled to vote. At the end of the day, it boils down to evidence in a particular case as to the whether the method used produces the desired results that the numbers needed for Parliament to have quorum have been realized, and that these must be reflected in the Hansard.
- 610 Sadly, the copies of Hansard which were exhibited before this court neither prove that the Speaker ascertained the existence of quorum at the critical times, nor provide the numbers of the Members of Parliament who were present. This makes it impossible for this court to rely on the Hansard to make its own inference that the numbers involved in the vote met the minimum prescribed for constituting quorum. The expressions "Questions put and agreed to" and "Report
- 615 620 Adopted" commonly found in the Hansard as a record of the decision or vote of Parliament do not meet the Constitutional standard set out in Article 89(1) of the Constitution of Uganda of 1995 which provides that 'Except as otherwise prescribed by this Constitution or any law consistent with this Constitution, any question proposed for decision of Parliament shall be determined by a majority of votes of the members present and voting in a manner prescribed by rules of procedure made by Parliament under article

g4 of this Constitution"

### **As rightly observed by this court in the Ssemwogerere case above**

"... The records should be able to show the number of members who supported the decision, the number of those opposed it, the number of those who abstained. The total number of members present and voting in the House should be able to show that at the time of voting there was quorum".

However, I can add that for the sake of completeness of the record and good practice, the record should also show the number of ex officio members present. Under Article 78 1(d) of the

### **Page 22 of 26**

Constitution, the ex officio members are part of the composition of Parliament even though they neither vote nor are they legible to be counted when ascertaining the quorum of Parliament.

630 In the premises I am satisfied that the evidence before us does not prove that there was quorum at the time the 9th Parliament passed the Bill for the enactment of the impugned Act.

### **Constitutionality of the act of the 9th Parliament passing the Bill without quorum**

635 The importance of legislative quorum cannot be over emphasized. A legislative body with quorum possesses all the powers of the whole legislative body save those which are expressly excluded or limited by the instrument creating it or defining its powers. As such, the general rule of all parliamentary bodies is that when quorum is present, the act of a majority of the quorum is the act of the whole body unless, of course, the instrument creating the parliamentary body has prescribed specific limitations. See: *United Sfafes Vs. Ballin* (op cit).

<https://www.asqo.co/sites/default/files/document/FGERLHTETYQLBMHEUKDQWKYKRHPJKFpdj> Needless to add, quorum has historically been used as one of the tools for striking the balance 640 between the need to prevent a minority in the legislature from imposing its will on the majority, while the speed of the legislature in the execution of its mandate is not held back on account of the absence of some of its members. See:

645 650 According to Luther S. Cushing, a Nineteenth Century Expert at Parliamentary Procedure, in "Rules Of Proceeding And Debate In Deliberative Assemblies" (8th Ed.1899), (Accessed at: <https://www.qutenbero.org/files/60757160757-h160757-h.htm>), the quorum requirements 'prevent matters from being concluded in a hasty manner, or agreed to by so small a number of the members, as not to command a due and proper respect' Cushing then summarizes the goals that quorum requirements are intended to further as being: First, requiring some minimal number of participants serves to encourage deliberation and collegiality among the participants. Second, a quorum requirement ensures that some minimal number of actors will vote, which increases the probability that the result reached by those who do participate is the same result that would have

been reached were all the members of the body to have participated. Third, quorum requirements affirm the legitimacy of the decision reached, the decision-making process, and of the body itself.

665 670 I have already established that, from the evidence before this court, the Speaker failed to ascertain the quorum as required by Rule 23(3) of the Rules of Procedure of the 9th Parliament, 2012. I have also made a finding that the evidence before court supported the Petitioners claim that there was no quorum at the time of passing the Bill for the enactment of the impugned Act contrary to Rule 23 (1) & (2) of the Rules of Procedure of the 9th Parliament, 2012. As such, Prima facie, the complaints about the acts and omissions on the part of the Speaker and Parliament would ordinarily amount to breaches of the Rules of Procedure of Parliament and nothing more. However, to appreciate the constitutionality of the said breaches, the principle of "purpose and effect" becomes handy. This is one of the principles of constitutional interpretation which was stated in the Canadian Supreme Court case of the Queen vs Big M Drug Mart Ltd -(1986) 1 LRC 332 thus :

The principle has been adopted by this Court and the Supreme Court in such cases as Attorney

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685 690 In the matter before us, there is no doubt that the issue of quorum of Parliament was not an isolated or standalone matter in the legislative process which culminated into the impugned Act. Under Rule 23 of the Rules of Procedure of the 91h Parliament, for quorum of the August House to be realized, a minimum of one third of the members of Parliament (excluding ex officio

members) had to be present at the time a vote on the Bill was to be taken. Existence of the prescribed quorum simply means that the August body is at that stage lawfully constituted to take a vote or otherwise make decisions on the Bill under consideration in accordance with the law. However, for the decision to be lawful and binding on the whole parliament, it had to be taken by the majority of that quorum since article 89 (1) of the Constitution requires that:

> "except as otherwise prescribed by this Constitution or any law consistent with this Constitution, any question proposed for decision of Parliament shall be determined by a majority of votes of the members present and voting in a manner prescribed by rules of procedure made by Parliament under article 94 of this Constitution."

- 69s 700 Said differently, the quorum requirements set out in the Rules of Procedure of Parliament feed into article 89(1) of the Constitution. The Rules of Parliament provide for what constitutes the quorum and the obligation of the Speaker in confirming its existence. Once a quorum is realized, the stage is set for Parliament to vote on the Bill. At the stage of voting, the Bill must receive the sufficient number of votes in order for it to be lawfully passed. The "sufficient number of votes" is prescribed by article 89(1) of the Constitution. They consist of the majority of the quorum. Therefore, compliance with the Rules of Procedure of Parliament is a condition precedent for compliance with article 89(1) of the Constitution. If there is no quorum in Parliament at the time of voting, like in the instant matter, it automatically leads to the Bill being passed without the majority of the quorum contrary to article 89(1) of the Constitution.
- The upshot of the above is that the Bill for the enactment of the impugned Act having been passed without quorum inevitably resulted in the Bill being passed WITHOUT receiving

sufficient number of votes namely, the majority of the quorum. This contravened article 89(1) of the Constitution which renders the impugned Act null and void.

Accordingly, I would answer issue two in the affirmative.

## 770 OTHER ISSUES

Having resolved that the impugned Act is null and void, it becomes academic for this court to go ahead and answer the remaining issues whose gist is whether the specific sections and schedules of the same Act are unconstitutional or not.

## REMEDIES

775 I note from the Petitioners' prayers that she was interested in nullification of only those aspects of the impugned law which relate to *Catha edulis* (khat). The evidence before this court was that the said provisions of the impugned Act were not handled by Parliament independent of the rest of the provisions of the Act. As such, there is nothing about the impugned Act to be saved.

720 In the premises, I would declare the Narcotic Drugs and Psychotropic Substances (Control) Act, 2015 null and void for lack of quorum on the part of Parliament contrary to Articles 88 and 89 of the Constitution and Rule 23 of the Rules of Procedure of the 9th Parliament, 2012 made pursuant to Articles 88 and 94 of the Constitution.

I would grant the costs of the Petition to the Petitioner

Delivered and dated at Kampala this day of tW\ <sup>2023</sup> 9|

iV\n^\\*

MUZAMIRU MUTANGULA KIBEEDI Justice of the Constitutional Court

## THE REPUBLIC OF UGANDA

### IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Richard Buteera-DCJ, Stephen Musota, Muzamiru M. Kibeedi, Irene Mulyagonja & Monica K. Mugenyi, JJCC)

### CONSTITUTIONAL PETITION NO. 001 OF 2017

**WAKISO MIRAA GROWERS AND DEALERS ASSOCIATION LIMITED =====  
PETITIONER**

**VERSUS**

**ATTORNEY GENERAL OF UGANDA ===== RESPONDENT**

### JUDGMENT OF RICHARD BUTEERA, DCJ

I have had the opportunity of reading in draft the Judgment of Justice Muzamiru Mutangula Kibeedi, JCC.

I agree with his decision that this petition substantially succeed for the reasons given, and with the declarations he proposed and have nothing useful to add.

As all the other members of the Court also agree, the Petition is allowed with costs to be borne by the Attorney General.

Dated this \$\overline{\phantom{a}}\$ day of \$\overline{\phantom{a}}\$ day of \$  
\overline{\phantom{a}}\$ 2023.

DEPUTY CHIEF JUSTICE

**THE REPUBLIC OF UGANDA IN THE CONSTITUTIONAL COURT OF UGANDA AT  
KAMPALA CONSTITUTIONAL PETITION NO. 001 OF 2017**

**WAXISO MIRAA GROWERS AND DEALERS ASSOCIATION  
LIMITED ::::::::::: PETITIONER VERSUS**

**THE ATTORNEY GENERAL OF UGANDA ::::::::::: RESPONDENT**

CORAM: HON. HON. HON. HON. HON. JUSTICE JUSTICE JUSTICE JUSTICE JUSTICE RICHARD  
BUTEERA, DCJ STEPHEN MUSOTA, JCC MUZAMIRU M. KIBEEDI, JCC IRENE MULYAGONJA, JCC  
MONICA K. MUGENYI, JCC

**JUDGMENT OF STEPHEN MUSOTA, JCC**

I have had the benefit of reading in draft the judgment by my brother Hon. Justice Muzamiru Kibeedi, JCC.

| Dated this | (<br>day of | 2023 |

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Stephen Musota JUSTICE OF APPEAL

**THE REPUBLIC OF UGANDA**

**IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA CONSTITUTIONAL  
PETITION NO. 001 OF 2017**

**WAKISO MIRAA GROWERS AND DEALERS ASSOCIATION LIMITED :::::::::::  
PETITIONER VERSUS**

**THE ATTORNEY GENERAL OF UGANDA ::::::::::: RESPONDENT**

CORAM: HON. JUSTICE RICHARD BUTEERA, DCJ HON. JUSTICE STEPHEN MUSOTA, JCC HON.  
JUSTICE MUZAMIRU M. KIBEEDI, JCC HON. JUSTICE IRENE MULYAGONJA, JCC HON. JUSTICE  
MONICA K. MUGENYI, JCC

**JUDGMENT OF STEPHEN MUSOTA, JCC**

I have had the benefit of reading in draft the judgment by my brother Hon. Justice Muzamiru Kibeedi, JCC.

| Dated this | day of | mon | 2023 |

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Stephen Musota JUSTICE OF APPEAL

**THE REPUBLIC OF UGANDA IN THE CONSTITUTIONAL COURT OF UGANDA AT  
KAMPALA CONSTITUTIONAL PETITION NO. 001 OF 2017**

**WAKISO MIRAA GROWERS AND**

**DEALTRS ASSOCIATION LIMITED : : : : : PETITIONER VERSUS**

**THI ATTORNEY GENERAL OF. UGANDA : : : : : RESPONDENT**

CORAM: HON. HON. HON. HON. HON. JUSTICE RICHARD BUTEERA, DCJ JUSTICE STEPHEN  
MUSOTA, JCC JUSTICE MUZAMIRU M. KIBEEDI, JCC JUSTICE IRENE MULYAGONJA, JCC  
JUSTICE MONICA K. MUGENYI, JCC

**JUDGMENT OF STEPHEN MUSOTA. JCC**

I have had the benefit of reading in draft the judgment by my brother Hon. Justice Muzamiru  
Kibeedi, JCC.

| Dated tt i" | i F<br>day of | A^o^4 | 2023 |

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Stephen Musota JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA  
PETITION NO. 001 OF 2017

WAKISO MIRAA GROWERS AND DEALERS ASSOCIATION  
LIMITED : : : : : PETITIONER VERSUS

THE ATTORNEY GENERAL OF UGANDA : : : : : RESPONDENT

CORAM: HON. HON. HON. HON. HON. JUSTICE RICHARD BUTERA, DCJ JUSTICE STEPHEN  
MUSOTA, JCC JUSTICE MUZAMIRU M. KIBEEDI, JCC JUSTICE IRENE MULYAGONJA, JCC  
JUSTICE MONICA K. MUGENYI, JCC

JUDGMENT OF STEPHEN MUSOTA . JCC

I have had the benefit of reading in draft the judgment by my brother Hon. Justice Muzamiru  
Kibeedi, JCC.

| Dated this | ( A day of | 2023 |

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Stephen Musota JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA  
Coram: Butera - DCJ, Musota, Kibeedi, Mulgagonja, Mugenyi J, JCC

CONSTITUTIONAL PETITION NO. 001 OF 2017

WAKISO MIRAA GROWERS AND DEALERS ASSOCIATION  
LIMITED : : : : : PETITIONER

VERSUS

ATTORNEY GENERAL : : : : : RESPONDENT

**JUDGMENT OF IRENE MULYAGONJA, JCC**

I have had the benefit of reading in draft the judgment of my learned brother, Muzamiru Mutangula Kibeedi, JCC. I agree with his decision that this petition should substantially succeed for the reasons given, and with the declarations he has proposed. The costs should be borne by the Attorney General.

t-Dated at Kampala this ...5...day of 2023

rene Muly JUSTICE OF THE CONSTITUTIONAL COURT



THE REPUBLIC OF UGANDA

**THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA**

(Coram: Buteera, DCJ; Musota, Kibeedi, Mulyagonja & Mugenyi, JJCC)

**CONSTITUTIONAL PETITION NO. 1 OF 2017**

WAKISO MIRAA GROWERS & DEALERS ASSOCIATION LIMITED PETITIONER

VERSUS

ATTORNEY GENERAL RESPONDENT

I

**JUDGMENT OF MONICA K. MUGENYI, JCC**

I have had the benefit of reading in draft the lead Judgment of my brother, Kibeedi, JCC in this matter.

I agree with the findings and conclusions therein, as well as the final orders proposed, and have nothing useful to add.

<table>

Dated and delivered at Kampala this .....

undingenni;

Monica K. Mugenyi Justice of the Constitutional Court

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