

**THE REPUBLIC OF UGANDA**

**IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA**

*[Coram: Egonda-Ntende, Musoke, Cheborion Barishaki, Mutangula Kibeedi & Mulyagonja, JJCC]*

**CONSTITUTIONAL PETITION NO. 13 OF 2014**

**BETWEEN**

- |                                                           |   |             |
|-----------------------------------------------------------|---|-------------|
| 1. Centre for Domestic Violence Prevention                | } | Petitioners |
| 2. Women's Organisation Network for Human Rights Advocacy |   |             |
| 3. Professor Sylvia Tamale                                |   |             |
| 4. Sarah Kihika                                           |   |             |
| 5. Lillian Drabo                                          |   |             |
| 6. Strategic Initiative for Women in the Horn of Africa   |   |             |
| 7. Uganda Health and Science Press Association            |   |             |
| 8. Human Rights Network for Journalists– Uganda           |   |             |
| 9. Lina Zedriga                                           |   |             |

**AND**

Attorney General of Uganda ===== Respondent

**JUDGMENT OF FREDRICK EGONDA-NTENDE, JCC**

**Introduction**

- [1] This petition was brought under Articles 137 (1) and (3) (a), (b) and 4 of the Constitution. The petitioners are seeking the following declarations:

‘That:

- (a) Section 2 of the Anti- Pornography Act, 2014 which defines and creates the offence of pornography is overly broad, inconsistent with and in contravention of the principle of legality

guaranteed under Articles 2(1) & (2), 28(12) and 44(c) of the Constitution of the Republic of Uganda 1995 and is thus null and void.

(b) Section 2 of the Anti-Pornography Act 2014 which defines and creates the offence of pornography has occasioned the harassment and mistreatment of women in public and denies them control over their bodies and access to public spaces, and is inconsistent with and in contravention of the right to equal dignity, freedom from discrimination, the right to personal liberty and security of the person, freedom from cruel, inhuman or degrading treatment and freedoms of movement and association guaranteed under Articles 2(1) & (2), 21(1) & (2), 23(1), 24, 29(1) & (2), 33(1) & (3) and 44(a) of the Constitution of the Republic of Uganda 1995 and is thus null and void.

(c) Section 11 of the Anti-Pornography Act 2014 confers wide and discretionary powers upon the Anti-Pornography Committee in the enforcement and monitoring of compliance of the Act and is inconsistent with and in contravention of the rights to personal liberty, privacy and property guaranteed under Articles 2(1) & (2), 23(1), 26 and 27 of the Constitution of the Republic of Uganda and thus null and void.

(d) Section 13 of the Anti-Pornography Act 2014 in criminalising the production, publication, broadcasting, procurement, importation and exportation, sale or abetment, sets out prohibited acts of pornography that are overly broad, and is likely to criminalise legitimate debate, commercial activities and private pursuits, and is inconsistent with and in contravention of the principle of legality, the right to privacy, freedom of expression, the press and other media, freedom of thought and conscience, academic freedom, the freedom of assembly and association, and the right to practice one's profession and to carry on a lawful occupation, trade or business guaranteed under Articles 2(1) & (2), 28(12), 27, 29(1), 40(2) and 44(c) of the Constitution of the Republic of Uganda 1995 and thus null and void.

(e) Section 15(1) and (2) of the Anti-Pornography Act 2014 confers wide enforcement and policing powers in authorising the entry upon premises and is likely to interfere with activities pursued in private; occasion the seizure of personal property and the arrest of persons engaged in private pursuits, and is inconsistent with and in contravention of the rights to privacy, property and personal liberty guaranteed under Articles 2(1) &

(2), 23(1), 26 and 27 of the Constitution of the Republic of Uganda and thus null and void.

(f) The Anti-Pornography Act 2014 in defining and creating the offence of pornography in a overly broad, vague and subjective manner and in conferring wide discretionary enforcement and policing powers on State authorities, is inconsistent with and in contravention of obligations with regards to rights guaranteed under international human rights instruments ratified or acceded by Uganda and in contravention of objective XXXVIII(i)(b) of the National Objectives and Directive Principles of State Policy, Articles 2(1) & (2), 8A, 20, 45 and 287 of the Constitution of the Republic of Uganda 1995 and thus null and void.'

- [2] The petition is supported by affidavits sworn by the petitioners.
- [3] The respondent filed a reply to the petition which is supported by the affidavit of Josephine Kiyingi, a Principal State Attorney in the Attorney General's chambers.
- [4] The reply of the respondent to the petition is simply a bare denial that the impugned provisions are not inconsistent with the principle of legality, the right to a fair trial, the right to equal dignity, right to privacy, and property, freedom from discrimination, the right to personal liberty, and security of the person, freedom from cruel, inhuman and degrading treatment, freedom of movement and association, freedom of expression, the press and other media, freedom of thought and conscience, academic freedom, freedom of assembly and association, and the right to practice one's profession and to carry on a lawful occupation, trade or business, which are all guaranteed under Chapter 4 of the Constitution.
- [5] The petitioners raised six issues to be determined by this court which state as follows:

**\*4.1 Whether sections 2 and 13(2) of the Anti-Pornography Act 2014 are inconsistent with or in contravention of the right to a Fair hearing guaranteed under Articles 2(1) & (2), 28(12) and 44(c) of the Constitution of the Republic of Uganda 1995;**

**4.2 Whether sections 2 and 13 of the Anti-Pornography Act 2014 is inconsistent with or in contravention of the right to equality before the law without any discrimination guaranteed under objective XVI of the National Objectives and Directive Principles of State Policy, Articles 2(1) & (2), 8A, 21(1), (2) & (4), 23(1),**

24, 29(1) & (2), 33(1) & (3) and 44(a) of the Constitution of the Republic of Uganda 1995;

4.3 Whether sections 11(1) and 15(1) & (2) of the Anti-Pornography Act 2014 is inconsistent with or in contravention of the right to personal liberty, privacy and property as guaranteed under Articles 2(1) & (2), 23(1), 26 and 27 of the Constitution of the Republic of Uganda 1995;

4.4 Whether the spirit of the Anti-Pornography Act 2014 is inconsistent with or in contravention of the duty of the Government to respect, protect and promote the rights and freedoms of the individual and groups under Article 2(1) & (2) and 20(2) of the Constitution of the Republic of Uganda 1995;

4.5 Whether the Anti-Pornography Act 2014 is inconsistent with or in contravention of obligations with regards to the rights guaranteed under international human rights instruments ratified or acceded by Uganda as enjoined under objective XXXVIII (i) (b) of the National Objectives and Directive Principles of State Policy and Articles 2(1) & (2), 8A, 20, 45 and 287 of the Constitution of the Republic of Uganda 1995;

4.6 Whether the Petitioners are entitled to the declarations and other reliefs prayed for.'

### **Submissions of Counsel**

- [6] At the hearing, the petitioners were represented by Mr. Onyango Owor and the respondent by Ms. Adong Imelda.
- [7] Counsel for the petitioners prayed that this court takes judicial notice of the acts of violence against women that took place after the enactment of the Anti-Pornography Act 2014 which included several women being undressed by men in public places whom they perceived as being indecently dressed. Counsel for the petitioners cited sections 2(1), 55 and 56(1) of the Evidence Act that provide for judicial notice and the authorities of Uganda Electricity Board v Musoke[1994] UGSC 4 and Gbaniyi Osafie and John Emeri v Paul Odi and Okwumaso Nwale / SC/149/1987.

- [8] Counsel for the petitioners submitted that this petition raises issues for constitutional interpretation under Article 137 of the Constitution is as much as it challenges the constitutionality of various sections of the Anti-Pornography Act 2014. Counsel argued that this petition discloses a cause of action as was stipulated in Raphael Baku & Another v Attorney General [2003] UGSC 3 and Ismael Serugo v Kampala City Council & Another [1999] UGSC 23.
- [9] With regard to the issue 1, counsel for the petitioners submitted that the definition of the word pornography under section 2 read together with the prohibition of pornography in section 13 of the Act contravenes and is inconsistent with the principle of legality under Article 28 (12) of the constitution. Counsel submitted that the words 'indecent show', 'by whatever means', 'stimulated explicit sexual activities', 'sexual parts', 'primarily sexual excitement' in the definition of pornography are vague, ambiguous, uncertain and generally subjective. Counsel relied on Salvatori Abuki & Anor v Attorney General [1997] UGCC 10, for the submission that Article 28 (12) requires that an offence must be defined and the definition must be clear to enable a citizen to distinguish between the prohibited conduct and the permissible one. Counsel for the petitioners also relied on Grayned v City of Rockford [1972] 208 US 104. Counsel for the petitioners submitted that the charge sheet in criminal case no. 1300 of 2014 Uganda v Muchwa Didi March Mugisa & Kansime Jemima alias 'PANADOL WA BASAJJA' illustrates how difficult it is to define the term pornography.
- [10] Counsel for the petitioners prayed that this court finds that section 2 and section 13(2) of the Anti-Pornography Act 2014 are inconsistent with or in contravention of the right to a fair hearing guaranteed under Articles 2(1) & (2), 28(12) and 44(c) of the Constitution. Counsel for the petitioners also prayed that the Anti-Pornography Act 2014 be declared null and void because the definition of pornography is central to the Act.
- [11] In relation to issue no. 2, counsel for the petitioners submitted that Article 21 of the Constitution guarantees the fundamental right to equality and freedom from discrimination. Counsel for the petitioners also referred to Articles 24, 29, 33 and 44 of the Constitution and Uganda Association of Women Lawyers & 5 others v Attorney General [2004] UGCC 1 where it was stated that rights of women are inalienable. Counsel for the petitioners submitted that following the enactment of the Anti-Pornography Act, several women were undressed in public in Kampala, Iganga and Mbale districts, that Jane Nabukenya and Prossy Nassuna were

detained for 3 hours each by the then Bukomansimbi Grade One Magistrate on allegations that they were indecently dressed which was discriminatory.

- [12] Counsel argued that although no state agent participated in undressing women, the state created the toxic environment that facilitated these actions by enacting the Anti-Pornography Act whose definition of the term pornography is vague, uncertain and therefore unconstitutional. Counsel referred to Salvatori Abuki & Anor v Attorney General (supra) where it was held that it is important to take into account the purpose and effect principle while determining whether a statute is constitutional. Counsel for the petitioners contended that the effect of the impugned law disproportionately affected women and infringed on their rights as provided under the constitution.
- [13] Counsel for the petitioners prayed that this court finds sections 2 and 13 of the Anti-Pornography Act 2014 is inconsistent with and in contravention of Articles 2 (1) & (2), 8A, 21 (1), (2) & (4), 23 (1), 24, 29 (1) & (2), 33 (1) & (3) and 44 (c) of the Constitution.
- [14] With regard to issue no.3, counsel for the petitioners submitted that section 11 (1) of the Anti- Pornography Act 2014 grants the Pornography Control Committee power without a warrant to inspect and examine documents or seize equipment which is inconsistent with and in contravention of the right to privacy guaranteed under Article 27 of the Constitution. Counsel for the petitioners argued that the impugned provisions confer wide discretionary powers to the Committee which contravenes and is inconsistent with the right to personal liberty, privacy and property. Counsel for the petitioners prayed that this court finds that section 11 (1) of the Anti-Pornography Act is inconsistent with or in contravention of the right to personal liberty, privacy and property guaranteed under Articles 2 (1) & (2), 23 (1), 26 and 27 of the Constitution.
- [15] In relation to issue no. 4, counsel for the petitioners submitted that impugned provisions of the Anti-Pornography Act 2014 contravene or are inconsistent with the government's obligation to respect and protect fundamental human rights and freedoms. Counsel stated that the obligation to respect requires the state to refrain from interfering with or curtailing the enjoyment or exercise of human rights which is its primary obligation. By enacting the Act and creating a plethora of offences, the government is actively engaged in infringing on constitutionally guaranteed rights. Counsel for the petitioners submitted that the second obligation of the state

is to protect individuals and groups against human rights abuses which includes the duty to deter the infringement of human rights by third parties.

- [16] With regard to issue no. 5, counsel for the petitioners submitted that the impugned provisions of the Anti-Pornography Act are inconsistent with or in contravention with the state's obligations concerning the human rights guaranteed under international human rights instruments ratified or acceded to by Uganda which include the UN Covenant on Civil and Political Rights, 1966, UN Covenant on Economic, Social & Cultural Rights, 1966, UN Convention on Elimination of All Forms of Discrimination against Women, African Charter on Human and People's Rights and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. Counsel was of the view that although these instruments pre-date the constitution, they are part of the law in accordance to Objective XXXVIII (i) (b) of the National Objectives and Directive Principles of State Policy and Articles 2 (1) & (2), 8A, 20, 45 and 287 of the Constitution. Counsel for the petitioners relied on Uganda Law Society & Another v Attorney General [2000] UGCC 5 for this submission.
- [17] Counsel for the petitioners submitted that the rights and freedoms guaranteed under the international human rights instruments constitute obligations Uganda has agreed to as the human rights standard for its citizens. The instruments are also relevant to the interpretation or construction of the provisions of the laws of Uganda. Counsel relied on Attorney General v Susan Kigula & 417 others [2009] UGSC 6 for this submission. Counsel for the petitioners also submitted that Uganda is duty bound to give effect to international human rights standards and refrain from adopting measures, including legislation that are inimical to the exercise and enjoyment of the rights stipulated under the instruments. Counsel for the petitioners concluded that the impugned provisions of the Anti-Pornography Act 2014 are in contravention or inconsistent with Uganda's obligations to foster the right to equality without discrimination and the right to privacy.
- [18] Counsel for the petitioners, in relation to issue no. 6, prayed that this court makes the declarations as prayed in the petition. Counsel for the petitioners also prayed that the Anti- Pornography Act 2014 be rendered null and void.
- [19] In reply, counsel for the respondent submitted that Article 137 (1) of the Constitution gives unlimited and original jurisdiction to this court to interpret the constitution and contended that paragraphs 11 (a), (b), (c), (d), (e) and (f) of the petition do not raise any questions or issues for constitutional interpretation. Counsel for the petitioners submitted that the acts against women that the

petitioners asked this court to take judicial notice of infringe on human rights of different citizens for which the Constitution already provides a remedy under Article 50 of the Constitution. Counsel for the respondent contended that these infringements suffered by several persons in the wake of the enactment of the Anti-Pornography Act entitle the petitioners to seek redress in the High Court. Counsel for the respondent relied on Charles Kabagambe v Uganda Electricity Board Constitutional Petition No. 2 of 1999 (unreported) where it was held that it is now settled law that if a matter does not require an interpretation of a provision of the Constitution, then there is no juristic scope for the invocation of the jurisdiction of this court. Counsel also referred to Mugoya Kwaya Gaster v Attorney General [2010] UGCC 1. Counsel for the respondent prayed that this court finds that the petition does not raise matters for constitutional interpretation.

[20] Counsel for the respondent also submitted that the petitioners did not discharge their burden of proof of the averments made in the petition but instead greatly relied on hearsay evidence which is inadmissible. Counsel cited Attorney General v Major General Tinyefuza Constitutional Appeal No. 1 of 1997. Counsel for the respondent argued that the evidence of newspaper reports, charge sheet and extracts relied on by the petitioners was attached by the petitioners on their submissions which is in breach of the Constitutional Court Petitions and References Rules 2005. Rule 12 of the Constitutional Court Petitions and References Rules provides that all evidence at the trial shall be by way of affidavits filed in court. Counsel relied on Interfreight Forwarders v East African Development Bank 1990-1994 EA 117 where it was held that a party will not be allowed to succeed on a case not set up by him nor be allowed at the trial to change his case or set up a case inconsistent with what he alleged in his pleadings except by way of amendment of pleadings. Counsel for the respondent submitted that the purported evidence should not be relied upon by this court because it did not form part of the petitioner's pleadings.

[21] In reply to issue no. 1, counsel for the respondent submitted that section 2 and section 13 of the Anti-Pornography Act do not contravene the principles of legality and of a fair trial. The stipulation of pornography as an offence meets the requirements set out by Article 28 (12) and Article 44 (c) of the Constitution. Counsel for the respondent argued that the case of Salvatori Abuki & Anor v Attorney General (supra) is distinguishable from this instant case. Counsel for the respondent relied on Canadian Pacific Ltd v R 1956 1 LRC where it was held that a law will be found unconstitutionally vague if it lacks precision to give sufficient guidance for legal debate. Counsel was of the view that the Anti-Pornography Act meets the requirements set out in the above case.



- [22] Counsel for the respondent submitted that the definition of pornography in the Act is precise and drafted in a manner that adequately describes the acts which constitute pornography and that the definition is not inconsistent with the definition in the Brian A Garner's Black's Law Dictionary, 8<sup>th</sup> Edition. Counsel for the respondent further argued that the terms 'indecent show', 'by whatever means', 'stimulated explicit sexual activities', 'sexual parts', 'primarily sexual excitement' as used in section 2 of the Anti-Pornography Act are clear and capable of aiding an individual and the courts of law to discern between permissible and illegal acts. Counsel argued that the evidence of the charge sheet was not properly adduced in court as it was not part of the petitioners' pleadings. Counsel for the respondent prayed that this court finds that section 2 and section 13 (2) of the Anti-Pornography act are not inconsistent with nor in contravention of Articles 2 (1) & (2), 28 (12) and 44 (c) of the Constitution.
- [23] In reply to counsel for the petitioners' submissions on issue no. 2, counsel for the respondent submitted that the Anti-Pornography Act does not infringe Articles 2 (1) & (2), 8A, 21 (1), (2) & (4), 23 (1), 24, 29 (1) & (2), 33 (1) & (3) and 44 (a) of the Constitution. The allegations by the petitioners of harassment and mistreatment of women by the public are matters for enforcement of rights under Article 50 of the Constitution and not for constitutional interpretation. Counsel for the respondent contended that the petitioners' submissions under the right to equality are misguided. Counsel stated that it is not disputed that the state did not participate or sanction any acts of undressing women as alleged by the petitioners. Counsel for the respondent argued that there is no evidence upon construction of section 13 of the Anti-Pornography Act that the offences therein were meant to target women perceived to be indecently dressed as the word 'any person' is used. Further, counsel stated that the long title from which the intention of the Act can be ascertained does not distinguish or stipulate the subjects of the Act.
- [24] Counsel for the respondent further submitted that it is trite law that the object and purpose of a statute can be ascertained from an examination of the parliamentary Hansard to ascertain the intent of parliament. Counsel relied on Zachary Olum & Anor v The Attorney General [2000] UGCC 3 for this averment. Counsel argued that an examination of the parliamentary Hansard demonstrates that the object and purpose of the Anti-Pornography Act is to protect women and not to discriminate against them which is in line with Objectives XIX of the National Objectives and Directive Principles of State Policy and Article 21 of the Constitution. Counsel was of the view that the law is rather an affirmative action in the protection of women's

rights. Counsel for the respondent also stated that the authority of Uganda Association of Women's Lawyers & 5 others v Attorney General [2004] UGCC 1 relied upon by the petitioners is distinguishable from the current petition and should be restrictively applied by this court.

- [25] In reply to issue no. 3, counsel for the respondent submitted that it is a reasonable expectation that the Anti-Pornography Committee charged with the responsibility of seizing infringing articles under section 7 has powers to search persons at reasonable times who are suspected of committing offences under the Act. Counsel for the respondent argued that the rights guaranteed under Articles 26 and 27 of the Constitution are not non-derogable under article 44 of the Constitution. These rights can be limited within the scope of Article 43(2). Further, counsel submitted that the rights provided under Article 26 and 27 of the Constitution do not accrue over items or property which have by law been made illegal. Counsel for the respondent submitted that this court is required to balance the interest of the society with those of an individual or groups who are engaged in acts of pornography outlawed by the Anti-Pornography Act and that the measures adopted by sections 11 and 15 of the Act are designed to achieve the objectives of the Act. Counsel for the respondent relied on Charles Onyango Obbo & Another v Attorney General [1997] UGCC 7 for the submissions.
- [26] On issue no. 4, counsel for the respondent reiterated the submissions under issue 4 and issue 2.
- [27] On issue no. 5, counsel for the respondent submitted that the Anti-Pornography Act is not inconsistent with international agreements acceded to by Uganda because it does not distinguish between male and female citizens in its construction and that the Act was created for the purpose of ensuring the protection of women from sexual offences which are prevalent in society and are exacerbated by pornography.
- [28] On issue no. 6, counsel for the respondent was of the view that the petitioners are not entitled to the declarations sought in the petition.
- [29] In rejoinder, counsel for the petitioners submitted that the actions or omissions that took place in the aftermath of the enactment of the Anti-Pornography Act 2014 are not before court for constitutional interpretation but simply to show court the effect

of the Act on women across the country following the enactment of the Act. Counsel argued that the actions which the petitioners pray for judicial notice show that there is a nexus between the enactment of the Act, the undressing of women in public and the detention of two women by the court of law. Counsel further argued that the said actions and or omissions showed how the general public, the police and judicial officers interpreted the provisions of the Act.

- [30] Counsel for the petitioners submitted that the respondent's contention that the evidence relied upon by the petitioners in regard to the undressing of women in public and the detention of two women is hearsay should not be entertained by this court because section 2 (1) of the Evidence Act recognises judicial notice as a form of evidence. The petitioners reiterated their prayer that this court should take judicial notice of the acts or omissions that took place after the enactment of the Anti-Pornography Act.
- [31] Counsel for the petitioners agreed with counsel for the respondent's submission that there is no evidence that section 13 of the Anti-Pornography Act 2014 was meant to target women perceived to be indecently dressed. Counsel argued that however, it is the effect of the law that disproportionately affected women perceived to be indecently dressed. Counsel for the petitioners argued that this unconstitutional effect alone renders the entire Anti-Pornography Act unconstitutional. Counsel for the petitioners relied on Salvatori Abuki & Anor v Attorney General (supra) for the submission that where the purpose of the statute is within the constitution, courts should further examine the effects of the law. Counsel also relied on Human Rights Network & others v Attorney General [2020] UGCC 6. Counsel for the petitioners prayed that this court finds that the Anti-Pornography Act 2014 is inconsistent with or in contravention of Article 21 (2) and (3) of the Constitution upon taking into account the effect of the Act.

### **Preliminary Matters**

- [32] Counsel for the respondent submitted that the petition does not raise issues for constitutional interpretation. Article 137 of the Constitution provides for the jurisdiction of this court. It states:

**'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 a bench of five members of that court.

(3) A 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

(b) any act or omission by any person or authority, is 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.

- [33] For this court to have jurisdiction, the petition or reference must show on its face that interpretation of a provision of the constitution is required in relation to an impugned law, act or omission of any person or authority. It is not enough to allege that a constitutional provision has been violated. See Serugo v Kampala City Council & Another [1999] UGSC 23. The petitioners contend that sections 2 and 13 of the Anti-Pornography Act are in contravention or inconsistent with, *inter alia*, articles, 21 and 28 of the Constitution. Clearly this petition raises questions for constitutional interpretation.
- [34] Counsel for the petitioners in their submissions requested this court to take judicial notice of the acts of violence that occurred against women following the enactment of the Anti-Pornography Act 2014. These included some women being undressed in public places and others arrested on allegations of indecent dressings. Counsel for the petitioners relied on newspaper recordings, reports, articles on the events and charge sheets for the women that were arrested during the period. It should be noted that none of these materials was adduced in evidence. They were merely attached to the written submissions of the petitioners. Counsel's approach amounts to adducing evidence at the bar which is clearly not acceptable. The evidence that counsel for the petitioners urged this court to take judicial notice of was not properly adduced in court. It was attached to the petitioners' submissions.
- [35] Rule 12 (1) of the Constitutional Court (Petitions and References) Rules, 2005 provides:

'12. Evidence at trial

1. All evidence at the trial in favour of or against a petition shall be by way of affidavit filed in court.'

- [36] In light of the above, I agree with counsel for the respondent and must reject the suggestion that this court take judicial notice of evidential matters that were annexed to the written submissions for the petitioner.

### **Analysis**

- [37] Mwendha, JSC, has succinctly summarised the principles of constitutional interpretation that this court must bear in mind in interpreting the Constitution in

David Welsely Tusingwire v Attorney General [2017] UGSC 11 in the following words,

**‘Principles of Constitutional Interpretation**

These have been laid down in several decided cases by this Court and other Courts in some other Commonwealth Jurisdictions and legal literature of persuasive authority.

(i) The constitution is the Supreme law of the land and forms the standard upon which all other laws are judged. Any law that is inconsistent with or in contravention of the Constitution is null and void to the extent of its inconsistency. See Article 2 (2) of the Constitution. Also see Presidential Election Petition No. 2 of the 2006 (SC) Rtd Dr. Col. Kiiza Besigye v. Y. K. Museveni

(ii) In determining the constitutionality of a legislation, its purpose and effect must be taken into consideration. Both purpose and effect are relevant in determining the constitutionality of either effect animated by the object of the legislation intends to achieve. See Attorney General v. S Abuki Constitutional Appeal No. 1988 (SC)

(iii) 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. Ssemwogere and Another v. Attorney General Constitution Appeal No 1 of 2002 (SC) and the Attorney General of Tanzania v. Rev Christopher Mtikila (2010) EA 13

(iv) A Constitutional provision containing a fundamental human right is a permanent provision intended to cater for all times to come and therefore should be given dynamic, progressive, liberal and flexible interpretation keeping in view the ideals of the people, their social economic and political cultural values so as to extend the benefit of the same to the maximum possible. See Okello Okello John Livingstone and 6 others v. The Attorney General and Another Constitutional Petition No I of 2005, South Dakota v. South Carolina 192, USA 268. 1940.

(v) Where words or phrases are clear and unambiguous, they must be given their primary, plain, ordinary or natural

meaning. The language used must be construed in its natural and ordinary sense.

(vi) Where the language of the Constitution or a statute sought to be interpreted is imprecise or ambiguous a liberal, general or purposeful interpretation should be given to it. (See Attorney General v Major David Tinyefunza Constitutional Appeal No. 1 of 1997 (SC)

(vii) The history of the country and the legislative history of the Constitution is also relevant and useful guide to Constitutional Interpretation. See Okello John Livingstone and 6 others v. Attorney General and Another (Supra).

(viii) The National Objectives and Directive Principles of State Policy are also a guide in the interpretation of the Constitution. Article 8A of the Constitution is instructive for applicability of the objectives.'

[38] I shall be guided by the said principles of constitutional interpretation.

### **Burden of Proof**

[39] Where it is alleged that a fundamental right or freedom has been impaired or diminished by any law, or act or omission of any authority, once a prima facie case is made out, the burden to justify the limitation falls upon the party arguing that the limitation is permissible under the Constitution.

[40] In the matter before us on the respondent's pleadings it was not their contention that the impugned provisions of the Anti-Pornography Act, were permitted by the limitation clause under article 43 of the Constitution. This was simply alluded to in the submissions without making out what the objective of the limitation was. In the respondent's reply it is simply contended that the impugned provisions are not inconsistent with the Chapter 4 rights and freedoms as claimed by the appellants. The respondent's case on its pleadings is therefore that the impugned provisions are not inconsistent with the fundamental rights and freedoms protected by Chapter 4 of the Constitution. It is not that the impugned provisions come within the purview of article 43 that permits certain limitations much as in the submissions the respondent appears to suggest that they come within the purview of article 43.

[41] Notwithstanding the foregoing it behoves us, if the petitioners show that the impugned provisions are clearly inconsistent with the fundamental rights and

freedoms protected by chapter 4 of the Constitution, to consider whether the impugned provisions would be permitted limitations under article 43 of the Constitution, in spite of absence of a case to that effect by the respondent. I shall therefore deal briefly with the principles to be applied in a limitation analysis.

- [42] The Supreme Court in Charles Onyango Obbo v Attorney General [2004] UGSC 1 approved the 'rationality test' as set out by the Supreme Court of Zimbabwe in Mark Gova Chavunduka & Others v Minister of Home Affairs & Anor (S.C. 36 of 2000) [2000] JOL 6540 (ZS). Three elements are to be considered to determine whether a law limiting fundamental rights and freedoms passed constitutional muster. Firstly, the legislative objective which the limitation is designed to promote must be sufficiently important to warrant overriding a fundamental right. Secondly, the measure designed to meet the objective must be rationally connected to it and not arbitrary, unfair or based on irrational consideration. Lastly the means to impair the right or freedom must be no more than necessary to accomplish the objective. The rationality test shall be applied to the derogable fundamental rights and freedoms.
- [43] However, where the right or freedom is non-derogable under article 44 of the Constitution such right cannot be impaired by any law. The right to a fair hearing, falling under article 28 of the Constitution falls under this category of non-derogable fundamental rights.

#### **Whether the offence of Pornography is properly defined in law?**

- [44] The petitioners contend that the definition of pornography under section 2 and section 13(2) of the Anti-Pornography Act 2014 contravene the principle of legality under Articles 2 (1) & (2), 28 (12) and 44 (c) of the Constitution of the republic of Uganda. Article 2 of the constitution states:

##### **'2. Supremacy of the Constitution.**

(1) This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.

(2) If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void.'

- [45] Article 28 (12) of the Constitution provides:



‘(12) ‘Except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law.’

[46] Article 44 (c) of the Constitution states:

**‘44. Prohibition of derogation from particular human rights and freedoms.** Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms...  
(c) the right to fair hearing;’

[47] The Anti-Pornography Act 2014 provides for prohibition of pornography and sets out the penalty for the offence under section 13 of the Act. It states:

**‘13. Prohibition of pornography**

(1) A person shall not produce, traffic in, publish, broadcast, procure, import, export, sell or abet any form of pornography.

(2) A person who produces or participates in the production of, or traffics in, publishes, broadcasts, procures, imports, exports or in any way abets pornography contrary to subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred currency points or imprisonment not exceeding ten years or both.’

[48] The term pornography is defined under section 2 of the Act as follows:

“‘pornography’ means any representation through publication, exhibition, cinematography, indecent show, information technology or by whatever means, of a person engaged in real or stimulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual excitement;’

[49] Counsel for the petitioners contends that this definition contains words and phrases that are vague, ambiguous, uncertain and generally subjective. Such words or phrases include ‘indecent show’, ‘by whatever means’, ‘stimulated explicit sexual activities’, ‘sexual parts’, ‘primarily sexual excitement’. Article 28(12) requires a criminal offence to be defined by law. It does not require every word used in the law to be defined but for the offence to be ascertainable from its definition in the statute. See Attorney General v Salvatory Abuki [1999] UGSC 7. It is essential for offences to be clearly defined so that people can know what is and what is not

prohibited. The description of the prohibited conduct should be precise and rationally connected with the harm targeted by the law.

- [50] The Supreme Court of Illinois in Grayned v City of Rockford, 408 U.S 1004 (1972) on vagueness in the law stated:

'It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning.' Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.' A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute "abut[s] upon sensitive areas of basic First Amendment freedoms," it "operates to inhibit the exercise of [those] freedoms." Uncertain meanings inevitably lead citizens to " 'steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked."

- [51] In Attorney General v Salvatori Abuki [1999] UGSC 7 while determining whether the offence of 'practicing witchcraft' had been defined in the Witchcraft Act, Tsekooko JSC (as he then was ) stated:

'We know for example that every Statute must be interpreted on the basis of its own language since words derive their own colour and content from the context and we know that the object of the Statute is paramount consideration. See Lall vs. Jeyppee Investment (1972) E.A. 512 and Attorney-General vs. Prince Ernest of Hanover (1957) A.C. 436. Subject to constitutional requirements, in construing a statute, it is the duty of the Court to give full effect to the apparent intention of the legislature in so far as it is possible without straining the natural meaning of the words used: R. vs. Makusud Ali (1942) E.A.C.A 76. It is not proper to treat statutory provision as void for mere uncertainty, unless the uncertainty cannot be resolved and the provision can be given no sensible or ascertainable meaning and must therefore be regarded as meaningless. Fawcett Properties vs. Buckingham Country

Council (1960) 3 All E.R. H.L. at page 507; *Salmon vs. Dancombe* (1886), 11 App. Cas. 627 P.C. at page 634.’

[52] Tsekooko, JSC (as he then was) in Attorney General v Salvatory Abuki (*supra*) while interpreting Article 28(12) stated:

‘Does clause (12) of Article 28 require that every word or a group of words creating a criminal offence in any enactment should be precisely as in an English Dictionary? Is that what is required by Article 28(12)? I think not.’

[53] In light of the above and upon consideration of the definition of the term pornography under section 2 of the Anti-Pornography Act 2014, the words or phrases ‘stimulated explicit sexual activities’, ‘sexual parts’, ‘primarily sexual excitement’ are not vague, ambiguous, uncertain and subjective as the petitioners contend. On the other hand, the Act does not provide what amounts to ‘indecent show’ and the threshold over which an action can be measured to determine whether it falls within the ambit of ‘indecent show’. An imprecise statement of the prohibited conduct may lead to inconsistent enforcement of the law, uncertain application of the law or failure to preclude conduct that it was intended to prohibit. The phrase ‘by whatever means’ is too general and unacceptable as it may capture a range of conduct that is too wide and not intended to be subject to the offence.

[54] To that extent section 2 of the Anti-Pornography Act is inconsistent with the Constitution and must be declared null and void in that limited context.

[55] Notwithstanding the foregoing, I am unable to determine either from this provision defining the crime of pornography, or from any other portion of the Act, the legislative objective for the criminalisation of pornography. Counsel for the respondent suggested in her submissions that the legislative objective was to protect women and children from sexual offences. How this provision or the Act protects women and children is unclear.

[56] What harm would result to society, if publication, exhibition, or other representation of images of sexual parts of the human body or sexual activities primarily for sexual excitement, is not prohibited? None has been put forward by the respondent except from the bar where it is intimated implicitly as harm to women and children. However, no proof of this harm has been provided. It was not specifically set out in the pleadings nor in the supporting affidavits.

[57] The Anti-Pornography Act, repealed section 166 of the Penal Code Act, which had criminalised trafficking in obscene objects and any other objects that tended to corrupt public morals. The objective of that provision was at least clear. It was to protect public morals. Whether it would have passed constitutional muster is another matter.

[58] For the foregoing reasons, I find that the impugned sections 2 and 13 of the Anti-Pornography Act 2014 are inconsistent with or in contravention of article 28 (12) and 44 (c) of the Constitution of the Republic of Uganda.

**Whether sections 2 and 13 of the Anti-Pornography Act is inconsistent with the fundamental freedom of expression?**

[59] The impugned provisions clearly are an abridgment of the fundamental freedom of expression. The question that we must answer is whether this impairment is protected by the general limitation clause under article 43 of the Constitution. To do so we must apply the rationality test. As noted hereinabove, much as counsel for the respondent in her submissions contended that the legislative objective of the impugned provision and the Act is to protect women and children, in my view, it is not possible to discern from both the impugned provisions or the rest of the Act what is the legislative objective of the Act. It is not therefore possible to determine if the objective was sufficiently important to override the fundamental freedom of expression.

[60] Secondly, even if one were to accept that the legislative objective of the impugned provisions and the Act were to protect women and children, it has not been demonstrated that the criminalisation of pornography is rationally connected to that legislative objective. Neither am I able to determine if this measure is no more than necessary to achieve the legislative objective.

[61] It was incumbent upon the respondent not only to clearly assert and show the legislative objective of the criminalisation of pornography but to demonstrate that this measure was rationally connected to achieving the legislative objective of the Act. This has not been done. The respondent has also failed to demonstrate before this court that the impairment of the fundamental right was no more than necessary to achieve the legislative objective of the Act.

[62] In the result I am constrained to find that the sections 2 and 13 of the Anti-Pornography Act impair the fundamental freedom of expression and such impairment is not justified by article 43 of the Constitution.

#### **Issue 2 & 4**

[63] Under the preliminary matters herein above I rejected the evidence upon which this issue and issue no.4 are grounded. Both issues will be answered in the negative as they lack supporting evidence.

**Whether the powers granted to the Pornography Control Committee and the Courts under the Act are inconsistent with the rights to personal liberty, privacy and property?**

[64] The petitioners allege that sections 11 (1) and 15 (1) & (2) of the Anti-Pornography Act are inconsistent with or in contravention of the right to personal liberty, privacy and property provided under Articles 2 (1) & (2), 23 (1) 26 and 27 of the Constitution. Article 26 (2) of the constitution provides:

**'26. Protection from deprivation of property.**

(1) Every person has a right to own property either individually or in association with others.

(2) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied 44 Constitution of the Republic of Uganda

(a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and

(b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for

(i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and

(ii) a right of access to a court of law by any person who has an interest or right over the property.'

[65] Article 27 of the Constitution provides:

**'27. Right to privacy of person, home and other property.**

(1) No person shall be subjected to-

(a) unlawful search of the person, home or other property of that person; or

- (b) unlawful entry by others of the premises of that person.
- (2) No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property.'

[66] Section 11 (1) of the Anti-Pornography Act grants the Pornography Control Committee a range of discretionary powers which include authority to carry out inspections, examination of records, require the production of records or any documentation necessary, power to carry out inquiries, seize equipment or any property in connection with any of the offences in the Act. This power can be exercised without a warrant. Section 11 (1) of the Anti-Pornography Act provides:

**'11. Powers and duties of the Committee.**

The Committee may, in the performance of its duties under this Act or any regulations made under this Act, at all reasonable times and without warrant-

- (a) require the production, inspection and examination of records and other necessary documentation relating to the enforcement of this Act;
- (b) carry out inquiries to ensure that this Act is complied with;
- (c) carry out periodic inspection of any establishment which imports, exports, stores, sells, distributes or uses equipment or data that is likely to give the public access to pornography.
- (d) carry out inspections as may be necessary to ensure that the provisions of this Act are complied with;
- (e) seize any equipment, document or any other thing which it believes has been used in the commission of an offence against this Act or regulations made under this Act;
- (d) close any internet service provider who promotes, publishes, sells or imports pornography contrary to this Act; or
- (c) cause a police officer to arrest any person whom it believes has committed an offence under this Act.'

[67] Section 15 (1) and (2) of the Anti-Pornography Act empowers courts of law to issue warrants for seizure of objects or materials and warrants of arrest in connection of any of the offences prescribed by the Act. It states:

- \*(1) Where information is brought to the attention of the court that there exists in premises, an object or material containing pornography or an act or event of a pornographic nature, the court shall issue a warrant for the seizure of the object or material and for the arrest of the person promoting the material or object.
- (2) An authorised person in possession of a search warrant issued by the court may enter any premises and inspect any object or

material including any computer, and seize the object, material or gadget for the purpose of giving effect to this Act.'

- [68] The petitioners allege that such power granted to the committee and the courts of law is too wide and discretionary. It thus contravenes or is inconsistent with the right to personal liberty, privacy and property. The rights guaranteed under Articles 23 (1), 26 and 27 of the Constitution are not absolute. They can be limited in the interest of the public as provided by Article 43 of the Constitution. The rights and freedoms guaranteed under the Constitution must not prejudice the fundamental rights and freedoms of others or the public interest. Whatever limitation is imposed it should not exceed what acceptable and demonstrably justifiable in a free and democratic society. Section 7 of the Anti-Pornography Act provides for the functions of the Pornography Control Committee. The power granted to the Committee under section 11 (1) are central to the execution of its duties. The powers granted to courts of law and authorised persons under section 15 (1) and (2) of the Act are neither wide nor too discretionary as alleged by the petitioners.
- [69] However, since the powers granted both to the Pornography Control Committee and the Courts are premised upon section 2 of the Anti-Pornography Act which has already been found unconstitutional it would follow the activities of the Pornography Control Committee and the courts in relation to sections 11 and 15 of the Anti-Pornography Act would equally not pass constitutional muster.

**Whether the impugned provisions are inconsistent with the obligations Uganda has assumed under International Human Rights Instruments?**

- [70] The petitioners contended that the impugned provisions of the Anti-Pornography Act 2014 are in contravention of or inconsistent with obligations regarding the rights guaranteed under international human rights instruments that Uganda ratified. The petitioners did not specify any provision of the international human rights instruments that the Act is inconsistent with or in contravention of. I therefore find that this issue lacks merit.

**Remedies**

- [71] I would issue the following declarations:
- (a) Sections 2 and 13 of the Anti-Pornography Act 2014 are inconsistent with or in contravention of Articles 2 (1) &

(2), 28 (12), and 29 (1) (a) of the Constitution of the Republic of Uganda.

(b) Sections 11 (1) and 15 of the Anti-Pornography Act are inconsistent with Articles 23, 26 and 27 of the Constitution.

(c) Sections 2, 11, 13 and 15 of the Anti-Pornography Act are hereby declared null and void for inconsistency with the Constitution.

(d) I would allow this petition in part and grant to the petitioners one half of their costs.

#### **Decision**

[72] As Musoke, Cheborion Barishaki, Mutangula Kibeedi & Mulyagonja, JJCC, agree this petition succeeds in part and the following orders are made:

(a) Sections 2 and 13 of the Anti-Pornography Act 2014 are inconsistent with or in contravention of Articles 2 (1) & (2), 28 (12), and 29 (1) (a) of the Constitution of the Republic of Uganda.

(b) Sections 11 (1) and 15 of the Anti-Pornography Act are inconsistent with Articles 23, 26 and 27 of the Constitution. Sections 2, 11, 13 and 15 of the Anti-Pornography Act are hereby declared null and void for inconsistency with the Constitution.

(c) This petition is allowed in part and the petitioners are granted one half of their costs.

Signed, dated and delivered at Kampala this 13<sup>th</sup> day of Aug 2021



Fredrick Egonda-Ntende

**Justice of the Constitutional Court**



1. CENTRE FOR DOMESTIC VIOLENCE PREVENTION
2. WOMEN ORGANISATION NETWORK FOR HUMAN RIGHTS ADVOCACY
3. PROF. SYLVIA TAMALE
4. SARAH KIHKA
5. LILIAN DRABO
6. STRATEGIC INITIATIVE FOR WOMEN IN THE HORN OF AFRICA
7. UGANDA HEALTH AND SCIENTIFIC PRESS ASSOCIATION
8. HUMAN RIGHTS NETWORK FOR JOURNALISTS-UGANDA
9. LINA ZEDRIGA:.....PETITIONERS

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

**JUDGMENT OF ELIZABETH MUSOKE, JCC**

The petitioners brought a challenge to the impugned provisions of the Act, on grounds that they are unconstitutional. They stated that the provisions of Sections 2 and 13; 1) are vague which contravenes Article 28 (12) of the 1995 Constitution; 2) are overbroad; and 3) constitute an unjustifiable

limitation to various rights enshrined in the 1995 Constitution, such as, the right to privacy, to freedom from cruel, inhuman or degrading treatment, to freedom of expression, et cetera.

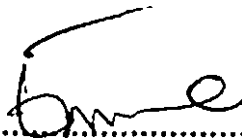
The respondent's answer was that the Sections 2 and 13 were not vague and neither did they violate any of the rights, as the petitioners alleged. The respondent made no attempt to argue that any violations were justified under Article 43 of the 1995 Constitution.

It is obvious that a law that criminalises pornography violates several constitutionally guaranteed rights, not least the right to freedom of expression, and the right to privacy. Whether or not violation of those rights was justified was for the respondent to prove, but he made no attempt in his pleadings to do so. Therefore, the challenge to the impugned provisions ought to be sustained.

With regards to the challenge to the provisions of Sections 11 and 15 of the Act, I observe that those provisions relate to exercise of powers and duties of the Pornography Control Committee which are primarily concerned with the offence of pornography created under the Act. Having found that Sections 2 and 13 of the Act, which create the offence of pornography, are inconsistent with the 1995 Constitution, it follows that the Pornography Control Committee may no longer exercise powers under Sections 2 and 13 of the Act.

I would make the same order on costs as Egonda-Ntende, JCC proposes in his Judgment.

Dated at Kampala this .....13<sup>th</sup>..... day of.....Aug.....2021.



**Elizabeth Musoke**

Justice of the Constitutional Court

**THE REPUBLIC OF UGANDA**  
**IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA**  
*(Coram: Egonda-Ntende, Musoke, Cheborion, Kibeedi and Mulyagonja, JCC)*

**CONSTITUTIONAL PETITION NO.13 OF 2014**

1. CENTRE FOR DOMESTIC VIOLENCE PREVENTION
2. WOMEN'S ORGANIZATION NETWORK FOR HUMAN RIGHTS ADVOCACY
3. PROFESSOR SYLVIA TAMALE
4. SARAH KIHKA
5. LILLIAN DRABO
6. STRATEGIC INITIATIVE FOR WOMEN IN THE HORN OF AFRICA
7. UGANDA HEALTH AND SCIENCE PRESS ASSOCIATION
8. HUMAN RIGHTS NETWORK FOR JOURNALISTS-UGANDA
9. LINA ZEDRIGA

**PETITIONERS**

**VERSUS**

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

**JUDGMENT OF IRENE MULYAGONJA, JCC**

I have had the benefit of reading in draft the judgment of my brother, Egonda-Ntende, JCC.

I agree that the petition should succeed in part and with the orders that he has proposed.

Dated at Kampala this 13<sup>th</sup> day of Aug 2021

Irene Mulyagonja

**Irene Mulyagonja**

**JUSTICE OF APPEAL/CONSTITUTIONAL COURT**

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO. 13 OF 2014

CENTRE FOR DOMESTIC VIOLENCE PREVENTION & 7

OTHERS:..... PETITIONERS

VERSUS

ATTORNEY GENERAL :..... RESPONDENT

CORAM: HON.MR.JUSTICE FREDERICK EGONDA-NTENDE, JCC

HON.LADY JUSTICE ELIZABETH MUSOKE, JCC

HON.MR.JUSTICE BARISHAKI CHEBORION, JCC

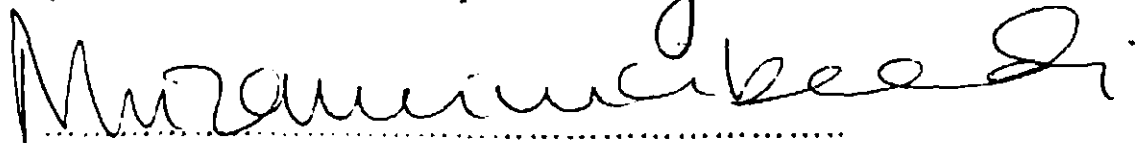
HON. MR. JUSTICE MUZAMIRU MUTANGULA KIBEEDI, JCC

HON.LADY JUSTICE IRENE MULYAGONJA, JCC)

**JUDGMENT OF MUZAMIRU MUTANGULA KIBEEDI, JCC.**

I have had the benefit of reading in draft the judgment of my learned brother, Egonda-Ntende, JCC. I fully concur with the judgment and the orders he has proposed.

Dated at Kampala, this.....<sup>13<sup>th</sup></sup>..... day of .....<sup>Aug</sup>..... 2021



MUZAMIRU MUTANGULA KIBEEDI

JUSTICE OF THE CONSTITUTIONAL COURT

**THE REPUBLIC OF UGANDA**

**IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA**

**[Coram: Egonda-Ntende, Musoke, Cheborion Barishaki, Mutangula Kibeedi & Mulyagonja, JJCC]**

**CONSTITUTIONAL PETITION NO. 13 OF 2014**

**BETWEEN**

1. Centre for Domestic Violence Prevention
2. Women's Organisation Network for Human Rights Advocacy
3. Professor Sylvia Tamale
4. Sarah Kihika
5. Lillian Drabo
6. Strategic Initiative for Women in the Horn of Africa
7. Uganda Health and Science Press Association
8. Human Rights Network for Journalists- Uganda
9. Lina Zedriga

Petitioners

**AND**

Attorney General .....Respondent

**JUDGMENT OF CHEBORION BARISHAKI, JCC**

I have had the benefit of reading in draft the judgment of my learned brother Egonda- Ntende, JCC and I agree with him that the petition succeeds in part for the reasons he has ably set out.

I also agree with the order that the petitioners be granted one half of the costs.

Dated at Kampala this.....12<sup>th</sup>.....day of.....Aug.....2021.

  
**Cheborion Barishaki**

**Justice of the Constitutional Court**