

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISC. APPLICATION NO. 94 OF 2014

(Arising from Misc. Application No. 451 of 2013)

(Arising from Misc. Application No. 445 of 2013)

(Arising from Misc. Cause No. 362 of 2013)

LUKWAGO ELIASLORD MAYOR,

KAMPALACAPITAL CITY AUTHORITY ::::::::::::::: APPLICANT

VERSUS

1. THE ATTORNEY GENERAL

2. THE ELECTORAL COMMISSION

3. KAMPALA CITY COUNCIL

AUTHORITY

4. BADRU KIGGUNDU

::::::::::::: RESPONDENTS

BEFORE: HON. LADY JUSTICE LYDIA MUGAMBE

RULING

I. INTRODUCTION

1. This is a ruling on an application, by chamber summons, under S. 33 of the Judicature Act, Cap 13; S. 98 of the Civil Procedure Act, Cap 71; Order 41 rr. 2 (3) and (4), 7 and 9 of the Civil Procedure Rules S.I 71-1 and all enabling laws. The application is brought by Elias Lukwago (herein after Lukwago) against the Attorney General, (herein after AG) the Electoral Commission (hereinafter EC), Kampala Capital City Authority (hereinafter KCCA) and Badru Kiggundu (hereinafter Kiggundu) as the first, second, third and fourth respondents

respectively. Lukwago was represented by Abdu Katuntu (hereinafter Katuntu), Christom Katumba (herein after Katumba) and Julius Galisonga (hereinafter Galisonga). The 1st and 3rd respondents were represented by Martin Mwambutsya (hereinafter Mwambutsya) and Dickinson Akena (hereinafter Akena) respectively. Eric Sabitti (hereinafter Sabitti) represented the 2nd and 4th respondents. Lukwago's application arises out of Misc. Application 451 of 2013, which arises out of Misc. Application 445 of 2013, which arises out of Misc. Cause 362 of 2013.

2. Lukwago prays for orders that:

a) A temporary injunction is issued against the respondents restraining them from acting in contempt of a Court Order by, *inter alia*, declaring the seat of the Lord Mayor, KCCA vacant and organizing a by-election for the position of Lord Mayor KCCA pending the final determination of Misc. Cause 362 of 2013;

b) The respondents pay a fine for acting in contempt of a Court Order;

c) Kiggundu who is Chairman of the EC be arrested and detained in civil prison for disobeying a Court Order and;

d) Costs.

3. Lukwago's application is supported by his own affirmation as well as affidavits of Kiwanuka Abdallah (hereinafter Kiwanuka) and Sewanyana Allan (hereinafter Sewanyana).

4. All the respondents oppose the application in affidavits sworn by; Cheborion Barishaki (herein after Barishaki) for AG, Lugolobi Hamidu (herein after Lugolobi) for EC and Kiggundu, and Caleb Mugisha (hereinafter Mugisha) for EC.

5. In sum, the respondents contend that Lukwago's application is without merit, incompetent and raises no relevant grounds for grant of the remedies sought therein. Further that the AG and EC and/or their agents have not defied any Court

Order stopping the by-election set for 17thApril, 2014, with nominations on 31stMarch, 2014 and 1stApril, 2014. Also that: Lukwago is no longer Lord Mayor for Kampala; Lukwago is guilty of dilatory conduct by delaying to bring this application and that the respondents are not in contempt of the injunctive Interim Orders of the registrar and Justice Nyanzi on 25thand28thNovember 2013 respectively.

6. The EC submits that the vacancy in the office of the Lord Mayor was neither declared by the EC nor Kiggundu. That the process of the by-election, that is in advanced stages, only started after KCCA in a communication of 26thNovember 2013, which was received by EC on 27thNovember 2013, notified the EC of a vacancy in the office of the Lord Mayor KCCA. The EC is executing its constitutional mandate, which Kiggundu is duty bound to execute in terms of the constitutional and statutory functions of the EC. In execution and carrying out the functions of the EC, Kiggundu issued the press statement of 5thMarch 2014 entailing the EC program for parliamentary, local government councillors and KCCA by-elections including replacing the Lord Mayor.
7. Further that any person performing any function under the direction of the EC is not personally liable to any civil proceedings for any act done in the performance of those acts thus Kiggundu is immune from the current civil process, nor should he be committed to civil prison as requested by Lukwago.
8. All the respondents want costs for this application.

II. PROCEDURAL HISTORY AND SUMMARY OF EVENTS

9. Before I address the application, some material aspects of the procedural history are important to note. Misc. Cause 362 of 2013 was filed in the Civil Division of the High Court along with Misc. Applications 445 and 451 in November 2013; Misc. Cause 362 was for judicial review of the Justice Catherine Bamugemereire Tribunal report; Misc. Applications 445 and 451 were for interim injunction and temporary injunction respectively; On 20thNovember 2013, the AG was served with

all three applications with Misc. Application 445 fixed for hearing on Monday 25th November 2013 at 10:00am; On 21st November 2013, the Minister for Kampala, Frank Tumwebaze (here in after the Minister), sent out a notice of meeting for KCCA councillors (hereinafter the KCCA meeting) for 25th November 2013 at 9:00am; The KCCA meeting and the court hearing of Misc. Application 445 were therefore on the same morning of 25th November 2013. According to the record of proceedings, by 8:45 am on 25th November 2013, Lukwago had filed another Misc. Application 454 for an Interim Order to stop the KCCA meeting at 9:00am pending the court application fixed at 10:00am that day; The court hearing and the KCCA meeting on 25th November 2013 were both concerned with the removal of Lukwago from the office of Lord Mayor. The purpose of Misc. Application 454 was for an Interim Order stopping the KCCA meeting and it was granted; The record of proceedings for Misc. Application 454 shows that although it was an *ex parte* application, Mwambutsya for the AG and KCCA was present for the hearing on the morning of 25th November 2013 and he was heard before the application was granted; By the time the Interim Order was signed, Mwambutsya had left court. Sewanyana showed the Minister a copy of the Interim Order of 25th November 2013 during the KCCA meeting and the Minister said it was unauthentic for it was not signed, stamped or sealed; following the KCCA meeting, the Minister notified the Executive Director KCCA - Jennifer Musisi (herein after ED) of the removal of Lukwago from the office of Lord Mayor: following this, the ED notified the EC of the vacancy in the office of Lord Mayor; As a result the EC is in advanced stages of organizing a by-election to replace Lukwago as Lord Mayor of KCCA.

III. ANALYSIS OF EVIDENCE

10. I have divided my analysis of evidence into sub sections below, based on the issues raised by the parties. This is to ensure that each of the issues raised is addressed satisfactorily. However in resolving the issues, the ruling should be read as a whole, including reference to the footnotes, and not piecemeal.

a) Preliminary point of law

i) Analysis

11. The EC raised a preliminary objection based on a point of law. Relying on Sections 2, 8 and 49 of the Electoral Commission Act (hereinafter EC Act), Article 61 of the 1995 Constitution of Uganda (hereinafter the Constitution), and Lugolobi's affidavit,¹ including in particular, Annexure 'A' thereto, Sabitti submitted that Lukwago has no cause of action against Kiggundu who is immune from civil action by virtue of S. 49 of the EC Act. Under S. 49, a member of the Commission or an employee of the commission or any other person performing the function of the commission under the direction of the commission shall not be personally liable to any civil proceedings for any act done in good faith in the performance of those functions. Sabitti emphasized "any act" in S. 49. He also submitted that after all the remedy sought by Lukwago can be achieved without Kiggundu being a party to the application.
12. Mwambutsya in line with Sabitti submitted that subjecting Kiggundu to unnecessary costs at the close of the main application by virtue of maintaining him as a party throughout the trial will be unfair.
13. Katuntu on the other hand raised objections to the preliminary point of law. He argued that Sabitti was jumping the gun as he was submitting on the substantive issues raised by Lukwago in the application. He said the burden is on the Lukwago team to prove to court's satisfaction that Kiggundu willfully disobeyed the Court Order, and they were ready to do so. Katuntu emphasized the words "acting in good faith" in S. 49 of the EC Act and went on to argue that Kiggundu by willfully disobeying a Court Order was not acting in good faith. Therefore Kiggundu could not take advantage of S. 49 of the EC Act. Further Katuntu submitted that institutions act through their officers; they don't act themselves but through individuals. The acts complained of are acts of individuals within these particular institutions. For this preliminary objection, I take it Katuntu was referring to Kiggundu the individual and EC the institution.

¹Lugolobi affidavit, in particular para 13 but generally the whole affidavit is considered.

14. Katuntu drew analogy with **Constitutional Court Application No. 73 of 2013** arising out of **Constitutional Application No. 41 of 2013** and the main **Petition 22 of 2013, Uganda Super League Limited v. AG, Charles Bakabulindi and others**. In this case, Katuntu submitted, the Constitutional Court made a finding of contempt in regard to Hon. Charles Bakabulindi then Minister of sports much as he was acting in his official capacity. Katuntu also submitted that if contempt had been demonstrated against the AG in that case, he too would have been found guilty of contempt but was only saved because there was no evidence. So, in Katuntu's assessment, the question was not of immunity but evidence against the AG. In sum Katuntu prayed that Sabitti's application be disallowed and the urgent main application proceeded with.
15. I have carefully looked at all the submissions of the parties. The issue I have is one: *Whether there is a cause of action against Kiggundu in the application before me.*
16. The jurisprudence on what constitutes a cause of action abounds. In **Maximov Oleg Petrovich v. Premchandra Sheoni and anor**² Akiiki Kiiza Ag J, as he then was, held *inter alia* that:-
- “in considering that the plaint discloses a cause of action only the plaint must be looked at so that it is apparent on its face that the plaintiff appears as a person aggrieved by the violation of his rights and that it is the defendant who is liable... Therefore it should be apparent on the face of the plaint that the plaintiff was aggrieved by the defendants.”*
17. Spry V. P put it slightly differently in **Auto Garage v. Motokov**³ explaining that a plaint must show that the plaintiff enjoyed a right, the right has been violated and that the defendant is liable.

²HCCS 802/97 (1998) KALR 52 at 53.

³ Auto Garage v. Motokov (1971) E.A 514.

18. This jurisprudence stems from Order 7 rules 11(a) and (e) of the CPR (Cap 71) which when read together, require that a plaint is rejected if it does not disclose a cause of action or is frivolous and vexatious.
19. For purposes of the preliminary point of law before me, Lukwago's chamber summons takes the place of the plaint. I will therefore evaluate it as the plaint is construed above.
20. Lukwago's chamber summons and affirmation⁴ as well as the Registrar's Interim Order of 25th November 2013 and Justice Nyanzi's ruling of 28th November 2013, which are attached to his affirmation,⁵ demonstrate that Lukwago is the holder of an Interim Order restraining a KCCA meeting to remove him from the office of Lord Mayor on 25th November 2013 at 9:00am. In Annexures EL-2 to Lukwago's affirmation, the AG writes to the Inspector General of Police for the attention of a one Mr. Arasmus Twaruhukwa, apparently responding to a 13th December, 2013 letter in which the police sought the AG advice on permission to hold a stakeholders' meeting by Lukwago as Lord Mayor. In the Annexure, the AG advises against granting Lukwago the said permission to hold a meeting at St. Matia Mulumba Hall explaining that the 25th November 2013 KCCA meeting removed Lukwago from the office of Lord Mayor and accordingly Lukwago could not hold such meeting as Lord Mayor. The AG says the meeting should not take place as it is likely to cause a breach of peace. Annexure EL-3 to Lukwago's affirmation demonstrates that the EC in a press statement detailing the preparations for, among others, KCCA Mayoral by-elections, has gone on to organize by-elections to replace Lukwago.
21. In Item No. 5 in the Table after the introduction in Annexure EL-3, Lord Mayor for KCCA in Kampala District is listed as part of the planned by-elections by the EC. The reason for removal therein is stated as impeachment. At pages 2 and 3, update

⁴Chamber summons, paras. 1 - 4 and Lukwago's affirmation in its entirety.

⁵Both attached as Annexure EL-1 to Lukwago's affirmation.

of voters' register is set for 15th to 19th March, 2014; display of voters register is for 27th March to 7th April, 2014; nomination of candidates is to be conducted on 31st March and 1st April, 2014; candidate campaign meetings are to run for 11 days from 3rd to 15th April 2014; and polling is to take place on 17th April, 2014 in each constituency; the EC shall accredit election observers over a period of 13 days from 2nd to 14th March, 2014.

22. In the conclusion on page 4, the EC urges all the various stakeholders in the different electoral areas listed, to turn up in large numbers and participate in this program and do so in accordance with the guidelines for each activity to ensure a smooth electoral process.
23. Kiggundu, the fourth respondent, signs off as Chairperson of the EC.
24. It is demonstrated from the above that; Lukwago has a right to remain in office as Lord Mayor until Misc. Cause 362 is disposed off, by virtue of the interim Court Order of 25th November 2013 which was upheld by Justice Nyanzi's ruling of 28th November 2013. Therefore, Kiggundu's activities of organizing a by-election to, among others, replace Lukwago in the same office, before the disposal of Misc. Cause 362 of 2013 appears to be a violation of Lukwago's right to remain Lord Mayor as required of the order.
25. Kiggundu, the author of Annexure EL-3, by virtue of his name and signature appearing at the end of this by-elections program document, brings himself in the ambit of the violator of Lukwago's said right at this preliminary stage of determining a cause of action. The burden, therefore, of determining a cause of action as laid out above against Kiggundu is discharged.

26. Issues of S. 49 of the EC Act as submitted by Sabitti, in my view, are issues relating to the substantive application so I have not considered them here.
27. However if I take S. 49 of the EC Act on its own, Kiggundu's planned by-election program laid down in Annexure EL-3 depicts him as not acting in good faith within the meaning of the section. It therefore does not diminish the cause of cause for purposes of Lukwago's interim injunction application before me. I shall therefore proceed to consider the application as presented by Lukwago.

ii) Specific finding:

At this preliminary stage, Lukwago's chamber summons discloses a cause of action against Kiggundu.

b) Service and Effectiveness of the 25th November 2013 Court Order

28. The issue whether the Interim Order of 25th November 2013 was effectively served on the Minister appears to be material to the application. Mwambutsya submitted that this issue is coming up for the first time before me and needs to be resolved. Akena also raised this issue. Having looked at Justice Nyanzi's ruling, it is true that he did not address this issue so I shall address it in this application.⁶
29. It is not disputed that the Court Order of 25th November was a document to be served on the AG within the meaning of S. 11 of the Government Proceedings Act, Cap 77 of the Laws of Uganda and this was done at 10:05 am on 25th November 2013. Barishaki, in his affidavit averred that the AG has never defied any Court

⁶See Annexure EL-2; Ruling of Justice Nyanzi, para 15 at p.7.

Order.⁷ That the said interim Court Order was only served on the AG at 10:05 am on 25th November 2013 and it was signed in acknowledgement of receipt.⁸

30. What is in issue is whether the Interim Order of 25th November 2013 was effectively served for purposes of stopping the KCCA meeting on the same day. In determining this, it is important to identify the evidence and submissions relevant to this issue from the different parties.

31. Mwambutsya cited **George William Kateregga v. Commissioner for Land Registration and 12 others** to say that a judgment in *personam* has to be personally served⁹ He explained, therefore, that even if he was in court when the order was issued, it would not amount to service on the Minister who was the target. In **Kariuki and 2 ors v Minister for Gender, Sports Culture and Social Services and two ors**, a Kenyan case cited by the respondents, it was held that the argument that in contempt proceedings, personal service need not be effected on a Minister is weak. In England, as a general rule, no order of court requiring a person to do or restrain from doing any act may be enforced unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question.¹⁰

32. Akena and Mwambutsya ably submitted on these cases. Akena in fact emphasized that such service must be personally on the targeted person. I find these authorities persuasive to the extent the service in issue is in regard to contempt.

33. It is not disputed that on 25 November 2013, the Registrar in the Civil Division of the High Court issued an Interim Order halting the KCCA meeting. It is also not in

⁷Barishaki affidavit, para 4.

⁸Barishaki affidavit, para 6. The said order is attached as Annexure A to Mr. Barishaki's affidavit. It has two stamps with the inscription received. One of the stamps is not signed and the other is signed with 10:05 below the signature.

⁹High Court Misc. Application No. 347 of 2013, p.5.

¹⁰(2004) Vol. 1 KLR, p.588.

dispute that Justice Nyanzi's ruling of 28 November 2013 upheld the temporary injunctive order of 25 November 2013.

34. In **Crane Finance Co. Ltd v. Makerere Properties Ltd**, it was observed that an order speaks from the date it is made and not from the date it is extracted.¹¹ Since the order of court and the meeting were on the same morning, it is a matter of analysis of evidence to determine if the order was made and effected before the resolution to remove Lukwago was passed. This appears to be the only way of determining whether the injunctive Court Order was issued in vain, as averred and submitted by Barishaki and Mwambutsya respectively.
35. In my view, the targeted person for purposes of enforcing the Court Order of 25th November was the Minister who was chairing the KCCA meeting. Akena and Mwambutsya also submitted as much. The purpose of the order was to stop the KCCA meeting. So there is need for an analysis of the evidence before me to determine whether the Minister was effectively served before the resolution to remove Lukwago was passed at the KCCA meeting.

i) Summary of evidence/submissions

36. Mwambutsya in his submissions associated himself and adopted Barishaki's affidavit in reply to Lukwago's application. Barishaki averred that the KCCA meeting held on 25th November 2013 was convened at 9:00am and the resolution to remove the applicant from the office of Lord Mayor was passed at 9:30am.¹² By 10:05am on 25th November 2013 when the AG was served with an Interim Order in Misc. application 454 of 2013 there was nothing left to stop as the KCCA meeting had already taken place and the councillors had already passed the resolution to remove Lukwago from office at 9:30am.¹³ The Interim Order issued on 28th November 2013 in respect of Misc. Application 445 of 2013, which replaced

¹¹Supreme Court Civil Appeal No. 1 of 2001 p. 7.

¹²Barishaki affidavit, para. 7.

¹³Barishaki affidavit, para. 8.

the order of the Deputy Registrar given on 25thNovember 2013, therefore, was issued in vain.¹⁴

37. Following Annexure EL-2 to Lukwago's affirmation, the AG advised the Inspector General of Police, as mandated under the Constitution that following a resolution made by councillors of KCCA on 25thNovember 2013 in which they removed Lukwago from office as Lord Mayor, he could therefore not hold such meeting as Lord Mayor.¹⁵ Barishaki categorically averred that the AG has never disobeyed any Court Order and that Lukwago is no longer the Mayor of Kampala Capital City.¹⁶
38. For the most part, Mugisha in his affidavit submits on the same lines as Barishaki in paragraphs 7, 8, 9 and 10 of his affidavit. He confirms that the Minister for Kampala held the KCCA meeting with councillors on 25thNovember 2013 after calling for the same on 21stNovember 2013; neither KCCA nor any of its agents have been served with any Court Order stopping the said meeting at which Lukwago was removed as Lord Mayor; neither KCCA nor any of its officers has ever been served with a Court Order reinstating Lukwago as Lord Mayor.
39. Mwambutsya submitted in court that he applied to join the *ex parte* application. This application was denied. Then he applied for leave to appeal this decision of the registrar and it was denied. Once this denial to join was made, he left the court. Mwambutsya was categorical in saying that once his application for leave to appeal was denied he left court on his own and was not there for Lukwago's *ex parte* application.
40. Lukwago in his affirmation in support of his chamber summons submits that this court issued an interim injunctive order on 25thNovember 2013; in a ruling delivered on 28thNovember 2013 in Misc. Application 455 of 2013 Justice Nyanzi

¹⁴Barishaki affidavit, para. 9.

¹⁵Barishaki affidavit, para. 12.

¹⁶Barishaki affidavit, paras.13 & 14.

upheld the said Interim Order. This Court Order was restraining and stopping the AG, the Minister responsible for KCCA, their agents and servants from convening the KCCA meeting on the same day to discuss the report of the Tribunal constituted to investigate allegations against the Lord Mayor pursuant to a petition by the councillors and proceeding with a vote for Lukwago's removal from the office of Lord Mayor KCCA until final determination of Misc. Cause No. 362 of 2013.¹⁷

41. Lukwago submits that the respondents have disobeyed and or defied the said interim injunctive order by declaring the position of Lord Mayor KCCA vacant and organizing a by-election for Lord Mayor of KCCA slated for 17th April, 2014.¹⁸ The office of Lord Mayor has never fallen vacant to warrant the said by-election.¹⁹ The subsistence of Misc. Cause 362 of 2013 and the existence of the interim injunction was brought to the attention of the respondents through a letter attached to Lukwago's affirmation as Annexure EL-4. Lukwago submits, they have chosen to ignore the same.²⁰

42. In rejoinder to the respondents, Sewanyana and Kiwanuka swore affidavits in support of Lukwago's application. Kiwanuka accuses Mugisha of falsehoods in his affidavit and submits that on 25th November 2013, he appeared for the hearing of Misc. Application No. 454 of 2013 at 8:45am.²¹ The respondents in that application, that is AG and KCCA, were represented by Mwambutsya from the AG office who objected to the grant of the application.²² Kiwanuka attaches a letter from the registrar of court explaining Mwambutsya's presence in court for the application, from start to finish, as Annexure AK1.²³

¹⁷Lukwago affirmation, para.3.

¹⁸Lukwago affirmation, para.5.

¹⁹Lukwago affirmation, para.6.

²⁰Lukwago affirmation, para.6.

²¹Kiwanuka affidavit, paras.2-4.

²²Kiwanuka affidavit, para.3.

²³Kiwanuka affidavit, para.3.

43. Kiwanuka also submitted that on the same day at around 8:58am, the application was granted and shortly thereafter he received signed and sealed copies to be served on the concerned parties including the Minister for Kampala, his agents, servants and councillors of KCCA.²⁴ Kiwanuka immediately boarded a motorcycle, popularly known as boda boda, which dropped him off at KCCA City Hall main gate facing Kimathi Avenue at 9:05am for purposes of effecting service of the order and representing Lukwago in the purported KCCA meeting.²⁵ On getting there, he introduced himself to the police officers at the main gate in charge of security and explained the purpose of his visit.²⁶ They allowed him to enter the KCCA compound and on getting in, Kiwanuka saw Councillor Sewanyana whom he knew very well and served him with two copies of the order and Sewanyana received them.²⁷
44. Kiwanuka then proceeded to the second checkpoint in the premises of City Hall for purposes of serving the Minister and Executive Director KCCA with the order.²⁸ On getting to the second security check point, he found police officers Kaheeru, Mugume, Okello, Ociru and a one Emmanuel Peace Opolo - an operative in President's office.²⁹ Kiwanuka affirmed that he knew all these officers very well. He explained the purpose of his visit to them and they denied him entry.³⁰ They closed the main entrance to the building saying that they had received orders from the Minister, the ED of KCCA, Andrew Felix Kaweesi, James Ruhweeza and Kale Kayihura not to allow any advocate for Lukwago - the Lord Mayor, or court process server to access the offices of the Minister, the ED and the Authority Chambers.³¹

²⁴Kiwanuka affidavit, para.4.

²⁵Kiwanuka affidavit, para. 5.

²⁶Kiwanuka affidavit, para. 6.

²⁷Kiwanuka affidavit, para. 6.

²⁸Kiwanuka affidavit, para. 7.

²⁹Kiwanuka affidavit, para. 7.

³⁰Kiwanuka affidavit, para. 7.

³¹Kiwanuka affidavit, para. 7.

45. When Kiwanuka insisted that he was mandated to serve the Court Order on the Minister and represent the interests of Lukwago at the KCCA meeting, one of the officers- Kaheeru with the help of Emmanuel Peace Opolo grabbed the Court Order from him and pocketed it in his trousers.³² At this point in time, Kiwanuka engaged Kaheeru in an argument to return the Court Order to him but in vain.³³ Instead, Kaheeru, Mugume, Okello, Ociru and Emmanuel Peace Opolo pushed, pulled and forced him to the ground.³⁴ They kicked, slapped and undressed Kiwanuka, removing his jacket and trying to strangle him by the neck using his necktie.³⁵ They tore his shirt and ordered police officers and others to drag Kiwanuka on the tarmac.³⁶ Kiwanuka annexed two photos marked AK-2 to demonstrate how he was maltreated.³⁷
46. Sewanyana on the other hand, also accused Mugisha of material falsehoods in his affidavit.³⁸ He averred that on 25th November 2013 he arrived at the Town Hall at 8:00am for the KCCA meeting scheduled at 9:00am.³⁹ On the same day at around 8:59pm, he received a call from Deo Mbabazi informing him that the High Court had issued an order stopping the KCCA meeting at 9:00am.⁴⁰ Mbabazi requested Sewanyana to get out of the Authority Chambers in order to receive a copy of the said order and bring it to the attention of the Minister who was scheduled to chair the meeting.⁴¹ Sewanyana left the Chambers immediately for the said order and this was before the Minister arrived at the Chambers for the meeting or the meeting commenced.⁴² As Sewanyana approached the KCCA main gate, he saw Kiwanuka who served him with two copies of the said order and Sewanyana received them

³²Kiwanuka affidavit, para. 8.

³³Kiwanuka affidavit, para. 9.

³⁴Kiwanuka affidavit, para. 9.

³⁵Kiwanuka affidavit, para. 9.

³⁶Kiwanuka affidavit, para. 9.

³⁷Kiwanuka affidavit, para. 9.

³⁸Sewanyana affidavit, para.2.

³⁹Sewanyana affidavit, para.2.

⁴⁰Sewanyana affidavit, para.4.

⁴¹Sewanyana affidavit, para.4

⁴²Sewanyana affidavit, para.5

and immediately rushed back to the Chambers.⁴³ He found the Minister had just entered and the National Anthem was about to be sung.⁴⁴

47. After the National and Buganda Anthems were sung, Sewanyana on several occasions sought audience from the Minister by way of point of order, which the Minister declined to grant.⁴⁵ On realizing that the Minister was not willing to give him audience in order to table his point, Sewanyana left his seat and approached the Minister's desk where Sewanyana served the Minister with a copy of the order, which he declined to acknowledge receipt of alleging that it had no seal.⁴⁶ Sewanyana averred that the said order was sealed and signed by court.⁴⁷
48. Sewanyana then requested the Minister to stop the meeting as directed by the Court Order but the Minister declined to do so.⁴⁸ The Minister then ordered that Sewanyana be immediately arrested and thrown out of the Authority Chambers by police.⁴⁹ Police and other plain clothed security operatives immediately threw Sewanyana out of the meeting as directed by the Minister and he left the Court Order on the Minister's desk.⁵⁰

ii) Analysis

49. It appears Kiwanuka and Sewanyana are best placed to inform court about the movement of the interim Court Order after it was issued because they were in physical possession of it after it was issued by court. From their evidence, this order was at City Hall before the KCCA meeting started. Sewanyana left the Chambers where the meeting was about to start; he received it from Kiwanuka and

⁴³Sewanyana affidavit, para.6.

⁴⁴Sewanyana affidavit, para.6.

⁴⁵Sewanyana affidavit, para.6.

⁴⁶Sewanyana affidavit, para.6.

⁴⁷Sewanyana affidavit, para.6.

⁴⁸Sewanyana affidavit, para.7.

⁴⁹Sewanyana affidavit, para.7.

⁵⁰Sewanyana affidavit, para.7.

returned to the Chambers to effect service on the Minister. From Sewanyana's affidavit, after struggling to bring it to the attention of the Minister in vain, he walked up to him and presented the order calling for a point of order and requesting the Minister that the meeting is called off since there is a Court Order to that effect. Instead the Minister ordered him out of the meeting.

50. Barishaki, Mugisha, Mwambutsya and Akena give the time of the resolution removing Lukwago as 9:30am. The Minister's communication to the ED (See Annexure C to Mugisha's affidavit, paragraph 2 (unnumbered)) places it at 9 and also says Lukwago ceased being Lord Mayor at 9:30am. Lukwago, Sewanyana, and Kiwanuka place the issuing of the Court Order before the resolution was passed. Sewanyana for one insists service of the order on the Minister was before 9:30am.
51. Annexure B to Mugisha's affidavit is the record of the minutes of the KCCA meeting. I'll refer to it. According to minutes 3.2 to 6.1 in this Annexure (starting at page 20 to 23), there is guidance on the sequence of events in the meeting.
52. In minute 3.2, Councillor Baker Serwamba moved a motion and was seconded by Ndege Hawa seeking the removal of the Lord Mayor from the office based on findings of the Tribunal. In minute 3.3, this motion was seconded by five Councillors.
53. In minute 3.4, Sewanyana rising on a point of order insisted that the motion should not be carried forward because there was a Court Order issued to stop the proceedings. Sewanyana then moved from his seat towards the Minister waving a purported Court Order, according to the minutes. The Minister requested the said Sewanyana to resume his seat and Sewanyana did not comply and continued shouting and threatening the Minister. At one point Sewanyana jumped and stood

on top of the table. Violence in form of a scuffle between Sewanyana and the security personnel ensued and Sewanyana was removed from the Chambers on the basis of his conduct.

54. The Minister observed with concern that there were people who had intentionally come to disrupt the meeting but assured members that he would ensure that peace prevailed.
55. On the purported Court Order, the Minister informed members that the document being flashed as a Court Order was not authentic because it bore no stamp, signature or seal. In addition, the Minister said, a legal Court Order should properly have been served to the AG who would have communicated receipt to the Minister.
56. In minute 3.5 Councillor Sulaiman Kidandala raised a point of order seeking clarity on whether the meeting could proceed without giving chance for the Lord Mayor to be heard by the Authority members during the meeting. The Minister responded that he intended to do so but he had not been notified by the Lord Mayor of his representative. The Minister then asked for any representative of the Lord Mayor present to make a statement on his behalf and no one responded.
57. In minute 4.1, Councillor Adam Kasim, Kyazze tabled a motion that the matter of the removal of the Lord Mayor from office be put to vote and he was seconded by Councillor Byaruhanga Bruhan. In minutes 4.2 to 6.2, the said voting was done by a show of hands. After minute 6.6, the Minister basing on the voting results declared the office of Lord Mayor vacant.
58. First, I observe that none of the respondents controverted Kiwanuka and Sewanyana's affidavits in rejoinder during their submissions in court. Yet, Sewanyana and Kiwanuka attribute falsehoods in Mugisha's affidavit.

59. Having made that observation, the minutes of the KCCA meeting attached as Annexure 'B' to Mugisha's affidavit support the evidence of Kiwanuka and Sewanyana to the effect that the Court Order was issued and presented to the Minister before the resolution to remove Lukwago from the office of Mayor was voted on or passed.
60. In his affidavit, Sewanyana averred that the order he served on the Minister was the signed and sealed order of court Kiwanuka gave him. Mr. Katuntu submitted that the idea that the order Sewanyana served on the Minister was not authentic is not true and merely an imagination of the respondents claiming so.
61. I am inclined to agree with Mr. Katuntu that the issue of the order served on the Minister not being authentic is not true. For, how would the Minister or anyone who saw the said order in the meeting verify its authenticity except by checking with court? This issue will be expanded on under the section on authenticity of the order below.
62. I have no reason to disbelieve Sewanyana's affidavit evidence that the order he presented to the Minister was the order served on him in two copies by Kiwanuka. I also have no reason to disbelieve Kiwanuka's evidence that the order he served copies of to Sewanyana was the Court Order he obtained from court on 25th November 2013 at about 8:58am and he proceeded to City Hall to effect service on the targeted persons in a timely manner.
63. This position is further supported by the explanations in Annexure EL-1 to Lukwago's affirmation. This is the ruling of Justice Nyanzi in which he explained the circumstances leading up to his allowing the registrar to hear Lukwago's *ex parte* application to consider whether to stop the 9:00 am KCCA meeting the same day.

64. Paragraphs 7 to 16 of the ruling show that the registrar sought guidance from the judge on how to proceed in circumstances where KCCA had scheduled the meeting at 9:00am yet the court hearing was for 10:00am. The judge then authorized the hearing of the said *ex parte* application by the registrar signing off at 8:20am.⁵¹ Given the urgency of the matter as shown in the ruling, it is easy to believe Kiwanuka's evidence that the application was heard and order granted at around 8:58am then he proceeded to City Hall to effect service.
65. From minute 3.4, it is clearly demonstrated that Sewanyana effected service on the Minister well before the resolution to vote Lukwago out of office at the KCCA meeting. I don't understand why the Minister chose to regard the order of court as unauthentic and chased Sewanyana out. Sewanyana's uncontroverted evidence is that while he was dragged out of the meeting, the order remained on the Minister's table.
66. This is also demonstrated by the Minister's claim that the purported order was unauthentic. If he had not been served with the same and had opportunity to look at it, he would not have been able to make this allegation.
67. Basing on the above, in particular, minute 3.4 of the KCCA meeting, I am left in no doubt that the Minister may not have wanted to be served with the 25th November 2013 Court Order but, in any event, he was served with the same by Sewanyana well before the resolution to remove Lukwago was passed by the KCCA meeting.
68. I therefore remain unconvinced by Barishaki's and Mugisha's affidavit evidence and Mwambutsya's and Akena's submissions to the effect that the Court Order was made in vain, or that it was served on the Minister after Lukwago was removed from office in the KCCA meeting.

⁵¹Annexure EL-2, p.5.

69. Mwambutsya's submission in court in this regard suggesting the possibility that the interim application before the registrar on 25th November 2013 was after the meeting is therefore also abstract and untenable in the circumstances.
70. As demonstrated above, Justice Nyanzi's ruling, Kiwanuka and Sewanyana's affidavits show that the order was applied for and granted before 9:00am. But perhaps the best wrap up here is Annexure 'B' to Mugisha's affidavit, which although does not give exact timing, gives the chronology of the events at the said meeting. In this chronology, Sewanyana is unequivocally demonstrated to have presented the order in issue to the Minister before the resolution to remove the Lord Mayor from office was passed. The minutes show that Sewanyana presented the order to the Minister before even the councillors voted on the motion to remove Lukwago.
71. I have no clear explanation why the Minister, in the face of the court application on 25th November 2013, went ahead to fix the said KCCA meeting touching on the same meeting, on the same day with a difference of one hour between the two sittings. That the Minister fixed the meeting at 9.00 am when the court application had been fixed at 10.00 am and where the Minister's notice of the meeting was issued after the court summons were out and received by the AG-who represented the Minister, may be suggestive of the Minister's unstoppable resolve to remove the Lord Mayor from office in the circumstances before me.
72. However, perhaps most glaring in the circumstances before me, is the AG's abysmal failure in his function under Article 119 (3) and (4) (a) of the Constitution, as principal legal adviser of government, to give the requisite professional legal advice to all government officers and agents involved in the abuse of court process demonstrated in the subject matter before me.
73. To this end, with all the due respect, I find the AG disingenuous in his Legal Advice attached to Mugisha's affidavit as Annexure E. The AG appears to distort

the chronology of events in the KCCA meeting (See Annexure 'B' to Mugisha affidavit from paragraph 3.4 onwards for clarity on the chronology) to suit his conclusions. With all due respect, this, in my view, is grossly unprofessional conduct of the head of the bar.

74. The manhandling of an officer of court, in the name of Kiwanuka, in the course of his work, to the extent of dragging him, chest bare, and clothes torn, like a chicken thief, as exhibited in the pictures in Annexure AK-2 to his affidavit in rejoinder, was uncalled for and the perpetrators should be investigated. In the same way the scuffle that ensued, when sending Sewanyana out of the Chambers, as reported in minute 3.4 of Annexure B to Mugisha's affidavit, was unnecessary and should be avoided in future.
75. Suffice to say that KCCA, its ED, the Minister, the EC, Kiggundu and all those government agents or servants associated with the continued violation of the Court Order of 25th November 2013 as validated by the ruling of 28th November 2013, by making the by-election for Lord Mayor KCCA happen are in violation of Article 128 (3) of the Constitution which requires all organs and agencies of the State to accord to the courts, such assistance as may be required to ensure the effectiveness of the courts.⁵²
76. Once it is demonstrated that the Minister was made aware of the Court Order by Sewanyana, it becomes easy to view the Minister's actions as akin to fearing to know the truth within the meaning laid out in **Sejjaka Nalima v. Rebeccah Musoke**.⁵³ In any event such fear, if at all, does not explain why the Minister did not stop the meeting at that point to check with the court or the AG on the authenticity of the order Sewanyana served him with.

iii) Specific finding:

⁵² Article 128 on independence of the judiciary; with specific emphasis on sub article (3).

⁵³ David Sejjaka Nalima v. Rebeccah Musoke Supreme Court Civil Appeal No. 12 of 1985.

77. From the evidence before me, the Minister was effectively served with the 25 November 2013 Court Order by Sewanyana. This was well before the resolution to remove Lukwago from the office of Lord Mayor was passed by the KCCA meeting on the same day. In all events, the Minister was aware of the Court Order before the resolution, but went ahead with the meeting to remove Lukwago from the office.

b) Authenticity of the Court Order of 25th November 2013

i) Analysis

78. The respondents question the validity and authenticity of the Court Order of 25th November 2013. From Annexure B to Mugisha's affidavit, even the Minister, questioned its validity saying it had no stamp, signature or seal of court.

79. Lukwago, in particular through the affidavits of Kiwanuka and Sewanyana, insists the Order served on the Minister was the valid and authentic Order of Court in issue. Mr. Katuntu stressing this point even questioned why the respondents do not produce what they call the fake (unauthentic) order for the court to see and determine. I have carefully analyzed the submissions of all the parties.

80. In **Wild Life Lodges Ltd v. County Council of Narok and anor**,⁵⁴ it was held that:

“the whole purpose of litigation as a process of judicial administration is lost if Court Orders are not complied with ... A party who knows of an order whether null or valid, regular or irregular cannot be permitted to disobey it. It would be most dangerous to hold that suitors or their solicitors could themselves judge whether an order was null or valid; whether it was regular or irregular⁵⁵ An exparte order by the court is a valid order like any other. To obey the orders of the court is to obey an order made both exparte or interpartes. Where a party considers an

⁵⁴(2005) Vol 2 EALR p.344.

⁵⁵See also *Chuck v. Cremer (1) Corp Temp 442*.

ex parte order to cause him undue hardship, a simple application will create an opportunity for an appropriate variation to be effected and therefore there will be no excuse for a party to disobey a Court Order merely on the ground that it had been made *ex parte*”⁵⁶

81. I am persuaded by this authority and it has also been utilized in many cases here in Uganda, including in the Court of Appeal.⁵⁷

82. In **Muriisa Nicholas v. AG and 3 ors. Misc. Cause No. 35 of 2012**, Justice Bashaija K Andrew, quoting the Court of Appeal explained in line with the above that:

*“ There is need to emphasize that the principle of law is that the whole essence of litigation as a process of judicial administration is lost if orders issued by court through the set judicial process in the normal functioning of courts are not complied with in full by those targeted and/or called upon to give due compliance/effect. A state organ or agency or person legally and duty bound to give due compliance must do so. Court Orders cannot be issued in vain.”*⁵⁸

83. The **Mohd Sharfuddin (Died) By Lrs v Mohd Jamal and Ors** case is also instructive and in line with Ugandan jurisprudence.⁵⁹In this case,it was observed that“it cannot be disputed that an order of the court has to be respected by the parties who are bound by it. But, this does not mean that it should be disrespected by the parties who are not bound by it. Therefore every effort must be made to implement the order of the court and not to disobey the same.”⁶⁰

⁵⁶(2005) Vol. 2 EALR p.344.

⁵⁷See for example, *Twinobusingye Severino v. AG, Constitutional* Petition No. 47 of 2011. Starting at around line 20 to 25. See also *Uganda v. Robert Sekabira and 10 others*, High Court Criminal Session 0085 of 2010. p.5, where Justice Ralph Ochan, quotes Lord Griffith above, among other cases. I also take the view that for purposes of rule of law, the principle is the same, ie supremacy of the Constitution whether in civil or criminal cases.

⁵⁸*Muriisa Nicholas v. AG and 3 ors. Misc. Cause No. 35 of 2012*, p. 16.

⁵⁹(2003) (3) ALD 83 2003 (5) ALT 86.

⁶⁰ (2003) (3) ALD 83 2003 (5) ALT 86.

84. I have checked with the record of proceedings for 25 November 2013. It confirms that the Registrar's Order of 25th November 2013 was and is a valid and authentic order from the Civil Division of the High Court of Uganda. It is complete with the Registrar's signature, seal of court and date and its copies are the ones attached to the different affidavits before me as the order of court that day.
85. In any case, it is the court to verify the authenticity of its orders, not the Minister or any of the people in the KCCA meeting held on 25th November 2013. I therefore find it outrageous that the Minister or any other person in that sitting could dismiss the Court Order presented by Sewanyana as not authentic.
86. If they were in doubt, and given the order was halting the KCCA meeting that was in progress the diligent and responsible thing to do of the Minister, who was chairing the meeting, was to stop the KCCA meeting at that point and consult and verify with the court about the said authenticity. I have no evidence this was explored.
87. As earlier established, based particularly on paragraph 3.4 of the minutes of the proceedings of the KCCA meeting;⁶¹ Sewanyana's affidavit paragraphs 6 and 7 and Kiwanuka's affidavit paragraphs 7, 8 and 9, that the Minister may have had the resolve and no one or anything was about to stop him in the said resolve to proceed with the KCCA meeting to remove Lukwago, from the office of Lord Mayor on 25th November 2013. From the minutes, at least Sewanyana's information about the order did not stop him from carrying on with the KCCA meeting.
88. By continuing with the said meeting after the order was brought to their attention as shown in minutes 3.4 to 6.6 and eventually voting the Lord Mayor out of office, the Minister and all those in the said KCCA meeting were in flagrant violation of an Order of Court. The resultant resolution removing Lukwago from the office of Lord Mayor was therefore illegal.

⁶¹Annexure B to Mugisha affidavit.

89. It follows also that the Minister's communication to the ED was in violation of the 25th November 2013 Court Order.
90. Moreover, the persons at the meeting included the Executive Director KCCA, Jennifer Musisi.⁶² In my view, with all the due respect, Musisi should have known better than to acquiesce in this violation of a Court Order, through her continued presence after the Sewanyana incident. It is also deplorable, therefore, that in furtherance of the violation of the Court Order, Musisi went on to notify the EC of a vacancy in the Lord Mayor's office through Annexure 'D' to Mugisha's affidavit.⁶³
91. Both Sabiiti from the bar and Lugolobi in his affidavit, submitted and averred, respectively, that it was this letter that kick-started the process of the by-election whose nomination is set for 31st March, 2014 and 1st April, 2014 with elections on 17th April, 2014.⁶⁴ Lugolobi confirmed that this process is in advanced stages.⁶⁵ Because this by-election is premised on an illegality as demonstrated above, it follows that it, along with all the activities associated with it, is also illegal and must stop forthwith subject to the conclusion of the application for judicial review in Misc. Cause 362 of 2013.
92. In specific response to Akena, the order of 25th November 2013, as upheld by Hon. Justice Nyanzi in the ruling of 28th November 2013, was and still is genuine, it was and still is valid and authentic.
93. Finally because Lukwago has this order maintaining him in the office of Lord Mayor in the interim, it has never been necessary for him to appeal under the KCCA Act or for any court to order his reinstatement to the same office.

⁶²See Annexure B to Mugisha affidavit, p.4 showing officers in attendance. Charles Ouma, the Deputy Director Legal Affairs also appears to have acquiesced in the illegality by continuing to be present there.

⁶³It is also attached to Lugolobi Hamidu's affidavit as Annexure A

⁶⁴Lugolobi affidavit, para. 6 to 10.

⁶⁵Lugolobi affidavit, para. 10.

ii) Specific finding:

94. From the evidence before me, the Court Order of 25 November 2013 was authentic at the time it was served on the Minister on 25 November 2013. Justice Nyanzi's ruling of 28 November 2013 upheld the order of 25 November 2013.

c) Mwambutsya's presence in Court on 25th November 2013

i) Analysis

95. The order of 25th November 2013 says it was made in the absence of Mwambutsya. Mwambutsya submitted to this effect as well. Katuntu asked court to refer to its record on the events regarding the proceedings before the registrar for an accurate recap. Katuntu was alluding to Mwambutsya misleading the court.
96. I know from my stay in the Civil Division that orders of court are always extracted after the hearing to grant them. They do not demonstrate the chronology or, necessarily, the nature of proceedings leading to them. So the record of proceedings is the right place to look to for what transpired during the application for the order.
97. I have had opportunity to look at the record of court proceedings for the interim application before the Registrar on 25th November 2013. It shows that Lukwago's application was heard at 8:45am. It also shows clearly that Moses Kabega and Abdul Kiwanuka counsel for Lukwago, the applicant, as well as Martin Mwambutsya for the AG and KCCA were present for the application. The record shows that both Kabega and Mwambutsya made submissions for Lukwago and the AG respectively.
98. In particular, when granting the interim application to protect Misc. Application No. 445 of 2013, the learned registrar went on to explain that "Despite this being an *ex parte* matter, I heard both counsel for the respondents and the applicant." Having said that, the registrar then went ahead to grant the interim application.

99. After this, Mwambutsya sought leave to appeal and the Registrar denied the same.
100. The above is in line with Annexure AK-1 to Kiwanuka's affidavit where the Registrar clarified the proceedings of 25th November 2013 to Mr. Barishaki – Director Civil Litigation.
101. It is therefore utter dishonesty and professional misconduct for Mwambutsya to stand up in court and, with debonair swagger, try to give me the impression that he left court before the application for the Interim Order was heard and that it was disposed off in his absence.
102. Moreover, even if I consider that Mwambutsya was absent for part of this application, it does not dispel the fact that he was at court that morning and was made fully aware of this application. Because this application touched on the KCCA meeting that was about to take place or taking place, Mwambutsya was duty bound, as an officer of court, to wait for the order and facilitate its service on the Minister and KCCA, but he did not.
103. In the circumstances before me, Mwambutsya's choice to be absent from court at some point that morning can easily give the impression that the AG, in the name of Mwambutsya, indulged in deliberate acts or omissions to defeat timely service of the Court Order on the Minister, KCCA or the AG before the meeting resolution to remove Lukwago was made.

ii) Specific finding:

104. From the evidence before me, although it was an *ex parte* application, Mwambutsya was present for the application resulting in the grant of the order of 25 November 2013.

d) Annexure 'C' to Mugisha's affidavit

i) Analysis

105. Before I leave this issue, I wish to address Annexure 'C' to Mugisha's affidavit. This is a communication on 25th November 2013 from the Minister to the ED, KCCA- Jennifer Musisi. In all fairness I'll recap the 2nd and 3rd paragraphs so that the context of the communication is not lost in translation.
106. In this letter the Minister writes in the second paragraph that a **resolution** (Emphasis mine) for the removal of the Lord Mayor was passed by the Authority with 29 members voting in support at **9:00am** (*Emphasis mine*). It goes on to explain that once two thirds of all members of the Authority is achieved then the Lord Mayor ceases to hold office. The Minister goes on to notify the ED formally that Lukwago ceased to hold the said office at **9:30am** (*Emphasis mine*) on the same day.
107. If I take the Minister's communication that Lukwago ceased being Lord Mayor at 9:30, the Minister is in agreement with Barishaki's and Mugisha's evidence in their affidavits as well as Mwambutsya and Akena in their submissions in court.
108. This also does not distort Kiwanuka's and Sewanyana's averments that the order was extracted before 9:00am and they urgently took it to City Hall. It also does not distort Sewanyana's evidence that he served the Minister before the meeting started, at least in earnest. It is therefore possible that the Lord Mayor's illegal removal took place at 9:30am.
109. Having said that, I find the statement of the Minister that the resolution to remove the Lord Mayor was passed at 9:00am in the same communication to be erroneous and not supported by evidence. At best it is confusing.

110. I have seen Annexure 'A' to Mugisha's affidavit. This is the notice of meeting dated 21st November 2013 in which the Minister called the 25th November KCCA meeting. In paragraph 3, before the Minister signs off, he requests to convene on 25th November 2013 at **9:00am** (Emphasis mine) for the KCCA meeting in the KCCA Chambers.
111. From this communication, clearly the meeting was to begin at 9:00am and I take it begun at 9:00am or there about. So when the Minister communicates to the ED saying the resolution was passed at 9:00am, I can't make out what he is talking about. Unless, of course, the Minister passed the resolution before the motion for the same and all other preliminary procedures.
112. From Annexure 'B' to Mugisha's affidavit this was impossible. Relying on Annexure 'B' for the chronology it is clear that the Minister was served with and/or learnt of the Court Order before the resolution to remove the Lord Mayor was passed.
113. The Minister had the ability to do something, like halt the meeting at that point to verify authenticity of the order but he did not. Instead he went on with the meeting to remove Lukwago from the office of Lord Mayor in total disregard of the Court Order.

ii) Specific finding:

114. From the evidence before me, the Minister's inclusion in Annexure 'C' to Mugisha's affidavit that the resolution removing Lukwago from the office of Lord Mayor was at 9:00am on 25th November 2013 is confusing and not supported by evidence.

e) Urgency of the matter

i) Analysis

115. The issue of urgency of the matter came out of the submissions of Katuntu and Lukwago's affidavit. Mwambutsya responded to it. I will therefore address it. Lukwago averred that the AG filed a notice of appeal challenging an interim ruling of Justice Nyanzi but has taken no further steps to pursue the same.⁶⁶ Mwambutsya did not deny this. In fact he confirmed it submitting that the AG has 60 days within which to file an appeal and that he is still within this 60-day range.
116. At the same time, as sworn by Mugisha of KCCA and Lugolobi of EC, the process of replacing the Lord Mayor is going on and in advanced stages, with nominations set for 31st March, 2014 and 1st April, 2014 and by-elections on 17th April, 2014.⁶⁷
117. It is not in dispute that Rule 83 of the Court of Appeal Rules provides for the filing of a memorandum of appeal and record of proceedings within 60 days of filing the notice of appeal. This however does not restrict the filing to the last of these days.
118. In the circumstances before me, clearly time is of the essence. Anyone properly addressing him/herself to the issues before me would know that it is important that Misc. Cause 362 of 2013 in which the report of the Tribunal set up to investigate Lukwago as Lord Mayor by way of judicial review needs to be disposed off quickly.
119. So by Mwambutsya as the AG holding on to the 60-day rule within which to file a memorandum of appeal, which would be the effective appeal, he is, in my humble opinion, in total disregard of the urgency of this case. He is holding all the parties to Misc. Cause 362 of 2013 at ransom with the said notice of appeal.

⁶⁶Lukwago affirmation, para. 4.

⁶⁷See Lugolobi affidavit paras. 6-10 and Mugisha affidavit para. 11. See also the AG advice attached as Annexure E to Mugisha's affidavit and Annexure AK-3 to Kiwanuka affidavit in which Kiggundu- the chairman of the EC issued a press release explaining that the by-election process is ongoing and calling on the general public and voters of KCCA to participate in all the electoral activities publicized on 6 March 2013.

120. Due to this disregard of the urgency of the issues in the circumstances before me, the AG postures himself in a way that he may be viewed as playing delaying tactics and cherry picking to the prejudice of Lukwago. In his discretion, the AG should aggressively pursue his appeal by filing the memorandum of appeal and all other material necessary for the hearing of the interim appeal, if he is interested in it. This will go a long way in ensuring that Misc. Cause 362 is conclusively disposed off and also end the continuous interim applications flowing from the cause and clogging the system.

ii) Specific finding:

121. The substantive hearing of Misc. Cause 362 of 2013 should be prioritized by all.

f) Contempt

i) Analysis

122. Lukwago requests that the parties do pay a fine for acting in contempt of a Court Order. The respondents object to this. I have carefully and cautiously analyzed the submissions of all the parties on this issue. Mr. Galisonga's submissions on contempt were under S. 64 (c) of the CPA, that is, for violating a Court Order.

123. Katuntu submitted relying on **Hon. Sitenda Sebalu v. the Sec General of the EAC⁶⁸** and **The Uganda Super League Ltd v. AG and 6 others⁶⁹**, which relied on the Sitenda case. In this case, relying on the **Halsbury's Laws of England⁷⁰**, it was found that:

“it is a civil contempt to refuse or neglect to do an act required by a judgment or order of the court within the time specified in that judgment, or to disobey a judgment or order requiring a person to abstain from doing a specific act.”⁷¹

⁶⁸Reference No. 8 of 2012 in the East African Court of Justice at Arusha 1st Instance Division.

⁶⁹Constitutional Application No. 73 of 2013. pp. 16-20.

⁷⁰Halsbury's Laws of England 4th Edition, p.284, para 458

⁷¹Reference No. 8 of 2012 in the East African Court of Justice at Arusha 1st Instance Division.para.35, p.19.

124. The EACJ also observed that for contempt to exist, the complainant must prove four elements i.e.; (a) the existence of a lawful order (b) the potential contemnor’s knowledge of the order (c) the potential contemnor’s ability to comply and (d) the potential contemnor’s failure to comply.⁷²
125. The standard of proof in contempt proceedings must be higher than proof on a balance of probabilities and almost but not exactly beyond reasonable doubt. The jurisdiction to commit should be carefully exercised with the greatest reluctance and anxiety on the part of the court to see whether there is no other mode, which can be brought to bear on the contemnor.⁷³
126. The respondents relied on three Kenyan cases; **Kariuki and 2 ors v Minster for Gender, Sports Culture and Social Services and two ors**⁷⁴**Nyamongo & anor v. Kenya Posts and Telecommunications Cooperation**⁷⁵ and **Abdi Wahab Abdullahi Ali v. The Governor, County Government of Garissa**⁷⁶ In sum, in these cases, relying on Halsbury’s Laws of England they held that:
- “In England, as a general rule, no order of court requiring a person to do or restrain from doing any act may be enforced unless a copy of the order has been served personally on the person required to or abstain from doing the act in question.”*
127. Akena for the EC and Mwambutsya for the AG ably submitted on these cases. Akena in fact emphasized that such service must be personally on the targeted person.

⁷²Reference No. 8 of 2012 in the East African Court of Justice at Arusha 1st Instance Division.para.39 p. 21.

⁷³Reference No. 8 of 2012 in the East African Court of Justice at Arusha 1st Instance Division.para 40 p.21.

⁷⁴(2004) Vol 1 KLR, p.588.

⁷⁵ (1990-1994) EALR p.464

⁷⁶Constitutional Petition No. 8 of 2013 consolidated with Misc. App No. 10 of 2013.

128. My reliance on the Kenyan cases is only to the extent they are in conformity with the Sitenda and Super League cases, which address civil contempt more precisely as applicable in Uganda and are binding on me. I am also mindful of respondent's counsel specific submission that I exercise extra caution and restraint regarding the determination of contempt as the cited cases are from India and Kenya, jurisdictions with more developed procedures regarding contempt. I agree with Akena's concession in this regard that the Indian jurisprudence has existed for longer. It is therefore, in my view, more instructive than the Kenyan cases.
129. It is pertinent in the circumstances before me to address contempt from the time of service of the 25th November 2013 Court Order on the Minister.⁷⁷ This is because this order and its service set the ball of contempt in motion.
130. The targeted person for this order was the Minister and as earlier found he was effectively and personally served by Sewanyana. So in line with the standard in Sitenda Sebalu and the Super League cases, there was a valid Court Order of 25th November 2013; the Minister was the target; he was served with it and was fully aware of it before the resolution to remove the Lord Mayor was passed at the KCCA meeting which he chaired.
131. Nonetheless the Minister went ahead to ignore it and proceeded with the KCCA meeting hence violating it. For this violation, he was in contempt within the meaning in the Sitenda Sebalu and The Super League cases cited above.⁷⁸ For the same reason, he was also in contempt by writing to the ED KCCA about the removal of the Lord Mayor from office. In the same way the ED's notification to the EC was illegal.

⁷⁷ The reference to the Minister in this section for contempt is not to imply that he is found in contempt for purposes of the application before me. Rather, it is to lay the background and context for a clear understanding of the contempt in issue in relation to the four respondents before me. It must therefore be seen as such and nothing more.

⁷⁸ *Ibid.* (See footnote immediately preceding).

132. Because the notification from KCCA to EC which EC purports swung it into action for the by-election was illegal, as it violated a Court Order, the by-election process is also illegal for the same reason. With all due respect, Sabitti's and Lugolobi's submissions and averment, respectively, regarding the EC constitutional mandate to organize elections once notified cannot stand as it is based on a violation of the Constitution in the first place. In the circumstances before me, the EC argument that a temporary injunction would be wasteful of tax payers' money is also pale.
133. In specific regard to the current application, at the time of the application before me, all the respondents are in one way or another in receipt or knowledge of Justice Nyanzi's ruling validating the said order of 25th November 2013 or the order itself.⁷⁹ They don't deny this in fact. The 2nd and 4th respondents in particular demonstrate this through Annexure AK-3 to Kiwanuka's affidavit. They are the specific targets for the current application. Barishaki and Mwambutsya confirmed that the AG received the order on 25th November 2013 at 10:05 am. Proof of this is also in Annexure to Barishaki's affidavit. Moreover the AG represented the Minister in court at the time. Sewanyana's affidavit and the minutes of proceedings at the KCCA meeting show that the Minister was served with the order.
134. The four respondents are in violation of the Court Order in issue as it was validated in the court ruling of 28th November 2013. The AG had the ability to stop the violation by advising or otherwise informing KCCA that the KCCA meeting of 25 November was in violation of the Court Order but did not; the AG had the option to inform KCCA and EC that the by-election would be in violation of the Court Order but did not; KCCA had the option and ability to stop the meeting once Sewanyana informed the Minister about the Court Order but did not; KCCA had the ability not to communicate to the EC about the vacancy in the office of Lord Mayor but did not and; EC and Kiggundu had the ability not to initiate the by-election process for the replacement of the Lord Mayor but did not.

⁷⁹See affidavits of the different respondents and their submissions in court.

135. Moreover, Annexure EL4 to Lukwago's affirmation in which he writes to the Chairman Electoral Commission about the illegality of the by-election is copied to the AG, the Minister, KCCA with a copy of the Court Order attached.⁸⁰
136. Instead the by-election, as averred by Lugolobi, is in advanced stages with nominations on 31 March and 1 April 2014 and the by-election is on 17 April 2014. They all are therefore in contempt within the standard in the Sitenda Sebalu and The Super League cases.

ii) Specific finding:

137. From the evidence before me, the four respondents were in contempt of court by virtue of their disobeying or disregarding the Court Order of 25 November 2013 as validated by Justice Nyanzi's ruling of 28 November 2013 by in one way or another, enabling the declaration of the office of Lord Mayor vacant and/or organizing the planned by-election.

g) Temporary Injunctive Order

i) Analysis

138. Lukwago wants a temporary injunction restraining the respondents from acting in contempt of a Court Order by *inter alia* declaring that the seat of the Lord Mayor Kampala is vacant and organizing a by-election for the position of Lord Mayor pending the final determination of Misc. Cause No. 362 of 2013. Lukwago avers that it is in the interest of justice that this application is granted and the balance of convenience is in his favour. Katuntu and Galisonga placed Lukwago's application also under S. 64 (c) of the CPA in their submissions. The respondents object to this. I have carefully read all the submissions of the parties.
139. The Supreme Court in **Robert Kavuma v. Hotel International** (Wambuzi CJ), (as he then was), held that:

⁸⁰ See Annexure EL4 to Lukwago's affirmation, paragraph 4 (unnumbered).

“It is generally accepted that for a temporary injunction to issue, a court must be satisfied:

- 1) That the applicant has a prima facie case with a probability of success.*
- 2) That the applicant might otherwise suffer irreparable damage which would not be adequately compensated for in damages.*
- 3) If the court is in doubt on the above two points, then the court will decide the application on a balance of convenience. In other words whether the inconveniences which are likely to issue from withholding the injunction would be greater than those which are likely to arise from granting it.”⁸¹*

140. The EC relied on **Suleiman Muwonge Lubega v. AG**,⁸² **Yoweri Were Wekoye v. AG & the EC**,⁸³ **Byanyima Winnie v. Ngoma Ngine**⁸⁴ and **Akampunguza & anor v. MUBS**⁸⁵ to argue that the by-election is in advanced stages and cannot be stopped by a temporary injunction once it started. I find the scenario before me distinguishable from these cases because the planned by-election before me is in blatant violation of the Court Order of 25th November 2013. There was no such violation in those cases.

141. As established above, it is clear to me that Lukwago’s current application is premised on the Interim Order of 25th November 2013, which was validated by Justice Nyanzi’s ruling of 28th November 2013. Justice Nyanzi in his ruling analyzed in detail all the issues relating to the grant of a temporary injunction for Lukwago and granted it.

⁸¹Supreme Court Civil Appeal No. 8 of 1990.

⁸²Constitutional Application No. 7 of 2012.

⁸³Constitutional Application No. 3 of 2014.

⁸⁴High Court Civil Revision No. 9 of 2001.

⁸⁵Misc. Application 514 of 2012, arising from Misc. Cause 89 of 2009.

142. The circumstances before Justice Nyanzi for consideration of the application for an interim injunction are exactly the same as in the application before me. I have nothing useful to add. Moreover to do so, would in my view, amount to breach of the *res judicata* rule.⁸⁶

143. The only difference is that the ethos of this application is the respondents' failure to respect the Court Order in issue by in one way or another enabling the occurrence of the planned by-election. Otherwise the underlying issues for grant of the temporary injunction remain the same and addressed by Justice Nyanzi.

144. I am persuaded by the House of Lords in England that:

“... the court, in order to protect its own process from being degraded and misused, must have the power to stay proceedings which have come before it and have only been made possible by acts which offend the court’s conscience as being contrary to the rule of law. Those acts by providing a morally unacceptable foundation for the exercise of the jurisdiction over the suspect taint the proposed trial and, if tolerated, will mean that the Court’s process has been abused.”⁸⁷

145. While this case dealt with stopping proceedings illegally before the court, I find it highly persuasive for stopping the action of the EC in the same way as it is based on an illegality; the violation of the 25th November 2013 Court Order as validated by Justice Nyanzi’s ruling of 28 November 2013.

146. It also follows that any action by any of the respondents or others intended to remove Lukwago from the office of Lord Mayor is an illegality and must be

⁸⁶ Section 7 of the Civil Procedure Act (Cap 71 of the Laws of Uganda) provides for the doctrine of *res judicata* and states that: “No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court.”

⁸⁷ Lord Griffiths in *R vs Horseferry Road Magistrates Ex parte Bennet* [1993] UKHL 10; [1994] 1 A.C. 42.

avoided. This is because such action is in violation of the temporary injunctive order of 25th November 2013 as validated by Justice Nyanzi's ruling of 28th November 2013.

147. Therefore the temporary injunction as requested by Lukwago is hereby granted as requested.
148. I make haste to add that had the respondents addressed themselves to the law and respected the said Court Order and ruling, there would be no need for the current application.
149. I also find irrelevant the suggestion by the respondents that Lukwago should have sought redress under the KCCA Act, S. 12 (17) and 171 by way of appeal of the resolution of the KCCA meeting.
150. In the same way the EC cannot invoke its constitutional mandate under Article 61 of the Constitution when it is based on a violation of the Constitution in the first place. This is through the violation of the Court Order of 25th November 2013, as validated by the ruling of 28 November 2013, which rides against the constitutional mantle of independence of the judiciary in Article 128 (1) and (3) of the Constitution.
151. Moreover for as long as Lukwago has the Court Order staying his removal from the office of Lord Mayor until the disposal of Misc. Cause 362 of 2013, the balance of convenience lies in his favour.

ii) Specific finding:

152. The temporary injunction as requested by Lukwago is hereby granted as requested.

h) Rule by law versus Rule of law

i) Analysis

153. Sabitti of the EC pointed to the constitutional mandate of the EC in organizing the by-election. Katuntu submitted on rule of law. I take the view that the analysis of rule of law and rule by law is important in this application. I shall therefore address it.

154. The supremacy of the Constitution cannot be overemphasized. We are all bound by it in its Article 2. Manyindo DCJ (as he then was) in **Major General David Tinyefuza v. AG Constitutional Petition No. 1 of 1996 p.69** observed;

“... once a polity has enacted a constitution then the rule of law, that is the constitution becomes the cornerstone of all laws and regulates the structure of the principal organs of government and their relationships with their relationships to each other and to the citizen, and determines their main functions. Needless to emphasize, all laws must conform to the Constitution as the supreme law of the land. It is the constitution, and not the Executive, Legislature or Judiciary, which is supreme. Under Article 2 (I) and 2 of the Constitution it has binding force on all authorities and persons throughout Uganda.”⁸⁸

155. The supremacy of rule of law has been, since the Middle Ages, a principle of the Constitution. It means that the exercise of powers of government shall be conditioned by law and that the subject shall not be exposed to the arbitrary will of his ruler.⁸⁹

156. In **R v. Horseferry Road Magistrates Ex parte Bennet**, the House of Lords stated that:

“...the Judiciary accepts a responsibility for the maintenance of the rule of law that embraces a willingness to oversee executive action and to refuse to countenance behaviour that threatens either basic human rights or the rule of law. ... [Authorities in the field of administrative law contend] that it is the function of the High Court to ensure that the executive action is

⁸⁸Major General David Tinyefuza v. AG Constitutional Petition No. 1 of 1996 p.69.

⁸⁹ See E.C.S. Wade and Godfrey Phillips, in Constitutional Law. 8thEdn at p.62.

exercised responsibly and as Parliament intended. So also it should be in the field of criminal law and if it comes to the attention of the court that there has been a serious abuse of power it should, in my view, express its disapproval by refusing to act upon it. ... The Courts, of course, have no power to apply direct discipline to the police or the prosecuting authorities, but they can refuse to allow them to take advantage of abuse of power by regarding their behaviour as an abuse of process and thus preventing a prosecution.” ... “...the court, in order to protect its own process from being degraded and misused, must have the power to stay proceedings which have come before it and have only been made possible by acts which offend the court’s conscience as being contrary to the rule of law. Those acts by providing a morally unacceptable foundation for the exercise of the jurisdiction over the suspect taint the proposed trial and, if tolerated, will mean that the Court’s process has been abused.”⁹⁰

157. Katuntu was the only counsel who submitted specifically on the rule of law in this application. I am highly persuaded by his authority because it speaks loudly to the circumstances before me and states what is legitimate and in line with Justice Manyindo’s observations above. He cited **Mohd Sharfuddin (Died) By Lrs v Mohd Jamal and Ors** where it was observed that:

“The rule of law is the foundation of a democratic society, the judiciary is the guardian of the rule of law hence judiciary is not only the pillar but the central pillar of the democratic state. In a democracy like ours where there is a written constitution, which is above all individuals and institutions and where the power of judicial review is vested in the superior courts, the judiciary has a special and additional duty to perform, viz to oversee that all individuals and institutions including the executive and legislature act within the framework of not only the law but also the fundamental law of the land. The duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society”.

⁹⁰Lord Griffiths in R vsHorseferry Road Magistrates Ex parte Bennet[1993] UKHL 10; [1994] 1 A.C. 42.

If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and a civilized life in the society. It is for this purpose that courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside courts which tend to undermine their authority and bring them in disrepute and disrespect by scandalizing them and obstructing them from discharging their duties without fear or favour.

When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalized but to uphold the majesty of the law and of the administration of justice. The foundation of judiciary is the trust and confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working the edifice of the judicial system gets eroded.⁹¹

158. On the other hand, there is the notion of rule by law, where the law is used for and at one's convenience, without clear justification or appeal to a higher authority that acts as some kind of benchmark.⁹² For the analysis before me, the higher authority is the Constitution. It follows therefore, that for as long as rule by law violates the Constitution, it cannot stand as it becomes an arbitrary instrument for abuse of rule of law.

⁹¹ (2003) (3) ALD 83 2003 (5) ALT 86.

⁹² See for example the distinction between rule of law and rule of law at: (<http://branemrys.blogspot.com.com/2005/08/rule-of-law-v.rule-by-law.html>.) (Accessed on 26 March 2014.). Here it was explained that the two chief arguments for rule by law and against rule of law are always used against the natural law theory, these are, a) the question of how one can have authority without any moral basis and b) the claim that rule by law is seminal despotic. Rule by law can be either *ad hoc* or principled. Rule by law and rule of law tend in entirely different directions. Rule of law, on the other hand, is an intrinsically moral notion and one cannot easily have a consistent theory of rule of law without appealing either to natural law theory or to some higher rule.

159. If I put all the events before me in one room, I see rule by law as the big elephant in the room. This is demonstrated through the reliance on sections in the KCCA Act to deny Lukwago his rights as ordered by court. By disobeying these Orders (that is the 25th November Order and the ruling of 28th November 2013) the respondents are attacking the very independence of the judiciary enshrined in Article 128 of the Constitution. It is for this reason that they are suffocating rule of law with rule by law. This is outrageous.
160. In my view, it is not the court to bring its orders in line with the actions of the AG, KCCA, EC or their agents and staff, as some of the respondents appear to suggest. Rather, my understanding is that, rule of law requires, as a must, that all these parties and their agents as well as all citizens of this country must bring themselves in line with the orders of court.
161. The purpose of this is simple. It is to; protect the sanctity of the Courts of Judicature, which is well envisaged in the Constitution;⁹³ sustain the confidence in the third arm of government so that all the people who feel aggrieved by government, its agencies or private persons can have a place to run to for a neutral determination.
162. To disregard Court Orders therefore, among others in my view, is by implication, to set the precedent that people should not believe in the courts. This is wrong because it puts persons in our country on a collision course with no remedy thus creating a medium in which they descend into anarchy by resorting to taking the law into their hands. This is in utter disregard of the democratic and good governance principles and values enshrined in our Constitution.
163. It is also to create a medium in which persons, including government, KCCA, EC and all their agents, as well as private individuals like Lukwago may be condemned unheard in violation of Articles 28 and 44(c) of the Constitution and rules of natural justice. This also rides against the values and principles of the democracy

⁹³See Chapter 8 of the Constitution starting at p.104. In particular see Article 128 on independence of the judiciary.

that we purport Uganda to be based on, or at least, as are envisaged under Part II of the National Objectives and Directive Principles of State Policy in the Constitution.⁹⁴

164. Suffice to say in regard to the circumstances before me, that rule of law, as a must, makes it incumbent upon all to respect Court Orders without exception at all times. This includes reading Orders of Court positively to enhance their effectiveness whether or not they are in one's favour. It is, therefore, an exercise in futility to indulge in acts and/or omissions that disregard or disobey Court Orders like what the AG, EC and their agents and servants did or continue to do.
165. To use provisions in the EC or KCCA Acts to defeat, or in whatever manner, ignore and/or refuse to give effect to the Court Order of 25th November 2013 and the ruling of 28th November 2013, in the circumstances before me, is to conveniently rule by law, in total disregard for respect for the rule of law. It is irrelevant that the Court Order was not specifically directed at you, as some of the respondents present.
166. With all the due respect, this big elephant in the room in the name of rule by law, in the circumstances before me, appears to have blinded all the respondents in the application before me. Resultantly, they disregarded respect for the rule of law through their utter disregard of the Court Order and ruling of 25th and 28th November 2013 while acknowledging that they received or otherwise know it exists. That, with reckless abandon and effrontery, they/or their agents continue to do the same in whatever manner they cloth it, in my view, is blasphemous and deplorable given they are all in one way or another agents or servants of government – which is mandated to ensure such respect for the rule of law.
167. Moreover that the respondents are either lawyers who should know the law or where to find the law, or have legal departments with lawyers vested with the duty

⁹⁴See Constitution of the Republic of Uganda, National Objectives and Directive Principles of State Policy. II. Democratic Principles (1), at p. 22 of the Constitution.

to objectively advise them accordingly on the said rule of law is absolutely deplorable. It is glaringly embarrassing to the legal fraternity: It postures the profession in a way that the lay people on the streets not only lose confidence in it but also laugh at its members. This is not necessary in my view and must be guarded against jealously.⁹⁵

168. After hearing all the respondent submissions, I was still wondering why none of them addressed respect for the rule of law. I specifically asked Mwambutsya what the AG office did on learning that court had summoned the parties for a hearing of the temporary injunction regarding the KCCA meeting at 10:00am on 25th November 2013 and the Minister for Kampala had, a day after this summons was out, set the meeting for the same day at 9:00am.⁹⁶ In response, Mwambutsya, with reckless abandon, submitted that the office of the AG did nothing, because the Minister had called the meeting legally within the KCCA Act and Lukwago if aggrieved could be atoned in damages if he went to court. I find this abominable for the rule of law. In my view, in these circumstances, the office of the AG should have advised the Minister and KCCA to halt the planned meeting pending the injunctive application hearing the same day.

169. I also note that Mwambutsya was in court for the application, or at least part of it if I take his word. Whichever way, I am left wondering whether it was not unbecoming of Mwambutsya, in the urgent circumstances, to leave court before the Order was extracted.

⁹⁵ In my observations, it is for this reason in the circumstances before me that, with all due respect, the AG, Mwambutsya and Barishaki – all lawyers and senior officials in the AG office; the ED KCCA, Mugisha and Akena also lawyers and senior officers of the KCCA and/or its legal department; Sabitti and Lugolobi also lawyers and senior legal officials of the EC appear unprofessional and disingenuous in their actions, averments or submissions as the case may be, as presented before me in this application. For failing to professionally advise their offices on the obligation to respect Court Orders as a tenet of respect for the rule of law and independence of the judiciary, in the foregoing circumstances, is being out of order on their part as lawyers that concerned themselves with issues pertaining to this application. I make this observation simply to highlight the lawyer's duty to uphold and respect rule of law at all times in whatever they do and nothing more/less than that. It must be understood as such.

⁹⁶ See annexure to Barishaki affidavit.

170. To put it in perspective, there was an imminent KCCA meeting taking place at City Hall and there was an application in court to halt the same meeting in which the AG was a party. Mwambutsya as the AG representative leaves court premises, appearing uninterested in the outcome. This conduct in my view is out of order. It is conduct making the office of the AG appear suspect in its actions related to the application before me. It is conduct easily suggestive of a deliberate effort to defeat service of the resultant Court Order from the court proceedings on the targeted persons, hence conduct easily to be construed as disrespecting rule of law in the circumstances before me.
171. In my view, a responsible and diligent AG attorney with due regard for respect for the rule of law should, in his discretion, have remained in court to hear the ruling and act on it, or at least waited around court to obtain the said order and effect its service on KCCA. This was the priority and would have gone a long way in showing that the AG office discharged its duty of respecting rule of law in the circumstances before me.
172. Finally, the proverbial big elephant called rule by law, should not be allowed to suffocate or kill respect for the rule of law just because of its size. It should have no place in the room if the constitutional principles of good governance, democracy and respect for human rights are adhered to. It must be tamed by all means and it is the duty of all Ugandans, as mandated by the constitution, to do this by, in the circumstances before me, jealously protecting respect for the rule of law through respect for orders of courts of judicature as a part of upholding the independence of the judiciary.

ii) Specific finding:

173. Rule of law and its respect are always supreme to rule by law.

IV. Remedies and Conclusion

174. Lukwago wants an injunctive order; the respondents to pay fines; arrest and detention of Kiggundu in civil prison and costs. The respondents oppose this application. I have considered the submissions on remedies from both Lukwago and the respondents.
175. Mindful of my findings above and in my discretion under Section 33 of the Judicature Act, and S. 98 of the CPA I have no inclination to order arrest and detention in civil prison of Kiggundu. This is not the only remedy available for Lukwago and I have no proof that Lukwago has explored other remedies likes mandamus. I also find no reason to order fines to be paid by the respondents.
176. Instead, the temporary injunctive order is hereby granted as requested by Lukwago.
177. In my discretion under S. 27 (1) of the CPA, costs for Lukwago are also granted.
178. I also order that until Misc. Cause 362 of 2013 is disposed off conclusively and in finality, no organ, employee or agent of government, the EC, the KCCA or any other such organ make any attempts to remove Lukwago from the office of the Lord Mayor for KCCA.
179. For the avoidance of doubt, any action related directly or implicitly, to the process of the by-election to find a new Lord Mayor, including the nominations on 31st March and 1st April 2013 as well as the election earlier fixed for 17th April 2013, should be stopped forthwith for being in violation of the Court Orders of 25 November and ruling of 28 November 2013 respectively. This status quo will remain until Misc. Cause 362 of 2013 is disposed off in finality. I so order.

Lydia Mugambe

J U D G E

28th March 2014

