

**MISCELLANEOUS CAUSE NO. 129 OF 2023**

**KALALI STEVEN ::::::::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**UGANDA LAW SOCIETY ::::::::::::::::::::::::::::::::::::::: RESPONDENT**

## Introduction

a) Declarations that;

- 1

(iii) The act of the Respondent's Council of appointment of Society representatives to statutory bodies without the Applicant and other members' participation violates Regulation 13 of the Uganda Law Society (Election) Regulations 2016 and Section 10 of the Uganda Law Society Act Cap 276.

(iv) The act of the Respondent's Council of appointing society representatives without members' participation or involvement is a violation of their right to freedom of expression, thought and/or conscience.

(v) The act of the Respondent's Council of appointing Society representatives to various bodies without members' involvement and or participation or consent is against or violates the democratic principles of good governance.

(vii) All the respective office bearers under the capacity of representatives are holding the same illegally and without members' approval hence null and void.

b) Orders that;

(i) The Respondent and its Council as well as its representatives do comply with the provisions of the Uganda Law Society (Election) Regulations 2016.

(ii) A permanent injunction doth issue against the Respondent, its agencies, bodies or organs restraining them from further violation and/or contravention of the rights of the Applicant and other members herein complained of.

(iii) No order be made as to costs of the application.

[2] The grounds of the application are contained in the Notice of Motion and the affidavit in support of the application deposed by **Kalali Steven**, the Applicant, and additional affidavits deposed by **Mwebya Mathias Ngobi** and **Sekidde Hamza**, both advocates and members of the Respondent.

Briefly, the grounds are that the Applicant is an advocate and a member of the Respondent that believes in rule of law and upholding of constitutional principles. The Applicant and other members of the Respondent have since 2016 been denied the right to choose their representatives and, instead, the Respondent's Council has been appointing or nominating different advocates on various statutory bodies contrary to the mandate under the Uganda Law Society (Elections) Regulations 2016. The Applicant stated that the Respondent has never conducted any elections in regard to the stipulated elective offices since 2016 despite several petitions by the Applicant. He stated that the Respondent's Council does not have power to appoint or nominate representatives to various statutory bodies without members' participation as required by the Regulations and the act of denying the Applicant and other members a chance to participate in the election of society representatives infringes their right to freedom of expression, is unlawful and connotes lack of transparency.

[3] The Applicant further stated that some of the Respondent's "Representatives" on the various statutory bodies have been on for many years without according other members of the Society chance to partake the same; which is in clear breach of democratic principles of good governance and rule of law, transparency and accountability. He concluded that the Respondent will not be prejudiced by grant of the application since it is aimed at streamlining the modus operandi and adherence to rule of law as well as right to freedom of expression, thought and conscience.

[4] The Respondent opposed the application through an affidavit in reply deposed by **Bernard Oundo**, the president of the Respondent. He stated that in the year 2016, the Council at the time passed the Uganda Law Society (Elections) Regulations 2016 (hereinafter called the "ULS Elections Regulations"), to guide on the election of members from the Society who would

represent the Society on boards, committees or commissions of different statutory bodies and organisations. He stated that pursuant to its mandate under Section 10 of the Uganda Law Society Act which empowers it to exercise all powers of the Society, the Council performed the nomination of different members of the Society to various bodies and organisations. He stated that prior to nomination of any member of the Society, the Council, acting through the Society's Secretariat, notifies the Respondent's members of the vacancy or positions available on the various bodies or organisations that invited the Respondent to nominate a representative. Upon receipt of a report from the nominations committee, the Council calls for a meeting to approve the criteria adopted in arriving at the most suitable member that should be nominated. Upon approval by the Council of the most suitable member of the Respondent, the successful member and the body are duly informed of the Respondent's decision.

[5] The deponent further stated that the Uganda Law Society Act expressly provides for the election of specific Council positions and not Society Representatives to various bodies and organisations and the Respondent has always conducted elections for stipulated positions both in the Act and the Regulations which are silent on any other alleged "stipulated positions". He also stated that by nominating persons to the different statutory bodies, the Council exercises powers vested in it by its members that elected the Council members. He averred that the above acts are an exercise of the rights referred to by the Applicant. The deponent stated that the persons specifically referred to by the Applicant were duly nominated to the said statutory bodies and the Respondent does not have a right to recall the said members unless called upon by the body itself. He stated that in the alternative, the Respondent is also interested in obtaining guidance from this Honourable Court on whether the Council has powers to nominate its members to different statutory bodies and whether the subject regulations were made ultra vires.

## **Representation and Hearing**

[6] At the hearing, the Applicant represented himself while the Respondent was represented by **Mr. Isaac Newton Kyagaba** from M/s Legal Aid Clinic of the Uganda Law Society. It was agreed that the hearing would proceed by way of written submissions which were duly filed by counsel and have been considered in the determination of the matter before Court.

## **Issues for Determination by the Court**

[7] Four issues were agreed upon for determination by the Court, namely;

- a) Whether the Uganda Law Society (Elections) Regulations 2016 are inconsistent with the Uganda Law Society Act Cap 276?*
- b) Whether the conduct of the Respondent in the appointment and/or nomination of the Respondent's representatives to various statutory bodies was in breach of the Uganda Law Society Act and/or the ULS Elections Regulations?*
- c) Whether the alleged breach, if any, infringed the Applicant's right to freedom of expression towards electing the Respondent's representatives to the various statutory bodies?*
- d) What remedies are available to the parties?*

## **Resolution of the Issues**

**Issue 1: Whether the Uganda Law Society (Elections) Regulations 2016 are inconsistent with the Uganda Law Society Act Cap 276?**

### **Submissions by the Applicant**

[8] It was submitted by the Applicant that there is no inconsistency between the Regulations and the Uganda Law Society Act the same having been passed by the Respondent's Council and adopted by a Special Resolution. The Applicant relied on the case of *Returning Officer of Kampala & Others v Zziwa*

*Margaret, CACA No. 39 of 1997* to the effect that if words of a statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The Applicant argued that the words contained in the ULS Act and Regulations are clear, unambiguous and without any inconsistency. He concluded that the Regulations merely lay down the procedure for conducting elections. He prayed that this issue be resolved in the negative.

### **Submissions by Counsel for the Respondent**

[9] In reply, Counsel for the Respondent cited the case of *Uganda Clearing Industry & Forwarding Association v Kampala Capital City Authority (KCCA) & Attorney General, HC Misc. Cause No. 439 of 2017*, where the Court stated that; "A delegated legislation can be questioned on the grounds that it is inconsistent with provisions of the parent Act or that it is contrary to some other statute applicable on the same subject matter". Counsel submitted that Regulations 12(3) and 13 of the Uganda Law Society (Elections) Regulations 2016 are ultra vires the parent Act to the extent that they introduce another category of elective positions for representatives (to statutory bodies) not envisaged under the ULS Act. Counsel submitted that the power to nominate representatives is vested in the Council pursuant to Sections 9 and 10 of the ULS Act. Counsel stated that the ULS Act only requires election of some representatives to the Respondent's Council and to the Law Council such as the Committee of Legal Education. Counsel further stated that the Respondent Society has a total of about 34 statutory bodies that require representatives on their board, making it financially burdensome to conduct elections for each society representative and organising an election within such a limited time frame is unfeasible.

### **Determination by the Court**

[10] I need to point out that this issue did not arise from the Applicant's pleadings but rather from the response by the Respondent. The Respondent did not file a counter action but casually raised this contention in their affidavit in reply. This being an application for human rights enforcement, the relevance of this contention is only to the extent to which it facilitates the investigation and decision of the Court regarding the question as to whether an infringement to the Applicant's alleged right has been committed. The Court should not be expected to use this casual plea and the resultant arguments to exercise powers leading to possible impeachment of the subject Regulations on the allegation of them being ultra vires. To do so, the Court would have to be properly moved to invoke its prerogative powers by way of judicial review. The Court cannot exercise its supervisory powers over decisions of public bodies acting in performance of their statutory functions in any other way other than by invocation of its prerogative powers. As such, any action seeking a declaration and possible impeachment of a statutory instrument such as the present subject regulations cannot be sought casually as was done in the present case.

[11] That being the case, I will only make a finding on this issue to the extent its resolution affects the gist of the dispute before the court; that is, whether the Applicant's right to freedom of expression, thought or conscience has been violated by the Respondent. Section 9 of the Uganda Law Society Act Cap 276 provides for constitution (composition) of the ULS Council. Section 10 of the ULS Act provides as follows;

*"Except as otherwise expressly provided by this Act or by any regulations made under this Act, the council may exercise all the powers of the society; and no regulation made under the Act shall invalidate any prior act of the council which would have been valid if the regulation had not been made".*

[12] The ULS Elections Regulations were made in accordance with the provision under Section 25 of the ULS Act. Section 25 (h) and (i) of the Act provides as follows;

*“The council may, subject to this Act and to approval by a special resolution, make regulations binding on members of the society, prescribing all or any of the following matters—*

*...*

*(h) the manner of election, removal and replacement of the president, the vice president and other members of the society, and of representatives of the society on the Law Council; and*

*(i) such other matters as may be deemed by the council to be necessary for the proper conduct and regulation of the affairs of the society”.*

[13] The Uganda Law Society (Elections) Regulations No. 10 of 2016 were enacted pursuant to the above provision of the Act. The Regulations set up an Elections Committee of the Society and prescribes the procedure for the conduct of elections to elective offices of the Society. Regulation 12 of the ULS Election Regulations sets out the elective offices of the Respondent which includes the position of “Society representative”. Under regulation 2 thereof, “Society representative” is defined as “a member of the Uganda Law Society representing the Society on any statutory body, institution created under any law in Uganda”. Regulation 13 thereof provides for the manner of election of a Society representative. It provides as follows;

*“Where any law requires the representation of the society on a statutory body, the elections committee shall notify the members of the Society of the day and place for the election of the Society representatives”.*

[14] The above cited provisions of the law clearly show that the position of Society representative is an elective office in the Society. The provisions also



show that the election of the Society representatives have to be conducted in conformity with the ULS Elections Regulations. This requires the involvement of the Elections Committee and adoption of the procedure set out in the Regulations.

[15] The contention by the Respondent is that the Regulations in that regard were made ultra vires the Act. The Respondent cites a number of reasons. One is that under Section 10 of the ULS Act, the position of Society representative is not one of the positions that constitute the ULS Council. With due respect and as submitted by the Applicant, this argument by the Respondent's Counsel bears no relevance to the content and purpose of the Regulations. This is because, the Regulations were not made under Section 9 of the Act. Clearly, from the long title to the Regulations, the Regulations were made in reference to the power of the Respondent's Council under Sections 11 and 25 of the Act. Nowhere is it stated in the Act that the positions on the Council are the only elective positions in the Society. Section 25(h) and (i) makes reference to the matters that may be subject of regulations made by the council. It specifically mentions *"representatives of the society on the Law Council; and such other matters as may be deemed by the council to be necessary for the proper conduct and regulation of the affairs of the society"*.

[16] I do not agree with the argument by learned Counsel for the Respondent that the above provision limited powers of the Council to only making provision for election of representative to the Law Council. According to the view of the Respondent's Council, inclusion in the Regulations of the procedure for election of other Society representatives made the Regulations ultra vires the above stated provision of the ULS Act. I do not agree. This is especially because it is clear to me that the provision under Section 25(h) of the Act is not meant to be exhaustive, explaining why the law maker included the rather general provision under Section 25(i) thereof. As such, in making the subject

Regulations under Section 25(h) and (i) of the Act, the Council was in order to make provisions in respect of all elective offices. To my finding, the Council acted intra vires its powers. The allegation by the Respondent that the Regulations or part thereof were made ultra vires or are inconsistent with the Act is, therefore, not made out and is rejected. Issue one is answered in the negative.

**Issue 2: Whether the conduct of the Respondent in the appointment and/or nomination of the Respondent's representatives to various statutory bodies was in breach of the Uganda Law Society Act and/or the ULS Elections Regulations?**

**Submissions by the Applicant**

[17] It was submitted by the Applicant that Section 10 of the ULS Act limits the powers of Council of the Respondent to be exercised subject to limitations provided under the Act and the Regulations. Counsel argued that the conduct of the Respondent through its Council appointing and or nominating Society representatives without members being accorded an opportunity to elect them was done illegally, without power and in breach of the provisions of both the Act and the Regulations. Counsel cited the case of *Makula International v Cardinal Nsubuga 1982 [HCB]11* to the effect that courts cannot sanction an illegality and an illegality once brought to the attention of the court overrides all questions of pleadings and admissions made there under.

**Submissions by Counsel for the Respondent**

[18] It was submitted by Counsel for the Respondent that the Respondent has always nominated representatives to statutory bodies within the mandate under the ULS Act and Regulations and that the insistence on elections as the only form of participation for members in this process cannot be justified upon the premise of the ULS Act. Counsel submitted that the said insistence

by the Applicant also ignores the diligent and participatory process that the Respondent follows in nominating representatives where the Act does not insist on elections. Counsel stated that as averred in paragraphs 8, 9, 10 and 11 of the Respondent's affidavit in reply, upon receipt of requests from statutory bodies, the Respondent invites members to express interest in the roles and a careful selection is done prior to nominations and or appointing of representatives for positions not specified in the ULS Act as elective. Counsel argued that requiring elections for all representatives would necessitate a harmonisation of the Respondent's internal processes, calendars, terms of office, financing and unnamed other fetters with those of the over thirty-four (34) statutory bodies that will from time to time require representation from the Respondent.

**Determination by the Court.**

[19] As already found under issue one, the position of Society representative under the ULS Act and Elections Regulations is elective. The election is not by way of nomination or appointment by the Council but has to be in accordance with the Elections Regulations. The justifications put forward by the Respondent pointing to the practical difficulties in implementation of that part of the Regulations cannot be reason for a different construction of the Act and the Regulations. Rather they can form a ground to justify amendment of the Regulations which power is vested in the Council with the approval of the general assembly of the Society by way of a special resolution. As such, the act by the Respondent's Council to nominate or appoint Society representatives in a manner other than that provided for under the ULS Elections Regulations was in breach of the Act and the Regulations. This issue is answered in the affirmative.

**Issue 3: Whether the alleged breach, if any, infringed the Applicant's right to freedom of expression towards electing the Respondent's representatives to the various statutory bodies?**

**Submissions by the Applicant**

[20] It was submitted by the Applicant that the actions of the Respondent's Council of appointing or nominating Society representatives to the statutory bodies without according the Applicant or other members of the Society an opportunity to elect the same as mandated under Regulation 13 of the ULS Elections Regulations 2016 infringes or violates his right to freedom of expression or conscience. Counsel relied on Section 29(1)(a) and (b) of the Constitution and the decisions in *Hag v Canada (Chief Electoral Officer)* (1993) SCJ No. 84 (1993) 2 SCR 995 and *Re Secession of Quebec* [1998] SCJ No.61 [1998] 2 SCR Para. 61.

**Submissions by Counsel for the Respondent**

[21] It was submitted by Counsel for the Respondent that there was no infringement on the Applicant's rights. Counsel stated that the Applicant and other members have at all times and on multiple occasions been accorded exceptional indulgence to participate in the Respondent's election activities and administrative discourse which avenues the Applicant has not sufficiently utilised to obtain clarity for his misinterpretation of the Respondent Council's mandate in relation to the wider statutory bodies the Respondent serves. Counsel submitted that the Applicant was notified of all vacancies for representatives of the society on statutory bodies through circulars and newsletters issued by the Respondent's Council and invited to nominate candidates or himself for such positions in accordance with Regulation 8 of the Regulations. Counsel concluded that having not participated in the

electoral processes, the Applicant cannot blame the Respondent's Council for his own failure or omission to exercise his right to vote or be voted for.

### **Determination by the Court**

[22] Having found that the nomination or appointment of the Society representatives were conducted by the Respondent's Counsel in breach of the ULS Act and Elections Regulations, the remaining question is whether the said breach infringed on the Applicant's right to freedom of expression, thought or conscience. This question requires an examination of the nature and scope of the right to freedom of expression; in some instruments referred to as the right to freedom of opinion and expression.

[23] The starting point is Article 29(1)(a) and (b) of the Constitution of Uganda which provides that; *"Every person shall have the right to (a) freedom of speech and expression which shall include freedom of the press and other media; (b) freedom of thought, conscience and belief which shall include academic freedom in institutions of learning"*. The Constitution does not provide a definition or scope of the freedom of expression. The International Covenant on Civil and Political Rights (ICCPR), however, expounds on this right. Under Article 19 thereof, it provides as follows;

*"1. Everyone shall have the right to hold opinions without interference.*

*2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

*3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

*(a) For respect of the rights or reputations of others;*

*(b) For the protection of national security or of public order (ordre public), or of public health or morals”.*

[24] In the *UN General Comment No. 34 on Article 19: The Freedoms of Opinion and Expression*, (accessed at <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no34-article-19-freedoms-opinion->), it is stated that freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights. The freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights. For instance, freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association, and the exercise of the right to vote.

[25] In my view, despite the statement that “freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association, and the exercise of the right to vote” I do not take this as meaning that the scope of the right to freedom of expression includes “the rights to freedom of assembly and association, and the exercise of the right to vote”. The text simply says that the right to free expression is integral to the enjoyment of the other named rights. What this means is that when discussing infringement of the right to freedom of assembly or association, the right to free opinion and expression must necessarily come into issue. On the other hand, it ought to be noted that under the bill of rights, there is no express “right to vote”. This right however flows from the provision on civic rights and activities under Article 38 of the Constitution, which provides that;

*“(1) Every Uganda citizen has the right to participate in the affairs of government, individually or through his or her representatives in accordance with law.*

*(2) Every Ugandan has a right to participate in peaceful activities to influence the policies of government through civic organisations”.*

[26] Paragraph II(v) of the National Objectives and Directive Principles of State Policy provides that all “political and civic associations aspiring to manage and direct public affairs shall conform to democratic principles in their internal organisations and practice”. Article 25 of the ICCPR expounds on this right as follows;

*“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:*

*(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;*

*(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*

*(c) To have access, on general terms of equality, to public service in his country”.*

[27] It is clear to me that it is from the above related provisions that the right to vote leaders of one’s choice is derived. Although the provision refers to “guaranteeing the free expression of the will of the electors”, such does not make it one with the right to freedom of expression or opinion. It only makes one right integral with the other. As such, the right to freedom of expression or opinion does not include, in its scope, the right to vote leaders of one’s choice. The two are distinct rights, albeit integrated. This application was not brought on basis of allegations of infringement of the Applicant’s rights to enjoyment of civic rights or particularly the right to vote. It was brought upon an allegation of infringement of the right to freedom of expression or opinion.

[28] On the case before the Court, the facts do not disclose any infringement of the Applicant's right to free expression or opinion. There is evidence that the Applicant has always aired out his views by petitions and letters and the same have been considered and responded to. There is evidence that an extraordinary general meeting of the Respondent was convened to discuss, among others, matters raised by the Applicant. I do not find from the evidence any instance of infringement of the Applicant's right to freedom of expression, thought or conscience. In the circumstances, issue 3 is answered in the negative.

**Issue 4: What remedies are available to the Parties?**

[29] It follows from the above discourse that although I have found a breach of the provisions of the ULS Act and the Elections Regulations, the only order available to the Applicant and which I accordingly issue is an order of a permanent injunction restraining the Respondent's Council from any further breach of the Act and the Elections Regulations regarding the election of the Society representatives. No other declarations or orders can issue since the consequences of the breach were not part of the action before the Court. The rest of the action by the Applicant fails and is dismissed with an order that each party shall bear their own costs of the application.

It is so ordered.

***Dated, signed and delivered by email this 2<sup>nd</sup> day of February, 2024.***



**Boniface Wamala**

**JUDGE**