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THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

**CORAM: OWINY - DOLLO, DCJ; KASULE, EGONDA-NTENDE, MUHANGUZI,
MADRAMA IZAMA JJA/JJCC.**

CONSTITUTIONAL PETITION No. 53 OF 2011

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BETWEEN

FOUNDATION FOR HUMAN RIGHTS INITIATIVE} PETITIONER

AND

ATTORNEY GENERAL} RESPONDENT

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JUDGMENT OF OWINY - DOLLO; DCJ

I have had the benefit of reading, in draft, the judgment of my learned brother, Egonda-Ntende, JA/JCC, in this petition. I however agree with him in part only; and this, for reasons I shall give shortly. The undisputed facts that led to the filing of this petition are that the complainants, for whom the Petitioner has brought this petition, were arrested from various places including the home of Dr. Kiiza Besigye and a taxi, and were, with the sanction of the DPP, charged in Court with the offences of treason or concealment of treason. The Petitioner claims that the arrest and charges levied against the complainants were so done because of their participation in the peaceful 'walk to work' demonstrations organized by political party activists to express their discontent with government policies relating to the economy, inflation, and corruption.

This was however disputed by the Respondent whose case was that the arrests were effected owing to the intelligence received by the police that the complainants had engaged in plans to disrupt public order and cause the overthrow of government by force of arms. Hence, whether the persons arrested by agents of the Respondent, for whom the

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5 Petitioner has instituted this petition, were apprehended for the reasons
they have stated in their various affidavits in support of the petition, or
not, is a crucial issue in the determination of the petition since it is
contested by the Respondent. The onus is on the Petitioner to prove
each limb of the allegations to the satisfaction of the Court. There is
10 therefore no point in my producing them here again. At the
conferencing stage, counsel for the parties proposed issues which
Court, in the exercise of its responsibility to frame issues, may either
adopt, recast, or reject entirely. The proposed issues are: -

15 *1. Whether the acts of arrest and charging citizens with treason and
or terrorism for a non-violent act of peaceful demonstration by
walking to work contravenes articles 28(1), 28(3), 28(7), 28(12),
38(1), 38(2), 43(2) (a) (b) and 44 (a) (b) of the Constitution.*

20 *2. Whether section 24 of the Police Act Cap. 303 that permits the Police
to arrest and detain a citizen without charge, and or trial, for an
indefinite period of time is inconsistent with, and contravenes
Articles 23, 28, 29, and 38 of the Constitution.*

On the affidavit evidence adduced by the parties to the petition, and the
submissions made by their respective counsel, it is quite manifest that
25 issue No. 1 as proposed by the parties does not accord with the
pleadings of the parties; hence, it ought to be recast and reframed into
two limbs. The first limb of the issue is therefore whether, or not, the
complainants were arrested for indulging in the 'walk to work protest';
but were instead charged with treason and concealment of treason. The
30 second limb is whether, or not, such arrests were done in compliance
with, or instead offended or contravened, the provisions of the
Constitution which the Petitioner listed; or if it offended any other
provision of the Constitution. It is therefore only when the first limb of

5 the issue is answered in the affirmative, that Court can proceed to consider and answer the second limb of the issue.

I would therefore frame issue No. 1 as follows: -

1. *Whether, or not, the complainants were: -*

- 10 (a) *arrested and charged with treason and terrorism for participating in a non-violent act of peaceful demonstration by walking to work.*
- 15 (b) *lawfully arrested and charged with treason and or terrorism for a non-violent act of peaceful demonstration by walking to work, or the arrest and detention contravened articles 28(1), 28(3), 28(7), 28(12), 38(1), 38(2), 43(2) (a) (b) and 44 (a) (b) of the Constitution.*

I will advert to this issue shortly. I think it is proper to, first, address and dispose of the issue of the jurisdiction of this Court in the determination of the matters raised in the petition; this being an important question of law. The jurisdictional remit of this Court is provided for under the provisions of article 137 of the Constitution; the relevant parts of which state as follows: -

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

- 25 (1) *Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court.*
- (3) *A person who alleges that*
- (a) *an Act of Parliament or any other law or anything in or done under the authority of any law; or*
- 30 (b) *any act or omission by any person or authority,*

5 *is inconsistent with or in contravention of a provision of this
Constitution, may petition the Constitutional Court for a
declaration to that effect, and for redress where appropriate.*

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

 (a) *grant an order of redress; or*

 (b) *refer the matter to the High Court to investigate and
determine the appropriate redress."*

15 In my considered view, although the headnote to article 137 of the
Constitution reproduced above states that article 137 is on issues of
interpretation of the Constitution, clauses (1) and (3) of article 137 are
stand-alone provisions; which provide for two distinctively different
situations. Clause (1) of article 137 confers on the Constitutional Court,
20 the exclusive remit to handle any issue regarding the interpretation of
the Constitution. Clauses (3) and (4), read together, are however
enforcement provisions which confer on the Constitutional Court, the
powers to make declaratory orders that a provision in a legislation or
the act of a person or authority is inconsistent with or in contravention
25 of the Constitution; and where appropriate, grant remedial orders. This
does not require interpretation of any provision of the Constitution.

 Although the jurisdictional mandate conferred on the Constitutional
Court to intervene in either situation above is the point of convergence
for the two provisions, my view is that in considering the two provisions
30 one should apply a disjunctive approach. However, the Supreme Court
whose decision binds this Court, has consistently pronounced itself
that the two provisions of article 137 under reference must be read
conjunctively. Wherefore, the Constitutional Court only has jurisdiction

5 in matters brought under clauses (3) and (4) where the issue in
contention first requires the interpretation of a provision of the
Constitution as provided for in clause (1) of article 137. Otherwise, all
other actions arising from infringements of rights guaranteed and
protected by the Constitution have to be brought in other competent
10 Courts pursuant to the provisions of article 50 of the Constitution. The
authorities on this holding include *Attorney General vs Maj. Gen. David
Tinyefuza - S.C. Const. Appeal No. 1 of 1987*, and *Ismail Serugo vs Attorney
General & Anor - S. C. Const. Appeal No. 2 of 1998*. In the *Attorney General vs
Maj. Gen. David Tinyefuza* case (supra), Wambuzi C.J. held that: -

15 *"In my view, jurisdiction of the Constitutional Court is limited in article
137 (1) of the Constitution to interpretation of the Constitution. Put in
a different way, no other jurisdiction apart from interpretation of the
Constitution is given. In these circumstances, I would hold that unless
the question before the Constitutional Court depends for its
20 interpretation of a provision of the Constitution, the Constitutional
Court has no jurisdiction."*

In the *Ismail Serugo* case (supra), Mulenga JSC had this to say: -

25 *"It follows that a person who seeks to enforce a right or freedom
guaranteed under the Constitution by claiming redress for its
infringement or threatened infringement but whose claim does not
call for interpretation of the Constitution has to apply to another
competent Court. The Constitutional Court is competent for the
purpose only upon determination of a petition under 137 (3)"*

These authorities have been duly followed by this Court in such cases
30 as *Charles Kabagambe vs Uganda Electricity Board - Const. Petition No. 2 of 1999*,
Joyce Nakacwa vs Attorney General & Ors - Const. Petition No. 2 of 2001, *Asiimwe
Gilbert vs Barclays Bank - Const. Petition No. 22 of 2010*. It is therefore in the

5 light of the position of the law elucidated above that the issues raised
in the instant petition must be addressed. Court has to determine
whether both or either of the issues involve interpretation of a provision
of the Constitution before the Court can exercise jurisdiction therein.

I would adopt issue No. 2, as is proposed by counsel for the parties,
10 without any variation. It challenges the constitutionality of section 24
of the Police Act, which empowers the police to arrest and detain any
person, if the police officer concerned has reasonable cause to believe
that such a person is about to commit a breach of the peace. The
Petitioner claims this provision allows the police to carry out arrest and
15 detention of persons without charge for an indefinite period of time;
thereby contravening the provisions of articles 28(1), 28(3), 28(7),
28(12), 38(1), 38(2), 43(2) (a) (b) and 44 (a) (b) of the Constitution. To
determine this issue, it is necessary to interpret and give meaning to
the import of the provisions of the Constitution alleged to have been
20 contravened by the provisions of the Police Act.

The impugned section 24 of the Police Act provides as follows: -

"Arrest as preventive action.

- (1) *A police officer who has reasonable cause to believe that the arrest
and detention of a person is necessary to prevent that person -*
- 25 (a) *from causing physical injury to himself or herself or to any
other person;*
- (b) *from suffering physical injury;*
- (c) *from causing loss or damage to property;*
- (d) *from committing an offence against public decency in a
30 public place;*
- (e) *from causing unlawful obstruction on a highway;*

5 (f) from inflicting harm or undue suffering to a child or other
vulnerable person;

may arrest and detain that person.

(2) a person detained under subsection (1) shall be released -

10 (a) once the peril, risk of loss, damage or injury or obstruction
has been sufficiently removed;

(b) on the execution of a bond with or without surety where
provision is made for him or her to appear at regular
intervals before a senior police officer, if so required; or

15 (c) upon any other reasonable terms and conditions specified by
the Inspector General in writing.

(3) If the person detained under this section is not resident in Uganda,
the bond referred to in subsection (2) may be secured by a person
resident in Uganda.

20 (4) Any person so arrested or any other person on his or her behalf
who has reason to believe that any person is being unlawfully
detained under this section may apply to a Magistrate to have such
person released with or without security."

It is unmistakably clear from the provisions of section 24 of the Police
Act, reproduced above, that the power of preventive arrest and
25 detention accorded the police by the Act, does not confer on the police
blanket powers to act arbitrarily in accordance with their whims, or at
pleasure. In many of its provisions, which I shall point out here below,
the Act explicitly fetters the powers granted to the police under section
24 thereof. Before the police can invoke or rely on section 24 of the Act,
30 and cause the arrest and detention of a person, there must first exist a
threat of imminent breach of the law or of the peace, by such a person;

5 from which, the police would then have reasonable cause to form the
belief that there is need to arrest and keep such a person in detention
so as to avert the impending breach of the peace, or to answer for the
crime such a person has already committed.

10 It is therefore my finding that the provision of section 24 of the Police
Act is not in contravention of, but is instead clearly in accord with,
provisions of the Constitution which recognize the need to impose
reasonable restrictions on personal liberty. Article 23 (1) (c) of the
Constitution imposes restrictions on personal liberty as follows: -

15 *"No person shall be deprived of personal liberty except in any of the
following cases: -*

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

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(h) *as may be authorized by law, in any other circumstances
similar to any of the cases specified in paragraphs (a) to (g) of this
clause."*

25 Indeed, it is for good cause that the Constitution, and the Police Act
enacted in accord with it, recognize the need to place limitations on
personal liberty. I find the restrictions necessary and acceptable in a
free and democratic dispensation; hence, they are justified. For any
society to operate without regulations and necessary restrictions to its
enjoyment of freedom and liberty, it would be a recipe for lawlessness
30 disorder, and resultant chaos; which would be gravely injurious to the
interests and well-being of the society. The institution of the police is
therefore indispensable in the maintenance of law and order, pursuant

5 to the provisions of the Constitution and laws made thereunder. It is
the very essence of a democratic and civilized society. I therefore find
no merit in the Petitioner's challenge of the provisions of the Police Act.

It is worthy of note that the Constitution is cognizant of the fact that
such permissible restrictions on personal liberty are subject to abuse
10 by those vested with the power to enforce such restrictions. Hence, it
provides safeguards against abuse of the powers of restrictions on the
enjoyment of personal liberty provided for in Article 23 of the
Constitution. Such safeguards are by provisions for access to justice by
the person so arrested and detained. Under article 23 (2) the detention
15 or restriction of the arrested person must be only in a place authorized
by law. The arrested and detained person, as is provided for in article
23 (3), must be informed of the reason for the arrest and detention, and
for access to a lawyer. Such a person, as is provided for under article 23
(4) (b), must be released or produced before a Court of law within 48
20 hours of the detention of such a person. Such a person, as is provided
for under article 23 (5) (b), must have his or her next of kin informed of
the arrest and detention.

Under article 23 (5) (b) and (c), the next of kin, lawyer, and personal
doctor of the arrested and detained person must be afforded access to
25 him or her; and the arrested person must be allowed access to medical
treatment. Where a person has been so arrested and detained without
being arraigned before a Court of law within the forty-eight hour period
provided for in the Constitution, then Court can be moved by an *habeas
corpus* application for the production, before Court, of the person
30 detained beyond the forty-eight hours permissible under the law. Under
article 23 (9) of the Constitution, "*the right to an order of habeas corpus
shall be inviolable and shall not be suspended.*" This means the remedy

5 of *habeas corpus*, as a safeguard against restrictions on personal liberty, and is non-derogable.

Finally, if it turns out that a person was unlawfully arrested, restricted, or detained, then he or she shall be entitled to compensation, pursuant to the provision of article 23 (7); which states as follows: -

10 *"A person unlawfully arrested, restricted or detained by any other person or authority shall be entitled to compensation from that other person or authority whether it is the State or an agency of the State or other person or authority."*

From the legal provisions shown above, it is quite evident that the
15 restrictions placed on personal liberty provided for in the impugned Police Act are for the greater public good; and are themselves fettered with safeguards against any abuse in their application. Accordingly, then, the restrictions are legal provisions permissible and acceptable in a democratic dispensation. I am therefore in full agreement with the
20 finding and conclusion made by my learned brother that on this issue, there is no merit in the contention by the Petitioner that the Police Act contravenes the stated provisions of the Constitution.

With regard to the first issue, the Petitioner alleges in the first limb thereof that the complainants, on whose behalf it has brought this
25 petition as a public interest litigation, were arrested and charged in Court with treason and terrorism for participating in the peaceful "*walk to work*" protest, which was occasioned by the protestors' concern over the state of the economy and rampant corruption in the country. In the light of the evidence adduced by the Petitioner in this regard, I have a
30 little difficulty in appreciating the basis of this complaint. It is not in dispute that indeed the complainants were arrested and charged in the Court of law with treason and concealment of treason; which are

5 offences provided for respectively under sections 23 (1) (c) and 25 of the Penal Code Act.

It is important that I set out here, in extenso, the particulars of the offences as are contained in the copy of the charge sheet provided as evidence in Court. The particulars of the offence of treason were that: -

10 *“Kamateneti Ingrid Turinawe, Mugumya Sam, Mwijuke Francis, and others still at large, between the months of August and October 2011, in the Districts of Kampala, Mityana, Hoima, Wakiso, and other places in Uganda, contrived a plot to overthrow the government as by law established, by force of arms, and expressed that plot at various*
15 *meetings convened in the places mentioned above where they mobilised the launching of simultaneous riots countrywide until Government of the Republic of Uganda is overthrown.”*

For the offence of concealment of treason, the particulars were that: -

20 *“Walakira Mathew, Mayanja Robert, Sempebwa Tony, and others still at large, between the months of August and October 2011, in the Districts of Kampala and Wakiso, knowing of a plot to overthrow the Government of Uganda as by law established, by force of arms, did not give information thereof with all reasonable dispatch to the Minister, Administration, Magistrate, or Officer in charge of a Police*
25 *Station, or failed to prevent the commission of the offence of the offence of treason.”*

I should point out from the outset that while the complainants claim that they were arrested and charged with treason and concealment of treason for having indulged in peaceful protests, their own evidence is
30 to the contrary. Ingrid Turinawe for instance deposed in her affidavit that she was arrested from the home of Dr. Kiiza Besigye who is admittedly a prominent opposition leader. Mwijukye Francis testified

5 that he was arrested, together with Sam Mugumya, while travelling in a
taxi. Second, the particulars of the offences appearing on the charge
sheets they have adduced in evidence in Court, instead disclose that
they were charged with the offence of treason, for having planned to
engage in 'riots' with the intention of overthrowing the government
10 with force of arms; and then the offence of concealment of treason.

To my understanding, '*peaceful demonstration*' and '*riot*' do not by any
stretch of construction connote the same thing. While a riot would
involve violence and public disorder; a peaceful demonstration would,
to the contrary, not do so. It would therefore be wrong for this Court to
15 read anything beyond the particulars of the offence as are spelt out in
the charge sheet to explain the arrests of the complainants. Only a trial
by Court would establish whether the charge was justified or not. It is
possible that the complainants were arrested while preparing to
participate in a '*walk to work*' demonstration; or headed thereto.
20 However, as is quite manifest from the charge sheet, the impugned
arrest was based on alleged overt acts in various named places around
the country, whose purpose was said to have been to overthrow the
government by force of arms.

Therefore, the circumstance under which the arrests were made was
25 immaterial. The complainants could have been arrested from a
wedding, conference, theatre, political rally, or any permissible place.
The circumstance of the arrest would not then determine the legality or
otherwise of the arrest; or be taken as the purpose of the arrest. The
arresting officer need only have reasonable belief that the person to be
30 arrested has either committed or is about to commit a breach of the
peace. On the evidence, the prosecution of the charges did not proceed
to trial. the Constitution empowers the DPP to determine whether or not
to proceed with the prosecution of a case. It would have been from the

5 trial of the accused persons that the prosecution could have either presented evidence that would result in conviction of the accused persons, or the accused persons could have been acquitted owing to failure of the State to prove the charges against them.

10 Since the arrested persons were charged in a Court of law with treason and concealment of treason, which are offences under provisions of Penal Code Act, there is no justification for seeking the Constitutional Court's intervention on the claim that the arrest, detention, and charges of treason and concealment of treason were unconstitutional. Both the Constitution and the Police Act, as is shown above, vest in the police 15 the powers of arrest when, in the belief of the police officer involved in the situation, there is reasonable cause to do so. The provision that the police can only lawfully effect arrest of a person upon the belief that breach of the peace is imminent, means the arrest precedes investigations. The investigations could proceed, and quite often does 20 so, beyond the forty-eight hours within which the person so arrested has to be produced in Court.

The investigations could establish that the police effected the arrest of the detained person based on a mistaken belief. This would then result in the discontinuation of the prosecution; but this would not mean or 25 suggest that the arrest and detention were unconstitutional. The prosecution could however proceed into a trial. Whether the charge would hold, or not, would only be determined from the evidence adduced by the prosecution at the trial. If it turns out that there was no basis for the arrest and detention, thus rendering the entire process 30 unlawful, such illegal arrest and detention would not call for interpretation of any provision of the Constitution.

The complainants would instead be entitled to bring an action in the High Court for enforcement of their rights pursuant to the provisions

5 of Article 50 of the Constitution; basing on the wrongful arrest, unlawful
detention, and malicious prosecution, they would have been subjected
to. It is in such a suit that the D.P.P. or anyone responsible would then
be expected to adduce evidence to justify the arrest and detention. If
Court finds that there was no basis for the infringement on the
10 complainant's personal liberty, it would pronounce itself accordingly;
and, it would accord the complainants such relief as it deems proper
pursuant to the provision of article 23 (7) of the Constitution as has
been shown above.

The particulars of the charges levied against the complainants show
15 that they were accused of having committed offences provided for
under, and known to, the law; and the crimes were allegedly committed
under circumstances for which such a charge is lawful. Since the
charges against the complainants were dismissed for non-prosecution,
the aggrieved complainants are entitled to challenge their arrests and
20 detention, in a Court of law. For this, the Constitution provides under
article 50 as follows: -

"50. Enforcement of rights and freedoms by Courts.

*(1) Any person who claims that a fundamental or other right or
freedom guaranteed under this Constitution has been infringed or
25 threatened, is entitled to apply to a competent Court for redress which
may include compensation.*

*(2) Any person or organization may bring an action against the
violation of another person's or group's human rights."*

I have already pointed out that the particulars of the charges brought
30 against the arrested complainants do not support their claim that they
were arrested for their involvement in a peaceful 'walk to work' protest.
In any case, even if the arrests were done in response to such

5 involvement in a peaceful protest as is alleged by them, it would not
have necessitated petitioning the Constitutional Court, because this was
not a matter requiring the interpretation of the Constitution, for which
the intervention of this Court would then have been rightly invoked as
has been exhaustively discussed herein above.

10 It follows from this position of the law that this ground of the petition
presents nothing for the interpretation of the constitution; and
therefore, for the reasons discussed herein above over circumstances
where this Court has jurisdiction, the petition should fail. Accordingly,
I would dismiss this petition with an order that their parties hereto bear
15 their own costs of the petition.

In the result, this Court declares and orders as follows: -

- (i) Section 24 of the Police Act is not inconsistent with or in
contravention of articles 23, 28, 29, and 38 of the Constitution.
- (ii) This Court (Egonda-Ntende & Kasule JJA/JJCC dissenting) has
20 no jurisdiction to entertain the petition with regard to the issue
of the arrest and charging in Court, of the complainants on
whose behalf this petition has been brought.
- (iii) The petition is accordingly dismissed.
- (iv) The parties hereto shall bear their own costs of the petition.

25 Dated, and signed at Kampala this day of 2020


Alfonse C. Owiny - Dollo

Deputy Chief Justice

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
(CORAM: OWINY-DOLLO, DCJ, KASULE, EGONDA-NTENDE,
MUHANGUZI, MADRAMA-EZAMA, JJA/JJCC)
CONSTITUTIONAL PETITION NO. 053 OF 2011

BETWEEN
FOUNDATION FOR HUMAN RIGHTS INITIATIVE :::::PETITIONER
AND
ATTORNEY GENERAL :::::::::::::::::::::::::::::::::::RESPONDENT

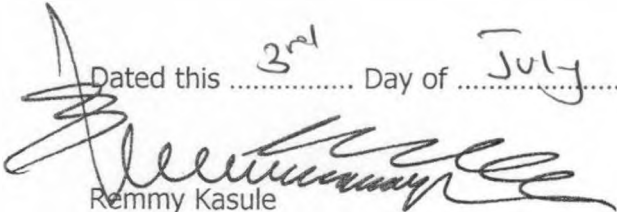
JUDGMENT OF REMMY KASULE, JA/JCC

I have had the benefit of reading in draft the Judgment of my brother, Justice Frederick Egonda-Ntende, JA/JCC. I entirely agree with his analysis of the facts, application of the law to those facts, the conclusion he has reached and the decisions he has made. I have nothing useful to add to the same.

On the issue of costs, I have taken the position that, given the nature and status of the petitioner as described in the petition and the statutory nature of the Respondent as a representative of the Uganda Government, as well as the fact that the petition is more or less a public interest litigation for the benefit of the public, each party should bear its own costs.

I so order.

Dated this ^{3rd}..... Day of ^{July}..... 201⁹


Remmy Kasule

JUSTICE OF APPEAL/CONSTITUTIONAL COURT

THE REPUBLIC OF UGANADA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 53 OF 2011

(Coram: Owinyi-Dollo, DCJ, Kasule, Egonda-Ntende, Muhanguzi, Madrama,
JJA/JCC)

FOUNDATION FOR HUMAN RIGHTS INITIATIVE.....PETITIONER

VERSUS

ATTORNEY GENERAL.....RESPONDENT

JUDGMENT OF EZEKIEL MUHANGUZI, JA/JCC

I have had the benefit of reading in draft the judgment of my learned brother Hon. Mr. Justice Egonda-Ntende JA/JCC.

I respectfully do not agree with his reasoning and conclusion on issue number one, mainly on the basis of jurisdiction of this court.

I am of the view that this court lacks jurisdiction to determine issue number one and should therefore be referred to a competent Court for enforcement. I only have brief comments in relation to the jurisdiction of the constitutional court under Article 137 of the Constitution.

The jurisdiction of the constitutional court is derived from Article 137 of the constitution which provides as follows:-

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

(1) Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the constitutional court.

(2) When sitting as a constitutional court, the Court of Appeal shall consist of a bench of five members of that court.

(3) A person who alleges that—

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

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

35

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

(a) grant an order of redress; or

(b) refer the matter to the High Court to investigate and determine the appropriate redress.

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(5) Where any question as to the interpretation of this Constitution arises in any proceedings in a court of law other than a field court martial, the court—

(a) may, if it is of the opinion that the question involves a substantial question of law; and

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(b) shall, if any party to the proceedings requests it to do so, refer the question to the constitutional court for decision in accordance with clause (1) of this article.

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(6) Where any question is referred to the constitutional court under clause (5) of this article, the constitutional court shall give its decision on the question, and the court in which the question arises shall dispose of the case in accordance with that decision.

(7) Upon a petition being made or a question being referred under this article, the Court of Appeal shall proceed to hear and determine the petition as soon as possible and may, for that purpose, suspend any other matter pending before it."

35 The facts giving rise to this petition were well set out by the petitioner
and are reproduced in the judgment of Hon. Mr. Justice Egonda-Ntende.
I do not need to reproduce them but will however refer to those ones
that will enable me illustrate the jurisdiction of this court as far as Article
137 of the constitution is concerned.

60 Under paragraph 3 of the petition the petitioner states:-

*“3(a). Your petitioner has an interest in as is being effected(sic) by acts of
the state that perpetuated through its security agencies namely the police,
the army and the directorate of public prosecutions whereby citizens of this
country have been arrested, are being arrested, and are being threatened
65 with arrest and charged with treason and or terrorism both capital offences
for exercising their fundamental rights enshrined in the constitution to wit;
freedom of expression, freedom of speech, freedom of conscience, freedom
to assemble and demonstrate together with others peacefully and
unarmed.*

70 *3(b). That the acts of the state set out in paragraph 3(a) above infringe,
limit and violate the citizens’ rights enshrined in Articles 28(1), 28(3),
28(12), 29, 38(1), 38(2) and 43(2) a & b, 44a & c of the constitution.”*

The question for determination in this first issue therefore is whether the
acts of arresting citizens and charging them with treason and or
75 terrorism raise a question of interpretation of the Articles of the
Constitution specified in paragraph 3(b) of the petition.

This Court and the Supreme Court have pronounced themselves on this
issue in several cases.

In *Attorney General V Major General David Tinyefuza*, Supreme Court
80 *Constitutional Appeal No. 1 of 1997*, WW Wambuzi CJ (as he then was)
held:-

85 *"In my view, jurisdiction of the constitutional court is limited in article 137(1) of the constitution to interpretation of the constitution. Put in a different way no other jurisdiction apart from interpretation of the constitution is given. In these circumstances I would hold that unless the question before the constitutional court depends for its interpretation of a provision of the constitution, the constitutional court has no jurisdiction."*

90 In *Ismail Serugo V Kampala City Council & Attorney General*, Supreme Court Constitutional Appeal No. 2 of 1998, Hon. Mulenga JSC held as follows:-

95 *"It follows that a person who seeks to enforce a right or freedom guaranteed under the constitution by claiming redress for its infringement or threatened infringement but whose claim does not call for interpretation of the constitution has to apply to another competent court. The constitutional court is competent for the purpose only upon determination of a petition under 137(3)"*

In that petition, Justice Kanyeihamba JSC (as he then was) referring to the case of *Attorney General V Major General David Tinyenfuza* (Supra) had this to say on the jurisdiction of this Court.

100 *"As far as the case of Major General David Tinyenfuza Constitutional Petition No. 1 of 1997 is concerned. There is a number of facts to the decision of the Supreme Court in that case.*

105 *Nevertheless, when it comes to that Court's view of the jurisdiction of the Court of Appeal as a Constitutional Court, its decision in that case is that the Constitutional Court had no original jurisdiction merely to enforce rights and freedoms enshrined in the Constitution in isolation to interpreting the Constitution and resolving any dispute as to the meaning of its provisions. The Judgment of the majority in that case (Wambuzi, C.J, Tsekooko JSC, Karokora JSC, and Kanyeihamba JSC), is that to be clothed with*
110 *jurisdiction at all, the Constitutional Court must be petitioned to*

determine the meaning of any part of the Constitution in addition to whatever remedies are sought from it in the same petition."

115 This court in **Charles Kabagambe V Uganda Electricity Board**,
Constitutional Petition No. 2 of 1999, held that:-

"It is therefore now settled once and for all that if the matter does not require an interpretation of a provision of the constitution, then there is no juristic scope for the invocation of the jurisdiction of this court.

120 *Here the petitioner alleges that his rights were violated and claims declaration and redress. On the facts available one cannot rule out wrongful dismissal. This is a matter dealt with by specific laws. They can be enforced by a competent court and should a question of interpretation of the constitution arise, that question can always be referred to this court."*

125 In **Joyce Nakacwa V Attorney General, Kampala City Council & Anor**,
Constitutional Petition No. 2 of 2001, this court stated as follows:-

130 *"In the second category, the petitioner complains of unlawful arrest and imprisonment or detention. Once it is established that any or all the respondents are responsible for this, it is not necessary to "interpret" whether the acts contravene the Constitution. The Constitution is very clear. It does not require a constitutional interpretation to determine whether a person's constitutional rights have been violated for example, if it is established that the person was arrested without cause and detained for more than 24 hours without being taken to court. It is a matter of drawing an inference which can be done by any competent court. In that case, an application for redress would be better entertained under article 50 of the Constitution."*

135

This court in **Asimwe Gilbert V Barclays Bank**, Constitutional Petition No. 22 of 2010 held:-

140 *"The jurisdiction of this court has been firmly resolved in a number of decisions of this court and the supreme court in its appellate capacity as the constitutional appeal court. First in the case of Attorney General v Major*

General David Tinyefuza, Constitutional Appeal No. 1 of 1997 and again in Ismail Serugo v Kampala City Council & AG,(supra). Those authorities have been followed ever since.

145 *It was held in the above authorities that this court has jurisdiction only under Article 137 of the constitution to interpret the constitution. It is not concerned with and has no jurisdiction to entertain matters relating to violation of rights under the constitution. Such matters ought to be brought before a competent court under Article 50 of the constitution for redress.”*

150 Upon careful consideration of issue number one, I agree with counsel for the respondent that this issue does not raise a question for constitutional interpretation and therefore this court has no jurisdiction to entertain issue number one.

As regards issue number two, I agree with the reasoning and decision of
155 my learned brother Hon. Mr. Justice Egonda-Ntende and I have nothing more useful to add.

In conclusion, I would dismiss this petition in relation to issue number two with each party to bear its costs and I would refer issue number one for enforcement to a competent court with each party to bear its own
160 costs.

Dated at Kampala this.....3rd.....day of.....July.....2019.



165

.....
Ezekiel Muhanguzi
Justice of Appeal/Constitutional Court.

5

THE REPUBLIC OF UGANDA,

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO 01 OF 2016

(CORAM: OWINY DOLLO, DCJ, KASULE, EGONDA NTENDE, MUHANGUZI, MADRAMA IZAMA, JJA/JJCC)

10 **FOUNDATION FOR HUMAN RIGHTS INITIATIVE)..... PETITIONER**

VERSUS

THE ATTORNEY GENERAL)..... RESPONDENT

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA, JA/JCC

15 I have had the benefit of reading in draft the Judgment of my learned brother, Justice Frederick Egonda-Ntende, JA/JCC. I agree with his analysis of the facts and the principles for interpretation of the Constitution but do not agree with his resolution of the first issue while I agree entirely with his decision on the second issue. In the result, I agree that the petition should fail on issue number two in which the petitioner contends that section 24 of the Police Act is unconstitutional. I refrain from commenting on the first
20 issue on the ground of lack of jurisdiction only and the following are my reasons grounds for holding so.

I respectfully disagree with the conclusion of my learned brother on issue number 1 which is whether the acts of arrest and charging citizens with treason or terrorism for a non-violent act of peaceful demonstration by walking to work contravenes article 28 (1),
25 28 (3), 28 (7), 98 (12), 38 (1), 38 (2), 43) (2). While I agree with the framing of the issue on whether the acts complained about contravened the Constitution, the question framed and considered do not involve a matter for interpretation of the Constitution. The persons involved were charged before a court of law which is rightfully classified as a court of competent jurisdiction envisaged under article 50 (1) of the Constitution of the
30 Republic of Uganda which provides as follows:

“50. Enforcement of rights and freedoms by courts.

5 (1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.

(2) Any person or organisation may bring an action against the violation of another person's or group's human rights.

10 (3) Any person aggrieved by any decision of the court may appeal to the appropriate court.

(4) Parliament shall make laws for the enforcement of the rights and freedoms under this Chapter."

The above provision allows any person or organisation such as the petitioner to bring an action against the violation of another persons or groups Human Rights in a court of competent jurisdiction. All the allegations contained in the petition alleging violation of article 28, 29, 38 and 43 as well as 44 fall under chapter 4 of the Constitution which deals with "Protection and Promotion of Fundamental and other Human Rights and Freedoms". The Constitutional Court is not a court of competent jurisdiction envisaged under article 50 (1) of the Constitution where this aspect of the petition on issue 1 primarily falls. The Constitutional Court only handles questions as to interpretation of the Constitution under article 137 of the Constitution. The question of whether there was reasonable or probable cause to charge Kamateni Ingrid Turinawe, Mugumya Sam, and Mwijukye Francis as well as Walakira Mathew, Mayanja Robert and Ssempebwa Tonny with treason and another count of concealment of treason is a matter of evidence and not interpretation of the Constitution and could be handled by the High Court before whom the persons on whose behalf the petition had been filed were charged. Even if the charge amounted to violation of the rights of the petitioners under articles 28, 29, 38, 43 and 44 of the Constitution which guarantee inter alia the right to a fair hearing, protection of freedom of conscience, expression, movement, religion, assembly and association, the right to participate in civic rights and activities as well as non derogation from the right to a fair hearing, it could be handled by a court of competent jurisdiction such as the High Court. Any question as to interpretation of the Constitution which arises in the course of proceedings in such a court of competent jurisdiction could always be referred for interpretation of the Constitution by Constitutional Court. Enforcement of fundamental rights and freedoms is the basic role and duty of courts of competent jurisdiction under article 50 (1) of the Constitution. Such a competent court

5 can not only order the release of persons unfairly arrested or maliciously prosecuted but also order for redress which includes compensation that can be assessed.

The question of whether there was any evidence to justify or sustain the charge is a matter that can be handled by the High Court. Furthermore, the case against the persons arrested, the subject matter of this petition was dismissed for want of
10 prosecution. In any subsequent action, the acts of arrest could be declared unconstitutional by a court of competent jurisdiction.

There is no controversy about the meaning of any of the articles of the Constitution which the petitioner alleges were infringed by the arrest, detention and trial of the persons, the subject of the alleged violation of human rights. The jurisdiction of the
15 Constitutional Court should only be invoked where there is a question as to interpretation of the Constitution as clearly provided for by article 137 (1) of the Constitution. Because the issue is not without precedents, I will endeavour to elaborate in some detail my reasons for this decision below.

Article 137 (1) of the Constitution confers jurisdiction on the Constitutional Court and is
20 couched in mandatory language. It provides in the head note thereof that it is about **"Questions as to the interpretation of the Constitution"**. Secondly, 137 (1) is couched in mandatory language on the issue of jurisdiction of the Constitutional Court and provides that:

"Any question as to interpretation of the Constitution shall be determined by the
25 Court of Appeal sitting as a Constitutional Court."

Article 137 (1) and (2) of the Constitution do not only provide for what the jurisdiction of the Constitutional Court is in terms of the subject matter it is meant to adjudicate upon, but also defines the quorum of the Court of Appeal for purposes of being constituted as a Constitutional Court. The question remains what "a question as to interpretation" is?

30 The mandate of the Constitutional Court only arises where there is a doubt or precisely a dispute as to the meaning of an Article or Articles i.e. *a question as to interpretation*. Secondly, courts of competent jurisdiction are the primary courts to enforce fundamental rights and freedoms under article 50 (1) of the Constitution. Thirdly a cause

5 of action is defined by Article 137 (3) provided there is a question as to interpretation
involved. Article 137 (3) provides for allegation or allegations that an act, omission or
law is inconsistent with an Article or Articles of the Constitution. Such an allegation does
not necessarily confer jurisdiction on the Constitutional Court because it may not
necessarily have any question or questions as to interpretation of the Constitution. This
10 is based on the holding of the Supreme Court per Mulenga JSC, Kanyeihamba JSC and
Wambuzi CJ in **Ismail Serugo v Attorney General and another Constitutional Appeal
No. 2 of 1998** as I shall discuss later in this judgment.

For purposes of my decision I have found great need in view of numerous decisions of
the Constitutional Court and Supreme Court on the question of jurisdiction, to further
15 emphasise the phrase used under article 137 of the Constitution of "*a question as to
interpretation of the Constitution*". My understanding is that the word '*question*' used in
Article 137 (1) means "controversy" or imports the meaning of an "arguable issue" which
discloses a genuine dispute about interpretation of the Constitution so as to resolve the
controversy. If the word "*question*" under Article 137 (1) is read to mean "*controversy*"
20 with particular reference to controversy as to interpretation, it would mean that the
Constitutional Court ought to only determine petitions or references where there is a
controversy or controversies about the meaning of a provision of the Constitution. This
meaning is possible because the High Court has the constitutional mandate to interpret
any provision of the Constitution unless there is a dispute about the meaning thereof. In
25 that regard, all judicial officers take a judicial oath to uphold the constitution and the
laws of Uganda as established there under.

The relevant part of Article 137 of the Constitution is quoted for ease of reference:

- 30 (1) Any question as to the interpretation of this Constitution shall be
determined by the Court of Appeal sitting as the Constitutional Court.
- (2) When sitting as a Constitutional Court, the Court of Appeal shall consist of
a bench of five members of that court.

- 5 (3) A person who alleges that—
- (a) an Act of Parliament or any other law or anything in or done under the authority of any law; or
- (b) Any act or omission by any person or authority, is inconsistent with or in contravention of a provision of this Constitution, may
- 10 petition the Constitutional Court for a declaration to that effect, and for redress where appropriate.
- (4) Where upon determination of the petition under clause (3) of this Article the Constitutional Court considers that there is need for redress in addition to the declaration sought, the Constitutional Court may—
- 15 (a) grant an order of redress; or
- (b) refer the matter to the High Court to investigate and determine the appropriate redress.
- (5) Where any question as to the interpretation of this Constitution arises in any proceedings in a court of law other than a field court martial, the
- 20 court—
- (a) may, if it is of the opinion that the question involves a substantial question of law; and
- (b) shall, if any party to the proceedings requests it to do so, refer the question to the Constitutional Court for decision in accordance with
- 25 clause (1) of this Article.
- (6) Where any question is referred to the Constitutional Court under clause (5) of this Article, the Constitutional Court shall give its decision on the question, and the court in which the question arises shall dispose of the case in accordance with that decision.
- 30 (7) Upon a petition being made or a question being referred under this Article, the Court of Appeal shall proceed to hear and determine the petition as

5 soon as possible and may, for that purpose, suspend any other matter pending
before it.”

Adopting a historical perspective to the issue of jurisdiction to enforce fundamental rights and freedoms and a separate jurisdiction to interpret the Constitution, the **1967 Constitution of the Republic of Uganda** also had provisions for determination of
10 questions as to the interpretation of the Constitution by the High Court under Articles 87 and 88 of that Constitution and gave a separate jurisdiction for enforcement of fundamental rights and freedoms. These Articles are reproduced for ease of reference and provide that:

Article 87

15 1) Where any question as to the interpretation of this Constitution arises in any proceedings in any court of law, other than a court-martial, and, the court is of opinion that the question involves a substantial question-of law the court may, and shall if any party to the proceedings so requests, refer the question to the High Court consisting of a bench of not less than three judges of the
20 High Court:

Provided that no such question need be so referred if the court is of the opinion that it is not sufficiently important to the proceedings to require a reference to the High Court.

25 (2) Where any question is referred to the High Court in pursuance of this Article, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision.

Article 87 of the 1967 Constitution gave some limitations similar to Article 137 (5) of the
30 1995 Constitution in that it firstly dealt with references where an issue or question as to interpretation arises in a proceeding before a court of law other than a court martial (In

5 the 1995 Constitution it is a field court martial which is excepted and not all military
courts). The 1967 Ugandan Constitution used the wording that the question for
reference is for determination of a question as to interpretation. Secondly, under the
1967 Constitution whether a question as to interpretation has arisen has to be in the
opinion of the court which finds that it involves a substantial question of law. Under the
10 1967 Constitution Article 87 is read in conjunction with Article 88 which provides that:

Article 88

"Where pursuant to the provisions of this Constitution any question is referred to
the High Court,

(a) as to the interpretation of this Constitution; or

15 (b) as to whether any person was validly elected to the office of President or as a
member of the National Assembly, the High Court shall proceed to hear and
determine the question as soon as may be and may for that purpose suspend any
other matter pending before it until the conclusion of that question.

20 This was distinguished from enforcement of fundamental rights and freedom. Article 22
of the 1967 Constitution provided separately for enforcement of the rights and
freedoms which rights were enshrined under Chapter 3 of that Constitution. It provided
that:

Article 22

25 "(1) Subject to the provisions of clause (5) of this Article, if any person that alleges
that any of the provisions of Articles 8 to 20 inclusive has been, is being or is
likely to be contravened in relation to him, then without prejudice to any other
action with respect to the same matter that is lawfully available, that person may
apply to the High Court for redress.

30

5 (2) The High Court shall have original jurisdiction to hear and determine any
application made by any person in pursuance of clause (1) of this Article, and may
make such orders, issue such writs and give such directions as it may consider
appropriate for the purpose of enforcing, or securing the enforcement of, any of
the provisions of the said Articles 8 to 20 inclusive to the protection of which the
10 person concerned is entitled:

Provided that the High Court shall not exercise its powers under this
clause if it is satisfied that adequate means of redress for the contravention
alleged are or have been available to the person concerned under any other law.

15 (3) Any person aggrieved by any determination of the High Court under this
Article may appeal there from to the Court of Appeal under Article 89.

(4) No appeal shall lie from any determination under this Article that any
application is merely frivolous or vexatious.

(5) Parliament may make provision, or may authorize the making of provision,
20 with respect to the practice and procedure of any court for the purpose of this
Article and may confer upon that court such powers, or may authorize the
conferment thereon of such powers, in addition to those conferred by this Article
as may appear to be necessary or desirable for the purposes of enabling that
court more effectively to exercise the jurisdiction conferred upon it by this
25 Article."

The above is the equivalent of Article 50 of the 1995 Constitution of the Republic of
Uganda. There were historically two jurisdictions relating to enforcement of fundamental
rights and freedoms and questions as to interpretation and issues of whether a person is
duly elected to office of President or to the National Assembly. In the 1967 Constitution
30 the above issues could only be determined by the Constitutional Court which was

5 constituted to try particular matters by a bench of not less than three judges of the High Court.

Under the 1995 Constitution, the Constitutional Court and the Supreme Court of Uganda have variously considered the jurisdiction of the Constitutional Court. In
10 **Constitutional Petition No 22 of 2010; Asiimwe Gilbert v Barclays Bank Uganda Ltd, Manirahuha Charles and Kototyo W. William Consolidated with Constitutional Petition No. 01 of 2010 Asiimwe Gilbert v Attorney General**, the Constitutional Court made a clear distinction between enforcement by a court of competent jurisdiction and interpretation by the Constitutional Court. The Constitutional Court unanimously held
15 that:

“The jurisdiction of this Court has been firmly resolved in a number of decisions of this court and of the Supreme Court in its appellate capacity as the Constitutional Appeal Court. First in the case of **Attorney General versus Major General David Tinyefuza Constitutional Appeal No. 1 of 1987** and again in
20 **Ismail Serugo vs. KCC and Attorney General** (supra). Those authorities have been followed ever since.

It was held in the above authorities that *this Court has jurisdiction only under Article 137 of the Constitution to interpret the Constitution. It is not concerned with and has no jurisdiction to entertain matters relating to violation of*
25 **rights under the Constitution for which parties seek redress. Such matter ought to be brought before a competent Court under Article 50 for redress.**

However, this Court is only competent to give redress under Article 50 when the matter has first come properly before it for interpretation under Article 137 and not otherwise. (Emphasis added in bold)

30 The holding that the court has only jurisdiction to interpret the Constitution sets out the specialised jurisdiction of the Constitutional Court though the Constitutional Court stopped short of using the words in the constitution which is to adjudicate on *questions as to interpretation*. In my opinion this phrase is in the Constitution itself and can be implied in that decision because the aspect of jurisdiction to decide only controversies
35 about interpretation of a provision of the Constitution came out.

5 In **Ismail Serugo v Kampala City Council & Attorney General Constitutional Appeal No. 2 of 1998 (unreported)** Mulenga JSC made a distinction between Order 7 rule 11 of the Civil Procedure Rules and Order 6 rule 29. The issue was whether the pleadings are struck out for not disclosing a cause of action or whether the suit was not maintainable on a point of law. He noted with reference to the authority of **Nurdin Ali**
10 **Dewji & others v G.M.M Meghji & Co. and Others (1953) 20 EACA 132** that there was criticism of the judge in that case for not making a distinction between the rejection of a plaint under Order 7 rule 11 of the Civil Procedure Rules and dismissal of a suit on an issue of law under order 6 rule 29. He noted that this decision was followed in **Uganda in Wycliffe Kiggundu v Attorney General Civil Appeal No 27 of 1993.**
15 Mulenga JSC noted that in the Ismail Serugo (supra) case the petition was dismissed not for any defect inherent in the petition but for not disclosing a cause of action (See Pages 180 – 182). In line with his decision a petition discloses a cause of action where it complies with Article 137 (3) of the Constitution. To disclose a cause of action, it is not essential for a petitioner to be a person aggrieved. It is not essential for the petitioner's
20 rights to have been violated by the alleged inconsistency or contravention of the Constitution for there to be a cause of action. The honourable judge held that it was a proper case for the petition to have been dismissed under Order 6 rule 29 of the Civil Procedure Rules on a point of law rather than having it rejected under Order 7 rule 11 of the CPR at the level of pleading only. Thereafter Mulenga JSC considered the issue of
25 jurisdiction separately. He held as follows:

"Although there are a number of issues in that case decided on the basis of majority view, it is evident from a proper reading of the seven judgments in that case, that it was the unanimous holding of the court that the jurisdiction of the Constitutional Court was exclusively derived from Article 137 of the Constitution.
30 It was not a holding in any of the judgments that Article 50 of the Constitution confers, on the Constitutional Court, any additional and/or separate jurisdiction

5 to enforce the right and freedoms guaranteed under the Constitution. It seems to
me that what Mr. Mbabazi may have misconstrued the holding.....that the
Constitutional Court was "a competent court" for purpose of Art 50 to which an
application (for redress) may be made when such right to freedom is infringed or
threatened. **It must be noted, however, that this holding is subject to a rider,**
10 **again variously expressed in the several of the judgments, to the effect that**
such application for redress can be made to the Constitutional Court, only in
the context of a petition under Art 137 brought principally for
interpretation of the Constitution. It is provisions in clauses (3), and (4) of Art
137 that empower the Constitutional Court, when adjudicating on a petition for
15 interpretation of the Constitution, to grant redress where appropriate. Clause (3)
provides in effect, that when a person petitions for a declaration on interpretation
of the Constitution, he may also petition for redress where appropriate. "
(Emphasis added)

In the above holding, Mulenga JSC generally referred to Article 137 as the Article
20 conferring jurisdiction on the Constitutional Court. Surprisingly, he made reference to
Article 137 (3) for the proposition that it confers jurisdiction when a petition is filed
there under. He held that the Constitutional Court is competent for that purpose only
upon determination of the petition under Article 137 (3).

An elaborate exposition of the meaning of Article 137 (3) is called for from the same
25 judgment and in the context of the above decision because no further attempt was
made to refer to the words of article 137 (1) of the Constitution. Article 137 (3) only
provides for what should be alleged in a petition but does not necessarily deal with
jurisdiction of the Constitutional court in light of Article 137 (1) thereof. Article 137 (1)
of the Constitution of the Republic of Uganda is the primary article that confers
30 jurisdiction on the Constitutional Court. This is further illustrated by the decision of

5 Kanyeihamba JSC in his judgment at page 239 when he clearly held that the question of jurisdiction should be distinguished from that of cause of action in the following words:

"However, I am constrained to comment very briefly on some other issues raised by the pleadings in this appeal. In my opinion, the question of cause of action must be distinguished from the matter of jurisdiction. The court may have
10 jurisdiction while the plaintiff lacks a cause or a reasonable cause of action and vice versa.

In other words, a plaintiff may have a perfectly legitimate and reasonable cause but the court before which the plaintiffs filed lacked jurisdiction, just as the court may have jurisdiction but the litigant before it lacked cause of action...."

15 His Lordship further held that "it was erroneous for any petition to rely solely on the provisions of Article 50 or any other Article of the Constitution without reference to the provisions of Article 137 which is the sole Article that breathes life in the jurisdiction of the Court of Appeal as a Constitutional Court." The learned justice however did not refer to any particular clause of Article 137 which has numerous other Articles other than the
20 one conferring jurisdiction (Article 137 (1)). In the same case the decision of Wambuzi CJ puts the matter succinctly when he held at page 204 that:

"In my view for the Constitutional Court to have jurisdiction the petition must show, on the face of it, that interpretation of a provision of the Constitution is required. It is not enough to allege merely that a Constitutional provision has
25 been violated. If therefore any rights have been violated as claimed, these are enforceable under Article 50 of the Constitution by another competent court."

By holding that it is not sufficient to allege that a Constitutional provision has been violated, Wambuzi CJ makes it necessary for the petition to be maintainable under Article 137 (1) of the Constitution of the Republic of Uganda to have in it a question as
30 to interpretation of the Constitution and not only an allegation of inconsistency with a provision of the Constitution under article 137 (3) of the Constitution. An allegation of

5 inconsistency with an article of the Constitution can fulfil the requirements of Article 137
(3) of the Constitution but it is not sufficient on the face of it to merely allege breach of
or inconsistency with an Article or Articles of the Constitution by any act, omission or
law. For the Constitutional Court to have jurisdiction such an allegation must have in it a
controversy as to interpretation of the Constitution of the Republic of Uganda. It follows
10 that the question before court should involve a controversy about interpretation before
the Constitutional Court assumes jurisdiction in the matter. As I have noted above, a
question for interpretation must be an arguable case about interpretation and where
there is some doubt about the meaning which the person having the doubt needs
cleared or their point of view adopted by the court while the adverse party has a
15 contrary view about the meaning and scope of an article of the Constitution. In other
words, it must be a doubt which makes the meaning of an article controversial and
which controversy should be cleared by the Constitutional Court.

**20 The Role of Courts of Competent Jurisdiction under article 50 (1) of the
Constitution**

All courts and authorities should uphold the Constitution. Nobody can uphold the
Constitution unless they understand it. Nobody can understand a provision or
provisions of the Constitution unless he or she ascertains the meaning thereof. The
meaning can only be ascertained through interpretation. Every Judicial Officer takes a
25 judicial oath to do right to all manner of people in accordance with the Constitution.
Part of the oath reads:

“ ... I will well and truly exercise the judicial functions entrusted to me and will do
right to all manner of people in accordance with the Constitution of the Republic
of Uganda as by law established--”

30 The power of competent courts to interpret the Constitution is also envisaged by Article
274 (1) of the Constitution which provides that:

5

274 (1)...

"subject to the provisions of this Article, the operation of the existing law after the coming into force of this Constitution shall not be affected by the coming into force of this Constitution but the existing law shall be construed with such
10 modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitutions."

No one can construe a law with the necessary modifications, adaptations and qualifications to bring it into conformity with the Constitution unless they have understood and ascertained the meaning of the constitutional provision applied
15 through interpretation. The word "construe" under article 274 (1) can be considered in its own light. The term 'Construction' is derived from 'construe' as used in Article 274 and is defined in the **8th Edition of Black's Law Dictionary** as:

"The act or process of interpreting or explaining the sense or intention of a writing; the ascertainment of a document's meaning in accordance with judicial
20 standards..."

"Construction, as applied to written law, is the art or process of discovering and expounding the meaning and intention of the authors of the law with respect to its application to a given case, where that intention is rendered doubtful either by reason of the fact that the given case is not explicitly provided for in the law."

25 Henry Campbell Black, Handbook on the Construction and Interpretation of the Laws 1 (1896)

"Some authors have attempted to introduce a distinction between 'interpretation' and 'construction.' Etymologically there is, perhaps, such a distinction; but it has not been accepted by the profession. For practical purposes, any such distinction
30 may be ignored, in view of the real object of both interpretation and construction, which is merely to ascertain the meaning and will of the lawmaking

5 body, in order that it may be enforced." William M Life et al Brief Making and the
Use of Law Books 337 (3d ed. 1914)
... " There is no explanation of the distinction between interpretation and
construction [in Blackstone's], nor can it be inferred from the matters dealt away
under each head. The distinction is drawn in some modern works, but it is not
10 taken in this book because it lacks an agreed basis. Some writers treat
interpretation as something which is only called for when there is a dispute about
the meaning of statutory words, while speaking of construction as a process to
which all statutes, like all other writings, are necessarily subject when read by
anyone. Others treat interpretation as something which is mainly concerned with
15 the meaning of statutory words, while regarding construction as a process which
mainly relates to the ascertainment of the intention of legislature." Rupert Cross,
Statutory Interpretation 18 (1976).

It is my considered opinion that the last meaning in the immediately preceding passage
quoted above is the meaning of interpretation adopted by the Constitutional Court and
20 Supreme Court. This postulates that interpretation is only called for when there is a
dispute about the meaning of statutory words. This captures precisely the purpose of
Article 137 (1) of the Constitution which confers jurisdiction on the Constitutional Court
to determine any dispute as to the meaning of a provision of the Constitution. It is
clearly the plain and unambiguous meaning of Article 137 (1) (supra) to refer questions
25 as to interpretation to the Constitutional Court which has the exclusive mandate to
resolve any such doubt or dispute as to the meaning of an Article of the Constitution.
For instance a court of law before which a question as to interpretation of the
Constitution arises refers the matter to the Constitutional Court to get directions about
the meaning. On the other hand, the High Court ascertains the meaning of any
30 provision of the Constitution inclusive of those dealing with fundamental rights and

5 freedoms before applying the relevant law where there is no dispute about the meaning of a provision.

The jurisdiction of the High Court and other Courts of competent jurisdiction to interpret the Constitution and not only the part which deals with fundamental rights and freedoms under Article 50 was affirmed by the Court of Appeal in **Attorney General v**
10 **Osotraco Ltd Civil Appeal No.32 of 2002** where it was held that the High Court has power to construe the relevant existing law with adaptations and modifications. In **Osotraco Ltd v Attorney-General [2003] 2 EA 654**, Justice F.M.S Egonda - Ntende Judge of the High Court as he then was construed section 15 of the Government Proceedings Act to bring it in conformity with the Constitution under Article 273 (1)
15 (now 274 (1)) of the Constitution. This is what he said about the jurisdiction of the High Court:

“The Constitution of Uganda is the supreme law, and any law that is inconsistent with it, is void to the extent of the inconsistency vide Article 2 of the Constitution. At the same time Article 273 of the Constitution requires existing law to be
20 construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution. I shall set it out in full.

“273 (1) Subject to the provisions of this Article, the operation of the existing law after the coming into force of this Constitution shall not be
25 affected by the coming into force of this Constitution but the existing law shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution.

(2) For the purposes of this Article, the expression “existing law” means
30 the written and unwritten law of Uganda or any part of it as existed immediately before the coming into force of this Constitution, including

5 any Act of Parliament or statute or statutory instrument enacted or made
before that date which is to come into force on or after that date”.

I am aware that under Article 137(5) of the Constitution if any question arises as
to the interpretation of the Constitution in a court of law (which includes this
Court), the Court may, if it is of the opinion that the question involves a
10 substantial question of law refer the question to the Constitutional Court for
decision in accordance with clause (1) of Article 137. It is the Constitutional Court
to determine any question with regard to interpretation of the Constitution. But
where the question is simply the construing of existing law with such
modifications, adaptations, qualifications and exceptions as to bring such law into
15 conformity with the Constitution, in my view, this may be determined by the
court before which such a question arises.

The question before me implicit in the issue whether the plaintiff is entitled to an
eviction order or not against the Attorney-General is whether the existing law, in
terms of the proviso to section 15 of the Government Proceedings Act, is in
20 conformity with the Constitution of Uganda, and if not, whether it may be
construed in such a manner as to bring it in conformity with the Constitution of
Uganda. The task before me is not to interpret the Constitution but to subject
existing law to the Constitution, and if necessary comply with Article 273 of the
Constitution, and construe the existing law with such modifications, adaptations,
25 qualifications and exceptions, so as to bring it into conformity with the
Constitution.”

The Attorney General appealed the decision to the Court of Appeal in **Civil Appeal No
32/2002 Attorney General v Ostraco Ltd Before A.E. N. Mpagi – Bahigeine, C.N. B.
Kitumba, S.B. K Kavuma JJA** held:

30 “The learned Judge in construing section 15(1) (b) not to be in conformity with
the Constitution claimed to be acting under Article 273(1) which provides:-

5 "273. (1) Subject to the provisions of this Article, the operation of the
existing law after the coming into force of the Constitution shall not be
affected by the coming into force of this Constitution but the existing law
shall be construed with such modifications, adoptions, qualifications and
10 exceptions as may be necessary to bring it into conformity with this
Constitution.

(2) For the purposes of this Article, the expression "existing law" means the
written law of Uganda or any part of it as existed immediately before the
coming into force of this Constitution, including any Act of Parliament or
Statute or Statutory instrument enacted or made before that date which is
15 to come into force on or after that date".

This court has in a number of cases pronounced itself on the import of Article 273
and ruled that it only empowers all courts to modify existing unjust laws without
necessarily having to refer all such cases to the Constitutional Court. This
provision enables the court to expedite justice by construing unjust and archaic
20 laws and bringing them in conformity with the Constitution, so that they do not
exist and are void.

This Article does not oust the jurisdiction of the Constitutional Court under Article
137 where it can later declare these laws unconstitutional. This Court has applied
Article 273 in a number of cases. In **Pyarali Abdu Ismail v Adrian Sibbo,**
25 **Constitutional Petition No. 9 of 1997**, this court directed the trial Judge to
construe and modify section 11(4) (b) of the Expropriated Properties Act No. 9 of
1982 which was prescribing unfair and inadequate compensation for
compulsorily acquired property. Section 11(4) (b) was adapted and qualified so as
to conform to Article 26(2) (b) (1) of the Constitution providing for prompt
30 payment of fair and adequate compensation for the property. The matter had
been referred to the Constitutional Court under Article 137(5). This course of
action was found not to have been necessary. The judge should have moved
under Article 273, without wasting anytime and applied the Constitutional
provisions. ...

35 The Court of Appeal affirmed the unlimited original jurisdiction of the High Court to
interpret the law.

5 **The Principle of the Rule of Law**

The principle of the **Rule of Law** which allows court to inquire into the violations of the law was considered in **Attorney General v Kabourou [1995] 2 LRC 757** by the Court of Appeal of Tanzania which principle established that the jurisdiction of the court to
10 inquire into breach of the law, in particular the Constitution cannot be ousted. The Court of Appeal of Tanzania held that;-

“One of the fundamental principles of any democratic Constitution, including ours, is the rule of law. The principle is so obvious and elementary in a democracy that it does not have to be expressly stated in a democratic Constitution...The
15 Constitution cannot be interpreted so as to protect unconstitutional or illegal acts or deeds of the ...by the courts of law...It follows therefore that any act or deed made contrary to the Constitution or the relevant law is subject to review or inquiry by the appropriate courts of law... Under this principle, nobody is above the law of the land and similarly nobody is authorized to act unconstitutionally or
20 illegally. ”

The Tanzania Court of Appeal put its finger on the very foundation of Constitutional and Administrative Law, which gives unlimited jurisdiction to the High Court and other courts of competent jurisdiction to ensure that authorities act within powers granted to them by law. Powers are granted by the Constitution and other legislation. If the court
25 cannot read it, interpret it for meaning and apply it, then it has lost its power to uphold the Constitution and the rule of law. This view is consistent with the judicial oath cited above and there is no need to set out the various mandates of authorities such as Police, DPP and the Attorney General which may be inquired into by a court of competent jurisdiction.

30 In **Osotraco v Attorney General** (supra), it was held that the act of the High Court, moving under Article 273 (now 274) did not in any way encroach on the powers of the

5 Constitutional Court under Article 137 but was used to protect the respondent's right to
property under Article 26. The process involved interpretation by ascertaining the
meaning of the Article applied. Furthermore, under the *ultra vires* doctrine, anybody
can file a suit for Judicial Review on grounds that someone has acted *ultra vires* his or
her powers granted in the Constitution provided there is no dispute as to the meaning
10 of a constitutional provision sought to be enforced which would call for interpretation
under article 137 of the Constitution.

Proceedings for enforcement of rights and freedoms under **Article 50 of the
Constitution** also involve interpretation of Articles on fundamental rights and freedoms
and the principles for interpretation of fundamental rights and freedoms in the main,
15 are well trodden and do not need to be restated by the Constitutional Court again and
again. As my learned brother Justice Egonda – Ntende has said in his lead judgment, in
interpreting fundamental rights and freedoms, the courts have adopted a generous and
purposive approach designed to give individuals the full benefit of their rights under the
bill of rights enshrined in the Constitution. The usual precedents have been cited in
20 many decisions of the Constitutional Court just as my learned brother has cited in this
case and it is highly doubtful whether there is a dispute about the meaning of
provisions of the constitution already interpreted before. Where the Constitutional Court
for instance has interpreted a provision, should it interpret the same provision again in
another case? When will disputes about the meaning of constitutional provisions ever
25 end?

The fact that a competent court acting under the constitutional powers to enforce
fundamental rights and freedoms have special jurisdiction to interpret the Constitution
is emphasized by the case of **Minister of Home Affairs and another v Fisher and
another [1979] 3 All ER 21** where it was held by the Privy Council that the bill of rights
30 was influenced in many countries by the United Nations Charter on Human rights and
calls for a generous and purposive interpretation. Lord Wilberforce at pages said 25 - 26

5 "It is known that this chapter, as similar portions of other Constitutional
instruments drafted in the post-colonial period, starting with the Constitution of
Nigeria, and including the Constitutions of most Caribbean territories, was greatly
influenced by the European Convention for the Protection of Human Rights and
Fundamental Freedoms. That convention was signed and ratified by the United
10 Kingdom and applied to dependent territories including Bermuda. It was in turn
influenced by the United Nations Universal Declaration of Human Rights 1948e.
*These antecedents, and the form of Chapter I itself, call for a generous
interpretation avoiding what has been called 'the austerity of tabulated legalism',
suitable to give to individuals the full measure of the fundamental rights and
15 freedoms referred to.* (3) Section 11 of the Constitution forms part of Chapter I. It
is thus to 'have effect for the purpose of affording protection to the aforesaid
rights and freedoms' subject only to such limitations contained in it 'being
limitations designed to ensure that the enjoyment of the said rights and
freedoms by any individual does not prejudice ... the public interest'." (Emphasis
20 added).

This holding was echoed in the case of **The Queen v Big M Drug Mart [1986] LRC 332**
at 364 when the Supreme Court of Canada held that in interpreting the charter on rights
the courts should adopt a generous rather than a legalistic approach aimed at fulfilling
the purpose of the guarantee and securing for individuals the full benefit of the Charters
25 protection.

It would be strange to restrict the jurisdiction of the High Court to guarantee the full
benefit of chapter 4 of the Constitution which declares, promotes and enforces
fundamental rights and other freedoms. In other words a purposive approach to
protection and promotion of fundamental and other human rights and freedoms would
30 allow the High Court to be actively involved in interpreting the Constitution unless and
until there is a controversy or dispute about the meaning of a provision as to call for

5 interpretation by the Constitutional Court. A restrictive approach to jurisdiction does not secure for individuals the full benefit of enforcement provisions.

Whenever there is controversy or any question arising about the meaning of an Article which the court is in doubt about then it is a question as to interpretation of the Constitution that should be referred to the Constitutional Court.

10 By analogy of what may be a question of law worth referring to the appropriate court I would illustrate with the decision of Lord Denning in **R v Westminster (City) London Borough Rent Officer, ex parte Rendall [1973] 3 All ER 119** where his lordship considered whether there was a question worth referring by a rent officer under a statutory provision when he held:

15 "Section 6 (2) only applies where there is a 'question arising'. If the rent officer makes his own estimate of the rateable value of the part (by doing his own apportionment, rough and ready though it be) and it comes under £400, and there is no challenge to his jurisdiction, then there is no 'question arising'. There is nothing to refer to the county court. But if he has doubt whether it is over or
20 under £400, so that a question arises in his own mind about it, then he should refer it to the county court. Again, if the landlord takes objection or if there is a challenge to the jurisdiction, then, of course, a question arises and it must go to the county court."

The decision demonstrates that a question or controversy is always about a doubt as to
25 meaning or applicability of a statutory provision. One party asserts and another denies and it is not just a matter of pleading as directed by the rules of framing issues under order 15 rule 1 of the Civil Procedure Rules and article 137 (3) of the Constitution. Order 15 rule 1 of the Civil Procedure Rules provides that:

1. Framing of issues.

30 (1) Issues arise when a material proposition of law or fact is affirmed by the one party and denied by the other.

5 (2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute a defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue. ...”

10 My view is supported by the Supreme Court decision in **Ismail Serugo v Attorney General** (supra) and the decision of the Constitutional Court in **Constitutional Petition No 22 of 2010; Asimwe Gilbert v Barclays Bank Uganda Ltd, Manirahuha Charles and Kototyo W. William Consolidated with Constitutional Petition No. 01 of 2010 Asimwe Gilbert v Attorney General**, (supra) and is that it is not sufficient to allege a
15 material proposition of law or fact which is denied by the other party in pleadings. There must be a substantial question of law for determination by the Constitutional Court. Where the meaning of the Article is clear and is not in dispute, there is no question as to interpretation of the Constitution in terms of article 137 (1) of the Constitution and the Constitutional Court has no jurisdiction in the matter.

20 In this petition the agreed issue number one of whether the acts of arrest and charging citizens with treason and or terrorism for a non-violent act of peaceful demonstration by walking to work contravened articles 28 (1), 28 (3), 28 (7), 28 (12), 38 (2), 43 (2) (a), (b) and 44 (a) of the Constitution discloses a cause of action only in pleading under Article 137 (3) of the Constitution but upon the hearing and arguments for and against did not
25 disclose a dispute as to interpretation of the Constitution but a matter for enforcement of fundamental rights and freedoms under article 50 (1) of the Constitution. The main contention was that there was no justifiable or reasonable cause for the arrest of the persons on whose behalf the petitioner filed the petition. Secondly, the freedom of movement, Association and expression of the parties under article 29 of the constitution
30 was infringed. The question of reasonable cause or probable cause involved the court in establishing whether there was any evidence to support the charges. The petition does not consider any controversy or dispute as to the meaning of any provisions of the

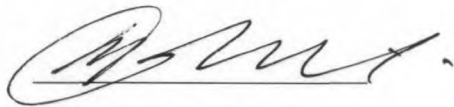
5 Constitution but merely calls for enforcement of fundamental rights and freedoms of
the persons on whose behalf the petition was filed. I must add that the petitioner had a
right as confirmed by article 50 (2) of the Constitution to file the petition in the High
Court on behalf of the persons who were arrested and the High Court had unlimited
original jurisdiction under articles 139 (1) and 50 of the Constitution to enforce the
10 rights of the persons by ordering their release or order any other redress which may
include compensation. Even if the act of prosecuting the victims of the alleged
infringement of fundamental rights and freedoms was unconstitutional, it was
enforceable by the High Court and not the Constitutional Court. A mere finding that a
provision of the Constitution has been infringed is a finding that the act of infringement
15 is unconstitutional and the High Court has jurisdiction to declare that.

No question was raised before the court about the meaning of articles in question i.e.
article 29 which deals with the freedom of conscience, association and assembly. The
petition disclosed a question or questions that called for enforcement of the rights and
the power of the High Court included power or jurisdiction to determine whether such a
20 right had been violated by the respondent and to order redress as appropriate.

For the above reasons, it is my humble view that no question as to interpretation of the
constitution arose because there was no dispute for decision of the constitutional court
about the meaning of any constitutional provision. I therefore respectfully disagree with
the conclusion of my learned brother that the acts of arresting and charging citizens
25 with treason and or terrorism for non-violent acts of peaceful demonstration by walking
to work was unconstitutional on the ground of lack of jurisdiction of the Constitutional
Court. It was a matter that was for enforcement of fundamental rights and freedoms
under article 50 and not for interpretation of the constitution and therefore the court
did not have jurisdiction to entertain the matter. I would in the circumstances express no
30 opinion about the conclusion on issue number 1 and hold that it is a matter that ought
to have been referred to the High Court for enforcement

5 In light of the my views on issues numbers 1 and 2, this court lacks jurisdiction to
adjudicate on issue number one and as far as issue number two is concerned, I agree
with the decision of my learned brother justice Egonda-Ntende and I do not have any
useful thing to add. In the premises, I would disallow issue number 2 with costs and
refer issue number 1 for enforcement by the High Court with each party to bear its own
10 costs.

Dated at Kampala the 3rd day of July 2019



CHRISTOPHER MADRAMA IZAMA

15 **JUSTICE OF APPEAL/CONSTITUTIONAL COURT**

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
(*Coram: Owiny- Dollo, DCJ., Kasule, Egonda-Ntende, Muhanguzi, Madrama
Izama, JJA / JJCC*)

Constitutional Petition No. 53 of 2011

BETWEEN

Foundation For Human Rights Initiative..... Petitioner

AND

Attorney GeneralRespondent

JUDGMENT OF FREDRICK EGONDA-NTENDE, JA / JCC

Introduction

1. This Petition is brought by the Foundation for Human Rights Initiative, a non-government organization registered under the Non-Governmental Organization Act, CAP 113 and a body corporate, incorporated as a company limited by guarantee under the Companies Act. Its objectives include, among others, protection and promotion of human rights, law reform, advocacy, human rights education and enforcement of human rights.
2. The Petition is brought under article 137(3) of the Constitution of the Republic of Uganda, the Fundamental Rights and Freedoms (Enforcement Procedure) Rules and the Constitutional Court (Petition and Reference) Rules S.I. 91 of 2005.
3. It is supported by the affidavits of Livingstone Sewanyana, the executive director of the petitioner, Ingrid Turinawe Kamateneti and Mwijukye Francis.
4. During conferencing, the parties agreed that the following were the issues for determination by this court:

1) Whether the acts of arrest and charging citizens with treason and or terrorism for a non-violent act of peaceful demonstration by walking to work contravenes articles 28(1), 28(3), 28(7), 28(12), 38(1), 38(2), 43(2), (a)(b) and 44(a), (c) of the Constitution.

2) Whether section 24 of the Police Act Cap 303 that permits the police to arrest and detain a citizen without charge, and or trial for an indefinite period of time is inconsistent with and contravenes Articles 23, 28, 29 and 38 of the Constitution

5. The background of this Petition is that in October 2011, the police with the sanction of the DPP charged with treason, persons that had been arrested for their involvement in peaceful civil protest called “walk to work” organized by political party activists to express their discontent with government policies relating to the economy, inflation and corruption. The petitioner is challenging the constitutionality of the acts of the state. As a result of which, the petitioner is seeking for declarations that:

‘(a) The act of charging citizens with treason and or terrorism both are capital offences, only triable by the High Court and only bailable by the High Court under exceptional circumstances, for a nonviolent act of peaceful demonstration and or intent to demonstrate by walking to work contravenes articles 28(1), 28(3), 28(7), 28(12), 29, 38(1),38(2), 43(2)a & b and 44 a & b of the Constitution.

(b) Section 24 of the Police Act that permits the Police to arrest and detain a citizen without charge, without trial, for an indefinite period of time, is inconsistent with and contravenes articles 23, 28, 29 and 38 of the Constitution.’

6. The respondent opposes the petition and filed an answer to the petition supported by the affidavits of Maureen Ijang and Walugembe Musa.
7. The respondent in answer to the petition contended that the petition was premature and raised no issue or questions for constitutional interpretation. It denied that the respondent had violated or infringed any of the provisions of the Constitution as

alleged in the petition. It further contended that the allegations in the petition were speculative and intended to subvert court process; all arrests and prosecutions done by the said agencies of the state are constitutional and all acts done pursuant to their constitutional and legal mandate; the state agencies were acting with the limitations imposed on fundamental rights and freedoms by article 43 of the Constitution; the state agencies, in carrying out their constitutional duties did not breach any articles of the Constitution; the Director of Public Prosecution has a constitutional duty and discretion to prefer charges of whatever nature depending on the facts and circumstances of the case; and that the preferred charges against the specified persons were lawful and the due process of law was on-going.

8. In relation to section 24 of the Police Act the respondent contends that this fits within the limitations provided under article 43 of the Constitution. The provisions specifically stipulate the circumstances under which preventive arrest can be effected and is not arbitrary. The provision provides for release under certain conditions. It also provides for a remedy in case of any arbitrary arrest.

Submissions of Counsel

9. During the hearing, the petitioner was represented by Mr. Medard Lubega Segona and Mrs. Dorothy Nandugga Kabugo. The respondent was represented by Senior State Attorney, Mr. Richard Adrole.
10. It is Mr. Segona's submission that the arrest of citizens involved in peaceful demonstrations and charging them with treason and or terrorism is inconsistent with the citizen's rights to a fair hearing, freedom of conscience, expression, movement, assembly and association. That the acts of walk to work demonstrations were peaceful and do not constitute a criminal offence. The actions of the state were calculated at detaining political activists in prison in order to deny them their rights under article 28, 29, 38, 43 and 44 of the Constitution. The petitioner relied on the case of Onyango Obbo v Attorney General Constitutional Appeal No.2 of 2002, David Tinyefuza v Attorney General Constitutional Petition No.1 of 1996, Thornhill v Alabama 310 US 88 (1940) to emphasize the fundamentality of the right of freedom of expression.
11. Mr Segona further submitted that the respondent charged the deponents with a capital offence whereupon the grant of bail is cumbersome. This was coupled by

the fact that the case against the deponents was never heard in court due to lack of evidence. This is an illustration that the acts of the state were in bad faith and were intended to deny the citizens their fundamental rights.

12. In reply, Mr. Adrole submitted that the allegations of Ingrid Turinawe and Francis Mwijakye were denied in both the affidavits of Maureen Ijang and Walugembe Musa.

13. Counsel for the petitioner contends that section 24 of the Police Act is unconstitutional in so far as it permits the arrest and detention of citizens without charge and or trial for an indefinite period of time. Counsel for the petitioner relied on the case of Foundation for Human Rights Initiative v Attorney General Constitutional Petition No. 20 of 2006 where court held that section 25 (2) of the Police Act is unconstitutional in as far as it permits detention of an accused person for a longer period than that provided by the Constitution.

14. That section 24 permits abuse and misuse of power by the police. The petitioner contends that the police, under the ambit of preventive arrest, has on several occasions arrested and detained citizens without charge, without access to court and their lawyers which contravenes article 28 and 23 of the Constitution. That the police has used the power granted under section 24 on several occasions to disrupt peaceful rallies and demonstrations which is contrary to article 29 of the Constitution. For this submission, the petitioner cited the case of Paul K. Ssemwogerere and 2 Ors v Attorney General, Supreme Court Constitutional Appeal No. 1 of 2002 for the proposition that while interpreting the constitution, it has to be read together as an integrated whole and with no particular provision destroying the other.

15. In reply, counsel for the respondent contends that the impugned provision is not in contravention of Article 23, 28, 29 and 32 of the Constitution. That Article 23(4) (b) of the Constitution should be given a wide interpretation as it provides for preventive arrest. Section 24 of the Police Act does not allow a police officer to detain a person beyond the constitutional limit.

Analysis

16. Article 137(1) of our Constitution vests this court with jurisdiction to determine any question as to the interpretation of any provision of the Constitution. Article 137 (3) also grants this court the jurisdiction to grant a declaration that a law, act or omission is inconsistent with or contravenes a provision of the constitution.

17. In interpreting the Constitution this court is guided by a number of principles that have been pronounced in a number of cases. The interpretation ought to be generous rather than legalistic so as to achieve the purpose of securing and guaranteeing persons fundamental rights and freedoms. See Fox Odoi-Oywelowo v Attorney General, Constitutional Petition No.8 of 2003 (unreported).

18. In the case of Attorney General v Momodon Jobe (1984) AC 689, an appeal to the Privy Council from the Court of Appeal of Gambia, Lord Diplock made the following observation:-

‘A constitution and in particular that part of it which protects and entrenches the fundamental rights and freedoms to which all persons in the State are to be entitled to be given generous and purposeful Construction.’

19. In Unity Dow vs Attorney General of Botswana 1992 LRC 623, it was held that generous construction means:

‘that you must interpret the provisions of the Constitution in such a way as not to whittle down any of the rights and freedoms unless by way of very clear and unambiguous provisions such interpretation is compelling.’

20. Lastly in interpretation of the Constitution this court ought to look at the Constitution as a whole, with each particular provision not destroying the other but each in support of the other. No one provision of the Constitution must be segregated from the others and all provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the greater purpose of the Constitution. See the case of Attorney General v Major General Tinyenfuza, Supreme Court Constitutional Appeal No. 1 of 1997 (unreported).

21. Bearing in mind the above principles I shall proceed to resolve the issues agreed upon by the parties.

Issue one

22. The petitioner's contention is that the arrest of persons involved in the walk to work demonstrations and the subsequent charging of them with treason is unconstitutional. In the first charge sheet, Kamateneti Ingrid Turinawe, Mugumya Sam and Mwijukye Francis were jointly charged with treason. The statement of offence and particulars of offence are more or less the same as that in the amended charge sheet in which other parties, that is, Walakira Mathew, Mayanja Robert and Sempebwa Tonny are added. The amended charge sheet includes another count of concealment of treason. The amended charge sheet reads as follows:

STATEMENTT OF OFFENCE

CT.1: TREASON CONTRARY TO SECTION 23 (1) (C)
OF THE PENAL CODE ACT, CAP 120.

PARTICULARS OF OFFENCE

KAMATENETI INGRID TURINAWE, MUGUMYA SAM, MWIJUKE FRANCIS AND OTHERS STILL AT LARGE BETWEEN THE MONTHS OF AUGUST AND OCTOBER 2011 IN THE DISTRICTS OF KAMPALA, MITYANA, HOIMA, WAKISO AND OTHER PLACES IN UGANDA CONTRIVED A PLOT TO OVERTHROW THE GOVERNMENT AS BY LAW ESTABLISHED BY FORCE OF ARMS AND EXPRESSED THAT PLOT AT VARIOUS MEETINGS CONVENED IN THE PLACES MENTIONED ABOVE WHERE THEY MOBILISED THE LAUNCHING OF SIMULTANEOUS RIOTS COUNTRYWIDE UNTIL GOVERNMENT OF THE REBULIC OF UGANDA IS OVERTHROWN.

STATEMENT OF OFFENCE

CT.11: CONCEALMENT OF TREASON CONTRARY
TO SECTION 25 OF THE PENAL CODE ACT, CAP 120

PARTICULARS OF OFFENCE

WALAKIRA MATHEW, MAYANJA ROBERT, SEMPEBWA TONNY AND OTHERS STILL AT LARGE BETWEEN THE MONTHS OF AUGUST AND OCTOBER 2011 IN THE DISTRICTS OF KAMPALA AND WAKISO, KNOWING OF A PLOT TO OVERTHROW THE GOVERNMENT OF UGANDA AS BY LAW ESTABLISHED, BY FORCE OF ARMS, DID NOT GIVE INFORMATION THEREOF WITH ALL REASONABLE DISPATCH TO THE MINISTER, ADMINISTRATION, MAGISTRATE OR OFFICER IN CHARGE OF A POLICE STATION OR FAILED TO PREVENT THE COMMISSION OF THE OFFENCE OF TREASON.

23. Section 23 (1) (C) of the Penal Code Act

‘Any person who—
contrives any plot, act or matter and expresses or declares such plot, act or matter by any utterance or by any overt act in order, by force of arms, to overturn the Government as by law established;’

24. Section 25 of the Penal Code Act states:

‘Any person who knowing that any person intends to commit treason does not give information thereof with all reasonable dispatch to the Minister, an administrative officer, a magistrate or an officer in charge of a police station, or use all reasonable endeavours to prevent the commission of the offence of treason commits the offence of misprision of treason and is liable on conviction to imprisonment for life,

25. By the time Ingrid Turinawe and others as stated in the amended charge sheet were charged with treason and concealment of treason accordingly, treason and concealment of treason were criminal offences provided for under the Penal Code and the penalty for the offences was prescribed by law in accordance with article 28 (7) and 28 (12) of the Constitution. In order for a person to be lawfully arrested there must be reasonable suspicion that he or she committed or is about to commit an offence under the laws of Uganda. The state had to have information that would

give rise objectively to a reasonable suspicion that the person charged with treason had committed treason. Neither the Director of Public Prosecutions who approves all prosecutions in this country nor the police officers that investigated this matter, if at all, have filed any affidavits to establish that at the time of arrest of Ingrid Turinawe, Mwijukye and all other persons that were charged with treason, there was credible information giving rise to a reasonable suspicion that they had committed treason.

26. Ingrid Turinawe in her additional affidavit in support of the petition stated that around April 2011, she, together with other people, mobilized and launched a peaceful campaign against the government called walk to work. It was headed by Forum for Democratic Change (FDC), the political party to which she belonged. That they were protesting against corruption and bad governance that had culminated into economic hardship in the country indicated by the increased and high cost of living. The government response was to persecute the political activists and the citizens who were involved in the demonstration. Specifically, that they were beaten, assaulted with tear gas and most of the political party activists were arrested and detained in prison. She stated that Kale Kayihura, the then Inspector General of Police threatened to arrest her following the demonstration. That this was reported as news on television. That she was arrested a week later when she went to visit Dr. Kizza Besigye (the then FDC party president) at his home, who was under house arrest. She was detained at Jinja Police Station and consequently charged with treason.
27. Mwijukye Francis in the affidavit he deposed stated that he was arrested together with Sam Mugumya in a special hire taxi. The arresting officers failed to give a reason for their arrest despite his instance. On two occasions he was told that he was to be charged with conspiracy to commit an offence. After over three days, in the presence of his lawyers, he was informed that he was being charged with the offence of inciting violence. But however, he was eventually charged with the offence of treason.
28. In the respondent's affidavit in reply deposed by Maureen Ijang, a state attorney in the Office of the Attorney General, the respondent, generally denied the allegations and put the petitioner to strict proof. She stated that the Petition was premature, speculative and not supported by evidence. Note should be taken that by then the petitioner had not filed its additional affidavits in support of the petition that were

filed in 2015 to which the respondent replied with a further affidavit in rebuttal deposed by Walugembe Musa. He stated that he is a Detective Assistant Superintendent of Police attached to the Directorate of Crime Intelligence. I will therefore reproduce part of the affidavit as follows.

3. That I have read and had explained to me Constitutional Petition No.53 of 2011 and additional affidavits deposed by Ingrid Turinawe and Mwijukye Francis on 26TH October 2015 and respond as follows.

4. That I know that sometime in August, the Police received credible intelligence that, Ingrid Turinawe Kamateneti, Sam Mugumya and Mwijukye Francis were travelling in a taxi to Nakumatt, Garden City mall, in Kampala.

5. That I know that as a result of the above intelligence, an operation was conducted to arrest the above individuals and as a result both Sam Mugumya and Mwijukye were arrested and taken to Jinja Road Police Station where the two arrested suspects were informed of the crimes against them which included inciting violence and treason.'

29. From the affidavit it is clear that Walugembe Musa was neither the arresting officer nor the investigating officer in the matter. He was neither a witness to the events that ensued. He did not indicate in which capacity he swore the affidavit. His evidence is entirely hearsay. The testimony or affidavit of a witness based on what a witness has heard from another person rather than from direct personal knowledge or experience is hearsay evidence and is generally inadmissible in court unless it falls within certain exceptions. None of the exceptions is available here.

30. Other than the evidence of Walugembe Musa, which this court is barred by the law from considering or taking into account, there is no evidence in rebuttal to the allegations by the petitioner. The respondent has failed to counter the evidence of the petitioner's witnesses. There is no affidavit from the Directorate of Public Prosecutions to justify the charges against the persons charged with treason. There is no evidence by the police investigating officers of the case to suggest that there was a basis for the initial arrest. There is no explanation for the non-prosecution of the charges. The only evidence before this court is the evidence for the petitioners.

31. It is not in dispute that the Ingrid Turinawe, Francis Mwijukye and others named in the charge sheet were charged with 2 offences before Nakawa Magistrates court. The offences were treason and concealment of treason. They were remanded into Luzira Maximum Security Prison. Their initial attempts to apply for bail from the High Court at Nakawa were unsuccessful as the Resident Judge had no available dates to hear the bail applications. They appeared before the magistrates court until they were entitled to statutory bail after spending 180 days on remand.

32. They were never committed for trial to the High Court on account of absence of any evidence. They were eventually discharged.

33. The acts complained of have not been justified by the respondent. There is no justification for the initial arrest. There is no justification for the initial arraignment on capital charges of treason. There is no justification for the non-prosecution of the same.

34. Article 23 (1) of the Constitution provides,

‘No person shall be deprived of personal liberty except in any of the following cases –

(a)
(b)

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

35. Persons can only be deprived of their fundamental right to liberty in accordance with article 23 (1) (c) of the Constitution if, *inter alia*, there is reasonable suspicion that they have committed an offence. Initiating criminal charges against a person, whether for the gravest of offences or for the most minor infraction under the law must not be undertaken without a lawful basis for doing so. Having authority to initiate criminal proceedings is not a licence to launch criminal proceedings with an improper purpose. Criminal proceedings are launched for an improper purpose where there is no justification for raising the charges in the first place. This amounts to abuse of the process of court and is clearly unconstitutional.

36. It should be noted that the deponents were prominent political activists associated with FDC, one of the main opposition political parties.

37. Francis Mwijukye stated that he was not informed of the reason for his arrest. Later he was informed that he was to be charged with conspiracy to commit an offence until he was informed that he was to be charged with treason on his way to court. In the absence of an explanation from the respondent, one cannot dispel the view that the state was on a fishing expedition for an offence to justify his detention. It does not help matters that the case against the deponents was dismissed for lack of prosecution and accused persons discharged.

38. With no explanation and or reasonable justification for the charges, I am inclined to agree with the Petitioner that the arrest of the Ingrid Turinawe and others was intended to curtail them from leading and engaging in further demonstrations of walk to work.

39. Article 29 of the constitution provides, *inter alia*, for the protection of people's freedom of conscience, association and assembly. It states in part;

'1) Every person shall have the right to—

(d) freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition; and'

40. Article 38 of the Constitution states:

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

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

41. In a free and democratic society, as envisaged by our Constitution, the state should allow the citizens to exercise their fundamental rights and freedoms in accordance

with the law. In Handy side vs United Kingdom [1976] ECHR 5, the European Court of Human Rights at paragraph 49 stated:

‘freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress. It is guaranteed by the Universal Declaration of Human Rights, and by international conventions, such as the European Convention on Human Rights.

Freedom of expression is revered in liberal, democratic societies for a variety of reasons; it enables the discovery of truth, it is crucial to the working of a democratic society and it is an aspect of human autonomy. However, it is not an absolute right; rather, it is subject to restrictions in specific circumstances. ‘

42. Further, in the case of Muwanga Kivumbi vs Attorney General Constitutional Petition No. 9 Of 2005 (unreported), Mpagi-Bahigeine JA (as she then was) made the following observations:

‘This court has on many occasions stated that the right of assembly is the aggregate of the individual liberty of the person and individual liberty of speech. The liberty to have personal opinions and the liberty to express them is one of the purposes of the right to assemble, which right or freedom constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and therefore each individual's self-fulfillment.’

43. In the case of Oya Ataman vs Turkey ECHR App.No.74552/01 at paragraph 42, the European Court of Human Rights stated:

‘In court's view, where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance. Accordingly, the Court considers that in the instant case the police's forceful intervention was disproportionate and was not necessary for the prevention of disorder within the

meaning of the second paragraph of Article 11 of the Convention.'

44. Freedom of expression is a cornerstone upon which the very existence of a society rests. The state should refrain from restricting or hindering the citizens from exercising their freedom of expression through unnecessary and unlawful arrests and detention on concocted charges. This amounts to political persecution. According to the Black's law Dictionary 8th Edition persecution is defined as:

'Violent, cruel and oppressive treatment directed towards a person or group of persons because of their race, religion, sexual orientation, politics or other beliefs.'

45. In the case of Odonga Alex Oryang vs Nabillah Naggayi Sempala, Constitutional Petition No.9 of 2016 (unreported) political persecution was defined as:

'the persecution of an individual or group within a society for political reasons, particularly for the purpose of preventing or restricting their ability to take part in the political life of the society therefore reducing their standing among fellow citizens.'

46. In conclusion the acts of arrest and charging citizens with treason and or terrorism for the non-violent acts of peaceful demonstration by walking to work contravened articles 23 (1) (c), 28 (7), 29 and 38 of the Constitution.

Issue two

47. The petitioner contends that section 24 of the Police Act is unconstitutional in so far as it permits the arrest and detention of citizens without charge and or trial for an indefinite period of time. Counsel for the petitioner relied on the case of Foundation for Human Rights Initiative v Attorney General, Constitutional Petition No. 20 of 2006 where court held that section 25 (2) of the Police Act is unconstitutional in as far as it permits detention of an accused person for a longer period than that provided by the Constitution.

48. That section 24 permits abuse and misuse of power by the police. The petitioner contends that the police, under the ambit of preventive arrest, has on several

occasions arrested and detained citizens without charge, without access to court and their lawyers which contravenes articles 28 and 23 of the Constitution. That the police has used the power granted under section 24 on several occasions to disrupt peaceful rallies and demonstrations which is contrary to article 29 of the Constitution. For this submission, the petitioner cited the case of Paul K. Ssemwogerere and 2 Ors v Attorney General, Supreme Court Constitutional Appeal No. 1 of 2002 for the proposition that while interpreting the constitution, it has to be read together as an integrated whole and with no particular provision destroying the other.

49. In reply the respondent contends that the impugned provision is not in contravention of articles 23, 28, 29 and 32 of the Constitution. That article 23(4) (b) of the Constitution should be given a wide interpretation as it provides for preventive arrest.

50. Section 24 of the Police Act, chapter 303, states as follows:

‘Arrest as preventive action.

(1) A police officer who has reasonable cause to believe that the arrest and detention of a person is necessary to prevent that person

(a) from causing physical injury to himself or herself or to any other person;

(b) from suffering physical injury;

(c) from causing loss or damage to property;

(d) from committing an offence against public decency in a public place;

(e) from causing unlawful obstruction on a highway;

(f) from inflicting harm or undue suffering to a child or other vulnerable person,

may arrest and detain that person.

(2) A person detained under subsection (1) shall be released—

(a) once the peril, risk of loss, damage or injury or obstruction has been sufficiently removed;

(b) on the execution of a bond with or without surety where provision is made for him or her to appear at regular intervals before a senior police officer, if so required; or

- (c) upon any other reasonable terms and conditions specified by the inspector general in writing.
- (3) If the person detained under this section is not resident in Uganda, the bond referred to in subsection (2) may be secured by a surety resident in Uganda.
- (4) Any person so arrested or any other person on his or her behalf who has reason to believe that any person is being unlawfully detained under this section may apply to a magistrate to have such person released with or without security.

51. In essence section 24 provides for preventive arrest and detention. The object of preventive arrest is to intercept and prevent a person from doing an act that is prejudicial to himself or herself, or other persons, or property of the general public. It is aimed at preventing the person from breaking the law. This is distinguishable from instances where a person is arrested on a charge or allegation of having committed a crime. The police, usually must form their grounds for arrest upon an investigation. However, preventive arrest allows an officer to act on his or her belief, if based on reasonable and probable grounds, to arrest and detain a person.

52. Section 24 specifies the instances under which the police must exercise its power of arrest as a preventive action. From the circumstances stipulated, it can be deduced that preventive arrest is aimed at protecting the individual, property and the public at large from harm and maintain law and order in society.

53. The purpose of section 24 (1) (a) and (b) is to prevent an individual from causing himself or herself physical injury or to other persons and section 24 (1) (c) to preserve the right to property. Section 24 (1) (d) fosters our cultural values and morals which is the spirit of the Constitution. The purpose of section 24 (1) (e), I presume, is to maintain order, prevent unnecessary inconveniences that forestall day to day activities essential for economic progress. Section 24 (1) (f) is aimed at protecting the rights of the marginalised and vulnerable persons of our society. This is in line with the spirit of our Constitution.

54. The state is charged with the obligation of upholding and promoting the fundamental rights and freedoms guaranteed by the Constitution. The police is one of the instruments of the state for discharging this obligation. Article 212 of the Constitution sets forth the basic functions of the Uganda Police which include; to

protect life and property, to preserve law and order and to prevent and detect crime. I would think that the impugned provision is crucial in enabling the police to carry out these duties which are aimed at protecting the fundamental rights that the Constitution guarantees.

55. Under section 24 (1) of the Police Act, the justification for police officers to carry out an arrest as a preventive measure is reasonable cause to believe the impending commission of any of the acts stated. This standard has a subjective and objective component. Not only must the arresting officer personally believe that he or she possesses the required grounds to arrest, those grounds must be objectively established in the sense that a reasonable person standing in the shoes of the officer would believe that there are reasonable and probable grounds to make arrest. If this condition is not fulfilled, the arresting authority may be exposed to proceedings under the law on grounds of unlawful arrest and detention.

56. I do not agree with the petitioner's contention that section 24 allows detention of the persons arrested beyond the constitutional limit and denies the detained persons their rights under articles 23 and 28. It should be noted that in the case of Foundation for Human Rights Initiatives v Attorney General Constitutional Petition No. 20 of 2006, which the petitioner relies on for this proposition, this court was dealing with the constitutionality with S. 25(2) of the Police Act cap 303 which is distinguishable from this case.

57. Article 23 of the Constitution provides for the right to personal liberty which can only be deprived in exceptional circumstances as provided therein. Article 23 (1) (c) allows the deprivation of a person's liberty for the purpose of bringing that person before a court or upon reasonable suspicion that that person has committed or is about to commit a criminal offence under the laws of Uganda. Arrest as a preventive action falls under this category of exception.

58. And to that end, article 23 (4) (b) states:

'A person arrested or detained-
(b) upon reasonable suspicion of his or her having
committed or being about to commit a criminal offence
under the laws of Uganda,

Shall, if not earlier released, be brought to court as soon as possible but in any case not later than forty-eight hours from the time of his or her arrest.

59. It is clear that the state must comply with article 23 (4) (b) in relation to persons arrested under section 24 (1) (a)-(f) of the Police Act. Section 24 of the Police Act must be read in line with article 23 (4) (b) of the Constitution. Once forty eight hours have elapsed, the detainee must be produced before court. However, due to the fact the person is under arrest and detention as a preventive action, he or she cannot be charged with an offence because no offence was committed. Under section 24 (4) of the Police Act, the magistrate has power to release the detainee on grounds of unlawful detention upon the application of the detained person or any other person with reasonable belief that a person is being unlawfully charged..

60. Article 23 (5) of the Constitution provides for the rights of persons who have been restricted or detained. It states;

- (5) 'Where a person is restricted or detained-
- (a) The next- of -kin of that person shall, at the request of that person, be informed as soon as practicable of the restriction or detention.
 - (b) The next-of-kin of, lawyer and personal doctor of that person shall be allowed reasonable access to that person; and
 - (c) That person shall be allowed access to medical treatment including, at the request and at the cost of that person, access to private medical treatment'

61. My understanding of the wording of article 23 (5) bearing in mind the principles of constitutional interpretation is that these rights accrue to all persons under detention or restriction irrespective of the form and reason of arrest and detention.

62. The petitioner further contends that this provision is unconstitutional because it gives leeway to the police to abuse their power and infringe fundamental rights and freedoms more so the right to assembly enshrined in Article 29 of the Constitution. This is unfortunate, however, the law offers recourse in such instances. In the case of Ahmed Noormohmad Bhatti V State of Gujarat, AIR 2005, the Supreme Court of India while upholding the validity of the power of the Police under section 151 of Criminal Procedure Code 1973 to arrest and detention of a person, without a

warrant, to prevent commission of a cognizable offence, held that a provision cannot be held to be unconstitutional merely because the police might abuse its power. It stated:

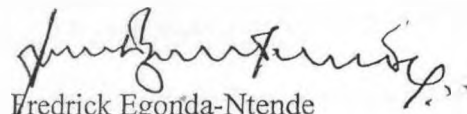
‘A provision cannot be held to be unreasonable or arbitrary and, therefore, unconstitutional, merely because the authority vested with the power may abuse his authority.’

63. I am inclined to this position too. In my view section 24 of the Police Act cap 303 does not contravene articles 23, 28, 29 and 38 of the Constitution.

64. I would issue the following declarations:

1. The acts of the state of arresting and charging citizens with treason and or terrorism for engaging in peaceful demonstrations is unconstitutional and contrary to article 23 (1) (c), 28 (7), 29 and 38 of the Constitution.
2. Section 24 of the Police Act is not inconsistent with and does not contravene articles 23, 28, 29 and 38 of the Constitution.
3. I would order each party to bear its costs given that this was a matter brought in the public interest by petitioner.

Signed, dated and delivered at Kampala this 3rd day of July 2019


Fredrick Egonda-Ntende
Justice of Appeal