

**THE REPUBLIC OF UGANDA**

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

**CONSTITUTIONAL PETITION NO.16 OF 2013**

HON. LT (RTD) SALEH M.W. KAMBA }  
5 MS AGASHA MARYM } .....PETITIONERS  
VERSUS  
THE ATTORNEY GENERAL OF UGANDA }  
HON. THEODORE SSEKIKUBO }  
HON. WILFRED NIWAGABA } .....RESPONDENTS  
10 HON. MOHAMMED NSEREKO }  
HON. BARNABAS TINKASIMIRE }

**CONSTITUTIONAL PETITION NO.19 OF 2013**

JOSEPH KWESIGA .....PETITIONER  
VERSUS  
15 THE ATTORNEY GENERAL OF UGANDA.....RESPONDENT

**CONSTITUTIONAL PETITION NO.21 OF 2013**

NATIONAL RESISTANCE MOVEMENT .....PETITIONER  
VERSUS  
THE ATTORNEY GENERAL OF UGANDA }  
20 HON. THEODORE SSEKIKUBO }

HON. WILFRED NIWAGABA

HON. MOHAMMED NSEREKO

HON. BARNABAS TINKASIMIRE

.....RESPONDENTS

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**CONSTITUTIONAL PETITION NO.25 OF 2013**

HON. ABDU KATUNTU ..... PETITIONER

VERSUS

THE ATTORNEY GENERAL OF UGANDA .....RESPONDENT

CORAM: HON. MR. JUSTICE S.B.K. KAVUMA, AG.DCJ.

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HON. MR. JUSTICE A.S. NSHIMYE, JA/CC

HON. MR. JUSTICE REMMY KASULE, JA/CC

HON. LADY JUSTICE FAITH MWONDHA, JA/CC

HON. MR. JUSTICE R. BUTEERA, JA/CC

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**DISSENTING JUDGEMENT OF HONOURABLE JUSTICE REMMY  
KASULE, JUSTICE OF THE CONSTITUTIONAL COURT**

I am grateful and in agreement with their Lordships of the majority judgement as to the facts constituting the background to the consolidated **Constitutional Petitions numbers 16, 19, 21 and 25 of 2013**, as well as the principles of constitutional interpretation set out in the said judgement.

However, with the greatest respect to their Lordships of the majority judgement, I beg to differ from some of the conclusions they have reached on some of the framed issues.

I will, as much as possible deal with the issues following the order they were submitted upon by respective counsel, even though this pattern may be departed from now and then, where the inter-relationship of the issues so demand.

**Issue 1, 4, 5 and 6:**

The overriding question for resolution through these four issues is whether or not under the 1995 Constitution an expulsion of a Member of Parliament by a political party from membership of that political party upon whose ticket the said member was elected to Parliament, automatically leads to that Member of Parliament to lose his/her seat in Parliament under **Article 83 (1) (g) and (h) of the Constitution**. The Article provides:

**“83. Tenure of office of Members of Parliament.**

**(1) A member of Parliament shall vacate his or her seat in Parliament -**

- (a)** .....
- (b)** .....
- (c)** .....
- (d)** .....

(e) .....

(f).....

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(g) If that person leaves the political party for which he or she stood as a candidate for election to Parliament to join another party or to remain in Parliament as an independent member;

(h) If, having been elected to Parliament as an independent candidate, that person joins a political party;”

(i) .....

**Historical Perspective:**

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The history, particularly the legislative history of a country is a relevant and useful guide in constitutional interpretation:

See: **Okello Okello John Livingstone & Six Others Vs The Attorney General and Another: Constitutional Court Constitutional Petition No.4 of 2005.**

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The 1995 Constitution, as is reflected in its preamble, Ugandans through a Constituent Assembly, adopted, enacted and gave to themselves and to their posterity a constitution on the basis:

**“Recalling our history which has been characterized by political and constitutional instability,**

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**RECOGNISING our struggles against the forces of tyranny, oppression and exploitation;**

COMMITTED to building a better future by establishing a socio economic and political order through a popular and durable national Constitution based on the principles of unity, peace, equality, democracy, freedom, social justice and progress; .....”

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Hence the 1995 Constitution is a result of the struggles of Ugandans against political and constitutional instability brought about by the forces of tyranny, oppression and exploitation. It is therefore through proper application and compliance with the 1995 Constitution that a society of Ugandans based on the principles of unity, peace, equality, democracy, freedom, social justice and progress has to be created.

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The suppression of fundamental human rights and freedoms of conscience, expression, movement, assembly and association, particularly through a dictatorship of the political party that managed to keep itself in political power at the suffocation of other political groups and other organs of the state had to be done away with. Hence the enactment of **Article 75 of the Constitution**, that Parliament shall have no power to enact a law establishing a one-party state.

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In 2005, Ugandans, through a Referendum, freely chose to govern themselves under a multi-party democracy dispensation with political parties presenting candidates for Presidential, Parliamentary and Local Government elections with the winning candidate in Presidential elections becoming President of the country and the winning party in Parliamentary

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elections controlling Parliament through its majority of Members in Parliament. The political party (parties) with minority seats form the opposition in Parliament. But all Members of Parliament representing constituencies as well as those representing special groups constitute the  
5 Parliament of Uganda whose constitutional mandate is to make laws to promote unity, peace, equality, democracy, freedom, social justice and progress. The same also happens, as much as possible, in respect of local governments.

Therefore from the historical perspective, the Constitution is to be  
10 interpreted in such a way that promotes the growth of democratic values and practices, while at the same time doing away or restricting those aspects of governance that are likely to return Uganda to a one party state and/or make in-roads in the enjoyment of the basic human rights and freedoms of conscience, expression, assembly and association.

15 The reason for the inclusion of **Article 83 (1) (g) and (h) in the Constitution** is thus, in my humble view, to address some of the wrongs identified in Uganda's history of political and constitutional instability. The Uganda Constitutional Commission headed by His Lordship Justice Odoki, JSC, as he then was, gathered views from Ugandans as to how they  
20 wanted to be governed and made a report that was debated by the Constituent Assembly and provided the basis for the 1995 Constitution.

The Commission found that since the attainment of independence, it had become a practice by Members of the political parties in opposition

crossing the floor in Parliament and joining the party in Government, thus contributing to the creation of a one party state and rendering the working of multi-party democracy impossible. The Odoki Commission thus proposed as a remedy that in the case of a multi-party Parliament a member wishing to cross the floor must first resign his or her seat and seek fresh mandate from the constituency that had elected him/her to represent the people of that constituency in Parliament. Likewise, one elected as an Independent, should also seek fresh mandate on joining a political party.

It is of some significance, in my observation, that the recommendation of the Odoki Commission is restricted to a Member of Parliament belonging to a political party or who was elected as an independent crossing the floor in Parliament to join another party or leaving the party to become an Independent in Parliament. The recommendation does not cover a situation of that Member of Parliament being in dispute with his or her political party outside Parliament on matters having nothing to do with that member's duties and responsibilities in Parliament, that for one reason or another, may lead to the expulsion of that Member from the party. This omission, in my considered view, must also be acknowledged as missing from **Article 83 (1) (h) and (g)**.

## **Principles of Constitutional Interpretation.**

The overriding principle is that in any question relating to the interpretation or application of any provision of the Constitution, the primary aids to the interpretation must be found in the Constitution itself:

See: **Supreme Court of Malawi Court Reference by the Western Highlands provincial Executive [1995] PG SC 6; SC 486 (20<sup>th</sup> September, 1995).**

5 It is a principle of constitutional interpretation that where words or phrases of the Constitution are clear and unambiguous, they are to be given their primary, plain, ordinary and natural meaning. The language must be construed in its natural and ordinary sense. Should the language of the Constitution be imprecise or ambiguous, then a liberal, generous and/or purposive interpretation should be given to it: See: **Attorney**  
10 **General Vs Major General David Tinyefunza: Constitutional Appeal No.1 of 1997 (SC).**

The language of the Constitution may be broad and in general terms laying down broad principles. This calls for a generous interpretation avoiding strict, legalistic and pedantic interpretation, but rather broadly  
15 and purposively; aiming at fulfilling the intention of the framers of the Constitution. One provision of the Constitution ought not be isolated from all the others. The Constitutional provisions bearing upon a particular subject should be looked at and be so interpreted as to effectuate the great purpose of the constitution: See: **Supreme Court of Uganda**  
20 **Constitutional Appeal No.1 of 1998: Attorney General Vs Salvatori Abuki.**

**The Constitutional (Amendment) No.3 Bill, 2005:**



The debates of Members of Parliament of this Bill have some significance in resolving the framed issues under consideration because the Bill constituted a proposed amendment by Parliament of **Article 83 (1) (g) in 2005**. The proposed amendment was:-

5           **“83 (1)**

**(g) If that person leaves the political party for which he or she stood as a candidate for election to Parliament to join another party or to remain in Parliament as an independent Member; or if he or she is expelled from the political organization or political party for which**  
10           **he or she stood as a candidate for election to Parliament.”** (emphasis is mine).

Members of Parliament from all the groups represented in Parliament extensively contributed giving various reasons either supporting or not supporting the amendment. Hon. Wandera, MP, reasoned that an MP who  
15 supports a position in the national interest, but contrary to the position of his/her party, ought not be a victim of the provision. To him issues of internal discipline in the political parties ought not be introduced in the Constitution. He reasoned that Members of Parliament were elected by the populace in the constituency including those who do not belong to the  
20 party of the MP. These should not be deprived of their MP because of that MP being expelled by his/her party. Hon. Amama Mbabazi’s stand was that in a multi-party system, once the party expels one, then such a one has no basis to speak in Parliament. Hon. Ben Wacha saw the amendment as

redundant. He read it as already contained in **Article 83 (1) (g)**. Hon. Dr. Okulo pointed out that political parties can be very arbitrary in their decisions and an MP should not lose his/her seat for standing against such decisions. **Hon. Ruhindi:** Proposed that the circumstances under which an  
5 MP is to be expelled be clearly set out in the provision so that there is protection to MPs and that way the functioning of systems and institutions be strengthened.

Parliament then resolved on 07.07.05 to stand over the amendment and consult further. On 08.08.05 when Parliament re-assembled, Hon. Dr.  
10 Makubuya, the then Attorney General, proposed to delete the amendment “**in the interest of peace**” because Members had expressed serious concern over what it meant. The House unanimously approved the deleting: See: **The Hansard: 5<sup>th</sup> session: 1<sup>st</sup> meeting: 07.07.05 pp 14745 - 15066.**

From the above account as to what transpired in Parliament, I am  
15 unable to conclude that **Article 83 (1) (g) and (h)** of the Constitution was retained as it was on the understanding that it was not necessary to amend it. Its effect was already catered for. The view I take is that Parliament on considering all the reasons put forward by the Honourable Members rejected the proposed amendment by having the same deleted. I am  
20 enforced to reach this view by the words of the then Attorney General Dr. Makubuya that he proposed to delete the amendment “**in the interest of peace**” because members had expressed serious concern as to what the amendment meant.

### **Position in Other jurisdictions:**

There are other jurisdictions to look at having constitutional provisions on the lines of **Article 83 (1) (g) and (h)**.

#### **Zambia:**

5 **Article 71 (2) (c) of the Constitution of Zambia** provides that a Member of the National Assembly shall vacate his/her seat:

10 “(C) in the case of an elected member, if he becomes a member of a political party other than the party of which he was an authorised candidate when he was elected to the National Assembly or, if having been an independent candidate, he joins a political party, or having been a member of a political party, he becomes an independent;”

#### **Malawi:**

Section 65 (1) of the Malawi Constitution provides that:

15 “The Speaker shall declare vacant the seat of any Member of the National Assembly who was, at the time of his or her election, a Member of one political party represented in the National Assembly, other than by that member alone but who has voluntarily ceased to be a member of that party or has joined another political party represented in the  
20 National Assembly, or has joined any other political party or association or organization whose objectives or activities are political in nature.

(2) Notwithstanding subsection (1), all members of all parties shall have the absolute right to exercise a free vote in any and all proceedings of the National Assembly, and a Member shall not have his or her seat declared vacant solely on account of his or her voting in contradiction to the  
5 recommendations of a political party, represented in the National Assembly, of which he or she is a member."

**India:**

The Tenth schedule to the Constitution of India, under its Article 102 (2) and 191 (2) provides:

10 "2. Disqualification on ground of defection:-

(1) Subject to the provisions of [paragraph 4 and 5] a member of a House belonging to any political party shall be disqualified for being a member of the House.....

15 (a) If he has voluntarily given up his membership of such a political party or

(b) If he or she votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs.....without obtaining .....the prior permission of such a political party."

20 **New Zealand:**

New Zealand, a commonwealth country, has a proportional representation system in Parliament. The proportion of the popular vote received by political parties determines representation in Parliament according to the Electoral Act. The proportionality of party representation is also reflected  
5 in the distribution of seats on select committees, allocation of question time and the order of call in the House.

Under **Section 55A of Electoral Act of new Zealand** a seat of a Member of Parliament becomes vacant if that member ceases to be a Parliamentary Member of the political party for which that member was elected if that  
10 member notifies in writing that he/she has resigned from the Parliamentary Membership of the political party for which the member was elected, or if the member wishes to be recognized for Parliamentary purposes as either an independent Member of Parliament or a member of another political party.

15 The political party also may through its Parliamentary leader in a written statement signed by the said leader stating that the Parliamentary leader reasonably believes that a Member of Parliament concerned has acted in a way that has distorted, or is likely to continue distorting the proportionality of political party representation in Parliament as  
20 determined at the last general election, after notifying and requiring the member concerned to respond, and after obtaining support of at least two thirds of the Party Parliamentary Members, notify the Speaker of the House to declare the seat of that Member vacant.

### **Interpretation of Article 83 (1) (g) and (h):**

Having considered the historical perspective, the appropriate principles of interpretation of the Constitution, the relevant Uganda Parliamentary debates on the very proposed amendment when it was tabled before  
5 Uganda Parliament in 2005 as well as the situations in some other jurisdictions other than Uganda, I now proceed to interpret **Article 83 (1) (g) and (h)**.

The Article has already been considered by this court in **Constitutional Petition No.038 of 2010: George Owor Vs Attorney General and Another**  
10 when the court held that its language was very simple and clear. It was not ambiguous and should be construed basing on the natural meaning of the English words. To the court, the provision meant that:-

- “ (i) **A Member of Parliament must vacate his/her seat if he/she was elected on a political party/organization ticket and then before the**  
15 **end of that Parliament the member joins another party.**
- (i) **He/she must vacate his/her seat if she was elected on a party ticket and elects to be nominated as an independent before the term of the Parliament comes to the end.**
- (ii) **If he/she was elected to Parliament on a party ticket, he/she**  
20 **cannot remain in Parliament as an independent member.**
- (iii) **Common sense dictates that if one was elected to Parliament on a political party ticket and joins another party, he/she**

cannot be validly nominated for election on the ticket of that latter party unless he/she at the time of nomination resigned or vacated the seat in Parliament.

- 5 (iv) If one was elected to Parliament on party ticket and he/she leaves that party to become independent, he/she cannot validly be nominated as an independent unless he/she has ceased to be or has vacated the seat in Parliament.”

The court gave as the rationale for its decision, as being that one cannot, in a multiparty political system, continue to represent the electorate on a party basis in Parliament while at the same time offering oneself for election for the next Parliament on the ticket of a different political party or as an independent. It would be a betrayal of the people who elected such a one and an exhibition of the highest form of political hypocrisy and opportunism which the Article was designed to prevent. It would also be an exhibition of political indiscipline and an abuse of people’s sovereignty which is so strongly enshrined in the Constitution.

The court, in similar terms and on the same grounds as above, interpreted **Article 83 (1) (h)** as meaning that an Independent Member of Parliament who joins a political party before the end of the Parliamentary term he/she was elected to, must also resign the seat of Parliament otherwise he/she cannot be validly nominated on a political party ticket for election to the next Parliament.



However, the decision of the **George Owor case (supra)** is not, in my view, a basis for the proposition of the petitioners in **Constitutional Petitions numbers 16, 19 and 21 of 2013** that once a Member of Parliament elected to Parliament on a ticket of a political party is expelled from membership of that party by the party itself, then such a member must also automatically vacate his/her seat in Parliament.

My appreciation of the meaning of the language of **Article 83 (1) (g) and (h)** is that the Member of Parliament concerned must himself/herself, out of his/her own volition take the decision to leave and abandon the political party for which he or she stood as a candidate for election to Parliament and the same member must also, again out of his/her own volition decide to join another party or to become an Independent. Once such a member takes that decision, then, such a member's seat in Parliament becomes vacant and a bye-election has to be held.

While the member of Parliament concerned may take such a decision directly and openly by announcing in writing, or otherwise, of leaving the political party on which he/she was elected to Parliament and joining another political party or becoming an Independent or vice versa, it is also possible that such a decision can be inferred from the conduct of the concerned Member of Parliament.

In the **Supreme Court of New Zealand case of Richard William Prebble and Three others Vs Donna Awatare Huata, SC C IV 9/2004**, such a conduct was inferred from the fact, amongst others, that the



concerned Member of Parliament willingly stopped paying subscription for her membership to her political party upon which she had been elected to Parliament so that her membership to that party lapsed. Since New Zealand has a proportional representation system of electing Members of Parliament whereby a political party is allotted Members of Parliament according to the number of votes a party has got at a general election, the lapse in membership willingly caused by this Member to her political party let that party to lose its strength under the proportional representation arrangement system. Thus the political party took the procedural steps provided for in the **Electoral Act of New Zealand** to have the Speaker declare the seat of this member vacant and the same was done.

All this was done on the basis that it was this Member of Parliament who voluntarily took the step to cease Membership of her party by withholding payment of her membership subscription to the same. The Supreme Court of New Zealand thus held that the political party was justified to take the steps it took, as allowed by the law, to have this member vacate her seat in Parliament.

The facts of this case are therefore very different from the facts of the consolidated **Constitutional Petitions 16, 19, 21 and 25 of 2013** where expulsion of the Members of Parliament is already done by the political party and the Speaker of Parliament is presented with a demand by the expelling political party to declare the seats of the concerned Members of Parliament to be vacant.

Also the Malawi Supreme Court of Appeal **In the matter of the question of the crossing the Floor by Members of the National Assembly: Presidential Reference Appeal No.44 of 2006 [2007] MWSC1** interpreted **section 65 (1) of the Constitution of Malawi** and held that the  
5 section did not violate the fundamental and other human rights and freedoms of conscience, expression, assembly and association as are enshrined in the Constitution of Malawi. It is of significance that the said section 65 (1) specifically provides that the Member of Parliament concerned must have **“voluntarily ceased to be a Member of that party  
10 and has joined another political party represented in the National Assembly.....”**. Further, **Section 65 (2)** removes any restrictions upon a Member of Parliament in that he/she retains an absolute right to freely vote in the National Assembly, even contrary to the recommendations of his/her political party upon which he/she was  
15 elected to Parliament.

The Malawi legislation therefore, while ensuring that political parties exercise discipline upon their Members of Parliament by preventing defections, Members of the Parliament of Malawi are allowed to vote freely in Parliament even against positions taken by their respective political  
20 parties on specific issues. Further still, in the case of Malawi the decision by a Member of Parliament to leave the party to join another or to become an independent must be a voluntary one.

The Supreme Court of Zambia has also had occasion to consider the meaning of **Article 71 (2) (c) of the Zambian Constitution**. This is in the case of **The Attorney General, The Movement for Multiparty Democracy (MMD) V Akashambatwa Mbikusita Lewanika Fabian and 4 Others: [1994] S.J. (S.C.)**. The issue for resolution by that Court was whether the Article as worded made a Member of Parliament elected on a ticket of the MMD political party to vacate his/her seat on that member's announcing that he/she had left the MDD party but without stating whether he/she had joined any other political party.

The Zambian Supreme Court, in resolving the issue, adopted the **"purposive approach"** other than the rule of literal interpretation of the Constitution, so as to promote the general legislative purpose underlying the provision. The court stated:-

**".....whether the strict interpretation of a statute gives rise to unreasonable and unjust situation, it is our view that judges can and should use their good common sense to remedy it - that is by reading words in if necessary - so as to do what Parliament would have done had they had the situation in mind."**

The court then proceeded to remedy the situation in the case by reading the necessary words so as to make the constitutional provision, which the court had found to be discriminatory, so as to make it to be fair and undiscriminatory. Consequently the court read the words **"vice versa"** in **Article 71 (2) (c)** so that the same read:

“71 (2) A member of the National Assembly shall vacate his seat in the Assembly:

5 (c) In the case of an elected member, if he/she becomes a member of a political party other than the party, of which he/she was an authorized candidate when he/she was elected to the National Assembly or, if having been an independent candidate, he/she joins a political party or vice versa.”

10 The **Zambian Article 71 (2) (c)** is in many respects similar to Uganda’s **Article 83 (1) (g) and (h)**. No Constitutional Court in Zambia has, as of now, interpreted the article to mean that a Member of Parliament automatically loses his/her seat in Parliament on being expelled from membership of that party for whatever cause, if that party is the one on whose ticket the concerned Member was elected to Parliament.

15 In India, where a Member of Parliament, can even lose his/her seat by reason of voting in Parliament on an issue contrary to a stand taken by his/her political party on that issue, the law specifically provides that the Member concerned shall **voluntarily** take the decision and the Constitution restricts itself to the conduct of a Member of Parliament within the House where crossing the floor primarily applies.

20 Having considered the history of Uganda’s political development, including its legislative history giving rise to the 1995 Constitution, and later on in 2005, the rejection by Uganda Parliament of the Constitutional (Amendment) Bill No.3 of 2005 on the very point, and the decisions of

courts of different jurisdictions, with constitutional provisions having a bearing on **Article 83 (1) (g) and (h)**, and some of whom too, like Zambia and Malawi, have had some aspects of history similar to that of Uganda, like the lack of democratic governance and the one party state, it is  
5 necessary to adopt the purposive approach in analyzing the meaning of **Article 83 (1) (g) and (h)**. This approach was also, in some ways, adopted by this court in the **George Owor case (supra)**.

It is necessary to address the question as to what is the mischief that the Article is there to cure.

10 In my considered view while the Article is there to prevent crossing on the floor of Parliament by Members who enter Parliament, and fail to stick and to pursue the policies of the party upon whose ticket the said members were elected into Parliament on the one hand, it must also be appreciated on the other hand, that a Member of Parliament represents everyone in the  
15 Constituency that elected him/her into Parliament, regardless of party affiliation on the part of the voters in that constituency and as such the Member of Parliament must be let to carry out his/her primary function as a constitutive part of Parliament under **Article 79 (1) of the Constitution:**

**“79. Functions of Parliament.**

20 **(1) Subject to the provisions of this Constitution, Parliament shall have power to make laws on any matter for the peace, order, development and good governance of Uganda.**

(2) Except as provided in this Constitution, no person or body other than Parliament shall have power to make provisions having the force of law in Uganda except under authority conferred by an Act of Parliament.

5 (3) Parliament shall protect this Constitution and promote the democratic governance of Uganda.”

It follows therefore that where, according to the judgement of the Member of Parliament, in situations where the position of a political party of a Member of Parliament is at variance with fulfillment of any of the constitutional functions stated above, a Member of Parliament, has by the command of the Constitution, to be let to take a stand in Parliament even if that stand is contrary to the position of his/her political party.

The political party concerned ought not, under the pretext of **Article 83 (1) (g) and (h)** claim to have powers to expel such a member from the party and by reason of the expulsion, to have that Member automatically vacate his/her seat in Parliament. Were that to be the case, then the mischief of elements of a one party state type of governance of suppressing basic freedoms of a Member of Parliament and over dominating organs of state, such as Parliament, that are supposed to operate independently, subject to the constitutional checks and balances, would re-surface again. This indeed would be the more reason if **Article 83 (1) (g) and (h)** is given the interpretation that would allow political parties to expel Members of Parliament from their membership to that party on grounds that do not

have even any bearing on the role, duties and responsibilities of a Member of Parliament as a representative of his/her constituency in Parliament.

5 The composition of Parliament, notwithstanding its constitutional mandate of five years, would be entirely left to be changed from time to time by the political parties depending on how many members the parties expel from membership during that period of five (5) years. This would greatly weaken Parliament and subject the country to have by-elections whenever a political party expels a Member of Parliament.

10 There is also a likelihood that free debate in Parliament would be negatively affected as Members, under the threat of expulsion, would restrain themselves from playing their role as representatives of all the people in the respective constituencies by merely supporting what their political parties dictate to them. A Member of Parliament would be rendered to be a mere mouth piece of the party he/she represents in  
15 Parliament.

I am thus unable to infer that the framers of the 1995 Constitution intended in framing the Article in question that a Member of Parliament elected in Parliament on a party ticket of a particular party should vacate his/her seat in Parliament because that member has been expelled by  
20 his/her party for some reasons between that member and the party, but which reasons are totally outside the roles, duties and responsibilities of that member as a legislator in Parliament.



Indeed, as legislators, a number of Members of Parliament are vested with certain responsibilities and roles that may require them to take or not to take stands on issues in respect of which the political parties upon which they were elected to Parliament may be taking different stands. The case of the Speaker and Deputy Speaker of Parliament is a case in point. **Article 82 of the Constitution** provides that the Speaker and deputy Speaker of Parliament are to be elected by Members of Parliament from among their members. Under **Article 82 (7) (d)** a Speaker/Deputy Speaker vacates office on ceasing to be a Member of Parliament. No business of Parliament shall be transacted in Parliament, other than the election of the Speaker, if the office of the Speaker is vacant. The Speaker and Deputy Speaker may, as indeed they are now, belong to a political party.

The responsibilities of the office of Speaker of Parliament dictate that the Speaker be as neutral as possible while managing the affairs of the House. This of necessity may result in the Speaker not always taking the same stand as his/her political party on whose ticket he/she is elected to Parliament. It is inconceivable to assert that the framers of the Constitution intended that the Speaker of Parliament would vacate her seat in Parliament if, for some reasons, the party to which she happens to belong were to expel her from membership of the party, asserting as it is being asserted now by the petitioners in **Constitutional Petitions 16, 19 and 21 of 2013**, that under **Article 83 (1) (g)** any Member of Parliament expelled by his/her political party has to automatically vacate Parliament.



What is stated in respect of the Speaker of Parliament is also true of the Deputy Speaker or some other Members of Parliament like Commissioners of the Parliamentary Commission under the **Parliamentary Commission Act** created under **Article 87A of the Constitution** and others serving as  
5 chairpersons and members of the various committees and organs of Parliament where, because of the special nature of the responsibilities of their respective offices, it may not be possible for them to always follow or vote or manage the affairs of Parliament in accordance with the dictates of the political parties upon whose tickets they were elected into Parliament,  
10 even when under strict instructions by those parties to do so.

Thus to interpret **Article 83 (1) (g) and (h)** as giving powers to political parties to cause Members of Parliament to automatically vacate their seats in Parliament through the avenue of expelling them from party membership would be to stifle the workings of Parliament as an  
15 independent arm of Government and thus undermine democratic governance under a multi-party political system. Where, the Constitution of Membership of Parliament, is such that there is a dominant party forming Government, the force of the threat of being expelled from Parliament, may easily bring about a near one party state type of  
20 governance that the Constitution bars under its **Article 75**. That surely cannot be said to have been the intention of the framers of the 1995 Constitution.

I appreciate that there is certainly need for legislators elected on the platform of a particular political party to advance the cause of that party, where circumstances do not dictate otherwise, in Parliament and also to the electorate. There is also need to maintain discipline in political parties if they are to be effective organs promoting democracy. Democracy also demands that a Member of Parliament on changing from one political party to another, or to become an independent, the electorate in the constituency should give approval or disapproval to such a change by the Member involved vacating his/her seat in Parliament and subjecting him/herself to the approval of the electorate through a by- election. But this must be through a voluntary act of the Member of Parliament involved and must be in respect of matters to do with the Member's duties and role in Parliament and not matters that have nothing to do with that role. Discipline in the whole process of representation of the people, political parties inclusive, is maintainable by applying the legal process that the Constitution and other laws have put in place.

Where a Member of Parliament who through his/her voluntary conduct leaves his/her party on whose ticket the said member was elected to Parliament and joins another party or remains independent, but refuses to do so or to state publicly and openly that this is what he or she has done, then in such a case, the remedy available to the political party demanding that this Member vacates his/her seat in Parliament is in **Article 86 (1) (a) of the Constitution**. That remedy is for the political party to petition the

High Court to declare the seat of the concerned member vacant. The Article provides:

**“86. Determination of question of Membership.**

**(1) The High Court shall have jurisdiction to hear and determine any question whether –**

**(a) A person has been validly elected a Member of Parliament or the seat of a Member of Parliament has become vacant;**

**(2) .....**

**(3) Parliament shall by law make provision with respect to-**

**(a) the persons eligible to apply to the High Court for determination of any question under this article; and**

**(b) the circumstances and manner in which and the conditions upon which any such application may be made.”**

My appreciation of the law is that the act of vacating a seat in Parliament to which a Member of Parliament was elected through a valid Parliamentary election is by its own nature an election matter. Such an act is therefore appropriately a matter that may be addressed by the **Parliamentary Elections Act [17 of 2005]**, which is an Act enacted by Parliament pursuant to **Article 76** whereby Parliament enacts laws on elections.

I come to this conclusion because there is no provision both in Article 76 of the constitution and section 86 of the Parliamentary Elections Act [17 of 2005] restricting the application of the said Article and section to a special category of members of Parliament, say, the disabled, the workers, the youth and army representatives. The Article and the section seem to me to be of general application to a situation of a member of Parliament in respect of whom the issue of determination of a question of his/her membership to parliament arises.

**Section 86 of the Parliamentary Elections Act** is a repeat, word for word, of **Article 86 (1) (a) (b) and (2) of the Constitution**. **Section 86 (3) (4) (5) (6) and (7)** sets out a procedure as to how the High Court is to be accessed so as for that court to determine the question referred to in **Article 86 of the Constitution** and **Section 86** of the very Act. **Under Section 86 (5) of the same Act**, given **Article 86 (2) of the Constitution**, a person aggrieved by the decision of the High Court may appeal to the Court of Appeal.

The procedure under the section requires that the one or group or entity raising the issue that a particular Member of Parliament has to vacate the seat in Parliament forwards an application in writing to the Attorney General signed by not less than fifty registered voters stating that a question referred to in **Article 86 (1) of the Constitution** and **Section 86 (1) of the Act** has arisen stating the ground for

coming to that conclusion. The Attorney General has to petition the High Court within thirty days after receipt of the application, and if he fails to do so, then those who submitted the application to the Attorney General may directly petition the High Court for  
5 determination of the question.

In my considered view the above procedure set out in **Section 86 (3) and (4) of the Parliamentary Elections Act** caters very well for a political party seeking to have a seat in Parliament vacated because the Member of Parliament holding that seat and who was elected on  
10 the ticket of that political party has by his/her voluntary conduct, in carrying out his/her role as Member of Parliament, without publicly stating so, left that party upon which he/she was elected to Parliament and has joined another party or has become an Independent in Parliament.

The political party concerned should be able to secure the requisite  
15 number of at least fifty registered voters signing the application may be from the electoral constituency of the Member of Parliament whose seat is being sought to be vacated in Parliament. The procedure gives an opportunity to the Attorney General to study and  
20 express himself/herself on the merits of the demand of the political party requiring that its member vacates his/her seat in Parliament and as such the political party is so advised by the Hon. Attorney General about the merits of the demand. The procedure also brings

in the participation of the ordinary voters, possibly from the constituency of the Member of Parliament whose Parliamentary seat is sought to be vacated, whose signatures are necessary to support the demand.

5           The above notwithstanding, should the procedure to access the High Court set out in **Section 86 (3) and (4)** be not the applicable one in the case of a political party as petitioner, the absence of such a procedure, cannot in any way affect, erode or diminish the jurisdiction vested in the High Court to hear and determine any  
10           question whether **“the seat of a Member of Parliament has become vacant”** by **Article 86 (1) of the Constitution**. If the law to provide for the proper procedure is not there, then Parliament should enact that law, but in the meantime, the High Court has to exercise the jurisdiction vested in it by the Constitution and access to the High  
15           Court has to be done through some appropriate procedure available to access the High Court. In my considered opinion, the procedure set out in **Section 86 (3) and (4) of the Parliamentary Elections Act** is appropriate.

By having the High Court decide whether the seat of the Member of  
20           Parliament alleged to have **“crossed the floor”** has become vacant puts a burden upon the political party seeking to have the seat declared vacant to prove its case for asserting so, while at the same time the Member of Parliament concerned is heard in defence as to why his/her seat in

Parliament should not be declared vacant. The court then proceeds to resolve the matter judiciously by taking into consideration all the relevant factors necessary to reach a just decision, with a right of appeal to the Court of Appeal by whoever is dissatisfied with the decision. Such a court  
5 process of determination by the High Court of whether or not a vacancy of a Member of Parliament has become vacant would result in creating discipline between the Members of Parliament and their political parties upon whose tickets they are elected to Parliament.

It has been submitted for the petitioners in **Constitutional Petitions 16, 10 19 and 21 of 2013** that given that the ordinary meaning of the word to “leave” is “to go away from”, “cease to live at a place or house”, cease to belong to a group”, to go away”, “to stop living in” “to stop working for”, “to stop belonging to”, therefore when used in **Article 83 (1) (g) and (h)** the word “leave” is neutral, and as such there is no difference between  
15 a Member of Parliament who voluntarily decides to leave his/her political party upon which he/she was elected to join another political party or to remain an Independent in Parliament, and the one who is forced to leave by being expelled from his/her political party.

With the greatest respect I do not agree with that interpretation. The  
20 word to expel is to be sent away by force or to force someone to leave or to dismiss officially from an institution, school, club or body: See: **Longman Dictionary of Contemporary English: New Edition, 1987 page 354.**



There is surely a difference between someone who voluntarily and through personal choice takes a decision to go away from or to cease to live at a place or to belong to a group and the one who by force is made to go away or to cease to live at a place or to belong to a group. There is no free will on the part of the doer in the case of the latter, while it is there in the case of the former.

It follows therefore that in terms of **Article 83 (1) (g) and (h)** the Member of Parliament to fall under the ambit of that article has to, by exercise of his/her free will, to decide to leave the political party for which he or she stood as a candidate for election to Parliament, the same Member of Parliament has also, by exercise of his/her free will, decide to join another party or, remain as an independent member, or if elected as an Independent, to join a political party. Once these choices are made by the Member of Parliament concerned, by the exercise of his or her free will, and the member so communicates to the Speaker of Parliament and whoever else is concerned, then the seat of this Member of Parliament becomes vacant.

On the other hand, in my considered view, if the political party upon whose ticket the Member of Parliament concerned was elected to Parliament, comes to the conclusion, on the basis of the evidence the party has, that this Member of Parliament through the exercise of his/her free will has left the said political party and has joined another one or has decided to remain in Parliament as an Independent, and therefore by



reason thereof, the seat of this Member of Parliament should be declared vacant, then the political party under **Article 86 (1) and Section 86 (1), (3) and (4) of the Parliamentary Elections Act** takes steps to have the High Court declare the seat of the concerned Member of Parliament vacant.

5 In conclusion, in disagreement with my Lords of the majority judgement, I answer issues 1, 4, 5 and 6 as hereunder:

**Issue 1:**

My answer is that expulsion of a Member of Parliament by and from the political party upon whose ticket the said Member of Parliament was  
10 elected to Parliament is not an automatic ground for a Member of Parliament to lose his/her seat in Parliament under **Article 83** of the 1995 Constitution of Uganda.

Expulsion of a Member of Parliament by his/her political party upon whose ticket a Member was elected into Parliament may however be part  
15 of the evidence of the grounds of the political party, where circumstances demand that the political party petitions the High Court to have a seat of that Member of Parliament be declared vacant under **Article 86 (1) of the Constitution and Section 86 (1) (3) and (4) of the Parliamentary Elections Act.**

20 **Issue 4:**

The answer to this issue is that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to **Constitutional Petitions 16,19 and 21 of 2013** having not declared that they

left the party upon which they were elected to Parliament so as to join another political party or to remain as Independents in Parliament, as concerns their roles and duties as Members of Parliament, and the political party to which they still claim they belong to having not moved the High Court for a declaration that the seats in Parliament of these members be declared and the High Court has not declared the said seats vacant, I find that the continued stay in Parliament of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents, after their expulsion from the NRM party on whose ticket they were elected in Parliament is not contrary to and/or inconsistent with **Articles (1) (1) (2) (4), 21 (1) (2), 29 (1) (e), 38 (1) 43 (1), 45, 69 (1) 71, 72 (1) 72 (2), 72 (4), 78 (1) 79 (1) (3) and 255 (3) of the Constitution.**

#### **Issues 5 and 6:**

The answer is that the expelled MPs who left and/or ceased being members of the National Resistance Movement political party, the petitioner in **Constitutional Petition No.21 of 2013**, but who still claim that they are members did not vacate their respective seats in Parliament and they are still Members of Parliament in accordance with the Constitution.

#### **Consideration of issues 9, 10, 11, 12 and 13.**

These issues arise from and concern in the main **Constitutional Petition No.25 of 2013: Hon. Abdu Katuntu (Shadow Attorney General) Vs The Attorney General.** The issues revolve upon the question whether the Honourable Attorney General acted contrary to the Constitution in his advice dated 08.05.2013 to the Rt. Hon. Speaker of Parliament relating to

the request by the Secretary General of the National Resistance Movement (NRM) political party that the Rt. Hon. Speaker declares the Parliamentary seats of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to **Constitutional Petitions 16, 19 and 21 of 2013** to be vacant by reason of the said respondents having  
5 been expelled from the NRM political party. The Rt. Hon. Speaker had in a statement to Parliament on 02.05.2013 stated that because of the absence of a “**clear unambiguous and unequivocal provisions of the law**” to empower her to make such a declaration she had restrained herself from acceding to the request of the Secretary General of the NRM Party.

10 The Honourable Attorney General after considering the decision taken by the Rt. Hon. Speaker of Parliament and pointing out the relevant laws that, according to him, applied to the situation, came to the conclusion that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents, having been expelled from the NRM political party, cannot legally hold their seats and were now “**Aliens**” in  
15 the 9<sup>th</sup> Parliament, their continued stay in Parliament being illegal and an abuse of the law. The Hon. Attorney General then advised, in his capacity as the Principal Legal Adviser of the Government, the Rt. Hon. Speaker to reverse her decision of not declaring vacant the seats of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents because it was unconstitutional.

20 **Constitutional Petition No.25 of 2013** faults the Attorney General that his advice contravenes the Constitution in that it wrongly advises that only members of political parties and representatives of the army are the only ones who sit in Parliament, that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents are no

longer Members of Parliament by reason of their expulsion from NRM party and therefore their seats are vacant, that the Attorney General cannot advise the Speaker to reverse her ruling. The petition seeks declarations that the said acts are unconstitutional.

5 The Attorney General as respondent maintained he acted in accordance with the Constitution.

No evidence was adduced to this court as to what action, if any, had been taken by the Rt. Hon. Speaker or Parliament on the advice the Hon. Attorney General had rendered to the Rt. Hon. Speaker. The advice thus  
10 remains not acted upon.

Under **Article 119 (3)** The Attorney General is the principal legal adviser of the Government, and carries out under **Article 119 (4)** the functions of giving legal advice and legal services to the Government on any subject, draws and peruses agreements, contracts, treaties, conventions  
15 and other documents to which the Government is a party or in which the Government has an interest, represents the Government in courts of law and in other proceedings to which the Government is a party and performs other functions assigned to him/her by the President or by law. Every agreement, contract, treaty, convention or any document relating to a  
20 transaction in which the Government has an interest must be concluded with legal advice having been obtained from the Attorney General, unless Parliament by law directs otherwise.

Courts in Uganda have pronounced themselves as to the effect and import of the legal advice that the Attorney General renders to Government its institutions and agencies.

5 While the Attorney General has a dual role as the Government principal legal adviser on both political and legal issues, as adviser on legal matters the Attorney General is a law officer and as such his/her advice on legal matters must be geared towards advancing the ends of justice. It is thus the duty of the Attorney General in discharging such responsibilities, to consult and access relevant information and advice from legitimate  
10 sources, including appropriate relevant advisers, so that the Attorney General informs himself/herself of all circumstances relevant to the advice and decision he/she is to render: See: **The attorney General, Politics and the Public interest, 1984, by John L.J. Edwards**, referred to in the judgement of G.W. Kanyeihamba, JSC, as he then was, in **Bank of Uganda  
15 V Banco Arabe Espanol: Civil Appeal No.1 of 2001 (SC)**.

The opinion of the Attorney General authenticated by his/her own hand and signature about the laws of Uganda and their effect, binding nature of any agreement, contract or other legal transaction in as much as the same concern the Government, ought to be accorded the highest  
20 respect by government, public institutions and their agents and unless there are other agreed conditions, third parties are entitled to believe and act on that opinion without further enquiries or verification.

Where the Government, any other public Institution or body in which the Government has an interest treats and deals with the advice of the Attorney General in such a way that on the basis of the said advice the rights and interests of third parties are affected, then the Government or  
5 public institution or body in which the Government has interest is estopped, as against those third parties, from questioning the correctness or validity of that Attorney General's legal opinion: See: **Bank of Uganda V Banco Arab Espanal (supra)**.

Where, as one representing the Government in a court of law or Tribunal,  
10 the Attorney General decides to take a certain action or not to take action, in the case before the court or Tribunal such a decision of the Attorney General cannot be challenged by another Government department, public Institution or body in which government has an interest: See: **Gordon Sentiba And 2 Others V Inspectorate of Government: Civil Appeal No.6**  
15 **of 2008 (SC)**.

Public institutions created under the 1995 Constitution such as the Electoral Commission, Judicial Service Commission and others that are mandated under the Constitution to carry out their work independently without being subjected to the control of any one, can be advised by the  
20 Attorney General, and while they must respect and take such advice as very persuasive, they are not bound to follow the advice of the Attorney General if to do so would compromise their constitutional role to act independently and without being subjected to the control or direction of

any one authority. In this regard courts of law as the third arm of the state are not bound by the advice of the Attorney General: See: **Constitutional Court Constitutional Petition No.1 of 2006: Kabagambe Asol And 2 Others Vs The Electoral Commission And Dr. Kizza Besigye.**

5 From the ordinary natural meaning of the English words: “**advise, advice and advisor**” an advice is never binding on the entity being advised. Therefore although the Attorney General is principal advisor of Government, the Constitution does not provide anywhere that such advice amounts to a directive that must be obeyed. Such advice while persuasive  
10 is subject to the Executive or Cabinet decision. See: **Kabagambe Asol case (supra)**

From the above analysis of the law as to the import and effect of the legal advice from the Attorney General, it is to be appreciated that Parliament, as the second Arm of Government, is part of Government and  
15 therefore has the Attorney General as principal legal adviser under **Article 119 (3) of the Constitution.**

I therefore, in agreement with their Lordships of the majority judgement, hold that the Honourable Attorney General acted within his constitutional powers to offer legal advice dated 08.05.2013 to the Rt. Hon.  
20 Speaker of Parliament.

The Speaker is the head of Parliament which is the second arm of Government, the first being the Executive and the third the Judiciary. Parliament is created by **Article 77 of the Constitution** and consists of



Members directly elected representing constituencies, one woman representative from each district, representatives of the army, the youth, workers and persons with disabilities, as well as the Vice President and Ministers.

5       The main function of Parliament is that it is vested by the constitution with power to make laws on any matter for the peace, order, development and good governance of Uganda: See: **Article 77**. In exercising that power, Parliament is only subject to the Constitution. It follows therefore that Parliament acts independent of any other authority or body, except the  
10   Constitution. It is therefore only in instances where the constitution provides that the exercise of power of Parliament be subjected to some other authority that that other authority may interfere with the work of Parliament. For example under **Article 137 of the Constitution**, the constitutional court may determine whether or not an Act of Parliament  
15   was enacted by Parliament in accordance with the constitution.

Therefore Parliament, while it must give all the respect to, cannot be bound by the advice of the Attorney General because no provision of the Constitution provides so. It follows therefore that as head of Parliament, the Rt. Hon. Speaker of Parliament, while bound to give the highest respect  
20   to the advice of the Hon. Attorney General, was not bound to follow the Hon. Attorney General's advice that she reverses her decision of retaining in Parliament the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to **Constitutional Petitions numbers 16 and 21 of 2013** after they had been expelled from



membership of the NRM party upon whose ticket they had been elected to Parliament.

Specifically in answer to issue number 9, I too, like the majority judgement, find that the Honourable Attorney, through possibly a slip of the pen, mistakenly stated in his advice on page 6 thereof that the only members provided for to constitute Parliament are Members of political parties and representatives of the army; and then later on the same page at the bottom, he mentioned the categories as being only Members of Parliament representing political parties, representative of the army and Independents. The Honourable Attorney General went on to explain on page 7 of his advice why the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents had become “**Aliens**” in the Parliament of Uganda after they had been expelled from the NRM political party.

The Honourable Attorney General properly referred to **Article 78 of the Constitution** which clearly sets out the categories of those who constitute parliament. He would not have referred to the Article if his intention was to distort, contrary to the Constitution, the categories of members that constitute the composition of Parliament. I am satisfied that it was a mere mistake on the part of the Honourable Attorney General not to set out in his advice all categories that constitute Parliament as **Article 78** provides. I therefore hold that issue Number 9 does not raise a question for constitutional interpretation. It was framed basing on an obvious mistake by the Honourable Attorney General in failing to set out in his advice all

the categories of members that constitute Parliament as set out in **Article 78 of the Constitution.**

As to issues 10, 11, 12, my resolution of issues 1, 4, 5 and 6 has a bearing on these issues. This resolution, which is contrary to the resolution of the majority judgement, is that the expulsion of a Member of Parliament by the political party upon whose ticket that member was elected to Parliament does not automatically result in that member vacating his/her seat in Parliament. The seat of a Member of Parliament may be vacated under **Article 83 (1) (g) and (h)** only under circumstances I have already set out while dealing with issues 1, 4, 5 and 6 earlier on in this judgement.

Further, as already held above, the advice of the Honourable Attorney General, though deserving all the highest respect possible is not binding upon the Rt. Hon. Speaker of Parliament, since Parliament of which the Rt. Hon. Speaker is head, carries out its functions as the second arm of Government only subject to the Constitution. The Constitution does not provide that the advice of the Attorney General shall be binding upon Parliament. To the extent therefore that issues 10, 11 and 12 arise from the advice of the Hon. Attorney General to the Rt. Hon. Speaker of Parliament, which advice has no binding effect upon the Rt. Hon. Speaker of Parliament, and which advice was never acted upon the said issues do not deserve any further consideration by way of interpreting the Constitution.

Issue number 13 questions whether the Honourable Attorney General's advice to the Honourable Speaker to reverse her decision retaining in

Parliament the four expelled Members of Parliament, was not inconsistent and/or contrary to **Article 137 of the Constitution** given the fact that the Honourable Attorney General rendered the said advice on 08.05.2013 after **Constitutional Petition No.16 of 2013** to which the Attorney General was  
5 the first respondent, had already been lodged in this court.

I find that **Article 119 of the Constitution** does not prescribe as to when or under what circumstances the Attorney General is supposed to give legal advice and legal services to the Government or an arm of Government like Parliament on any subject. The Constitution makes this  
10 to be a preserve of the Attorney General.

**Constitutional Petition Number 16 of 2013** was lodged in the Constitutional Court on 06.05.2013 and the advice of the Attorney General to the Speaker was rendered on 08.05.2013. The petitioner in **Constitutional Petition No.25 of 2013** did not adduce evidence to this  
15 court to show whether by the 08.05.2013 the Honourable Attorney General had already been served with **Constitutional Petition No.16 of 2013**. What is obvious is that the said petition was merely pending in the Constitutional Court by the time the Attorney General rendered his advice to the Speaker and as such there was no inconsistency with or  
20 contravention of **Article 137 of the Constitution** by the Honourable Attorney General in rendering the said advice. I so resolve.

**Constitutional Petition No.25 of 2013** has issues arising out of the Hon. Attorney General's advice dated 08.05.1013. As I have already resolved,

the said advice is not binding upon the Rt. Hon. Speaker of Parliament or Parliament itself. Further the **Constitutional Petition No.25 of 2013** does not assert that any action has been taken by anyone with regard to that advice. In my considered view, no cause of action arises out of such advice  
5 to give the petitioner locus to petition the Constitutional Court for declarations relating to contents of such advice.

**Issues 2, 3 and 8:** I will consider these issues together as they are interrelated. Issue number 2 is whether the act of the Speaker in ruling on 02.05.2013 that the four Members of Parliament expelled from the NRM  
10 political party for which they stood as candidates for election to Parliament, are to retain their respective seats in Parliament is inconsistent with or in contravention of the Constitution. Issue number 3 is whether by ruling as she did the Right Honourable Speaker created a category of Members of Parliament, peculiar to and thus inconsistent with and/or  
15 contrary to the constitution. Issue 8 is whether the Right Honourable Speaker of Parliament had jurisdiction to act as she did.

Specifically in respect of issue number 3, I have already resolved, while dealing with issues 1, 4, 5 and 6 that, under **Article 83 (1) (g) and (h) of the Constitution**, expulsion of a Member of Parliament from membership of  
20 and by the political party on whose ticket the said member was elected to Parliament does not, per se, automatically result in that Member of Parliament vacating his/her seat in Parliament. The Right Honourable

Speaker, therefore, in my considered view arrived at the correct decision consistent and not in contravention of the Constitution.

As to whether the Right Honourable Speaker was seized of jurisdiction under the Constitution to act as she did (issue No.8), **Article 82 of the**  
5 **Constitution** provides that:

**“82. Speaker and Deputy Speaker of Parliament.**

(1).....

(2).....

(3).....

10 (4) **Subject to article 81 (4) of this Constitution, no business shall be transacted in Parliament other than an election to the office of Speaker at anytime that office is vacant.”**

**Article 81 (4)** requires every Member of Parliament to take and subscribe to the oath of allegiance and that of a Member of Parliament.

15 **Article 79** provides for the business that Parliament transacts and only when the office of Speaker is not vacant, namely: to make laws on any matter for the peace, order, development and governance of Uganda. Parliament also protects the Constitution and promotes democratic governance of Uganda.

20 The Rt. Hon. Speaker therefore is vested with jurisdiction under the Constitution to handle, deal with and give directions on any matters that

relate to the business of Parliament as is vested in Parliament by **Article 79**. In exercising those powers the Rt. Hon. Speaker is subject to the Constitution, the laws that Parliament may enact under the Constitution and to the **Rules of Procedure of Parliament of Uganda**.

- 5 Under **Rule 7 of the Rules of Procedure of Parliament**, the Speaker presides at any sitting of the House, preserves order and decorum in the House. In case of any doubt for any question of procedure not provided for in the Rules, the Speaker decides on that issue, having regard to the practices of the House, the Constitutional provisions and practices of other  
10 Commonwealth Parliaments in so far as they may be applicable to Uganda's Parliament.

It is a fact that on 16.04.2013 the Secretary General of the NRM political party, Hon. Amama Mbabazi, requested in writing the Rt. Hon. Speaker to declare the seats of the four expelled MPs vacant because the NRM political  
15 party upon whose ticket each of the said MPs had been elected to Parliament, had expelled each of the four MPs from membership of the party.

The request in my considered view, is a matter that constituted business of Parliament in terms of **Articles 79 and 82 of the Constitution** and also  
20 falls under the ambit of the **Rules of Procedure of the Parliament of Uganda**.

The Rt. Hon. Speaker had to deal with the request made to her office by the Hon. Secretary General of the NRM party. The way the Rt. Hon. Speaker chose to handle the request is as per her statement to Parliament on 02.05.2013. Parliament received the statement of the Rt. Hon. Speaker  
5 and no further action was taken upon it by Parliament there and then or thereafter. The issue then came to the Constitutional Court through the consolidated Constitutional Petitions, the subject of this judgement.

It is my finding, given the state of the law as applied to the facts before this court, that the Rt. Hon. Speaker had the jurisdiction to act as she did  
10 and as such her act was not inconsistent or in contravention of the Constitution.

Whether by ruling that the four expelled MPs remain in Parliament, the Rt. Hon. Speaker of Parliament created a peculiar category of MPs in Parliament unknown to and being inconsistent with and/or in  
15 contravention of the Constitution, I note that **Article 78 of the Constitution** sets out those who constitute Parliament. These are: Members directly elected to represent constituencies, one woman representative for every district, representatives of the army, youth, workers and persons with disabilities, the Vice President and Ministers, who if not already elected  
20 Members of Parliament, are ex officio Members of Parliament with no right to vote on an issue requiring a vote in Parliament.

While **Rule 9 of the Rules of Procedure of Parliament** provides that in the House, the seats to the right hand side of the Speaker are for Members



of the political party in power and those on the left are for the members of parties in opposition, the said Rule must be applied and interpreted subject to the Constitution. **Article 78** mandates the Rt. Hon. Speaker to seat in the House any member directly elected to represent a constituency in the House. Indeed **Rule 9 (1) of the Rules of Procedure of Parliament** provides that:

**“9. Sitting arrangement in the House.**

**(1) Every Member shall, as far as possible, have a seat reserved for him or her by the Speaker.”**

10 The Rt. Hon. Speaker, after having considered the request of the Secretary General of the NRM party to declare the seats of the four Members of Parliament expelled by the party vacant, arrived at the conclusion that the law did not give her powers to do so. The Rt. Hon. Speaker then ruled that the four MPs remain in Parliament and found places for them where to sit  
15 and transact business of Parliament as elected Members of Parliament representing constituencies on the basis that, according to the Rt. Hon. Speaker, ( and now as I have held in this Judgement), the expulsion of the said Members of Parliament from membership of the political party upon which the said member were elected to Parliament did not automatically  
20 result in having their seats declared vacant.

I therefore hold that the Rt. Hon. Speaker of Parliament acted within and not in contravention of the Constitution when she ruled that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents remain in Parliament as members directly

5 elected to represent constituencies. It is up to those members to transact their Parliamentary business in compliance with the dictates of the party they claim they still belong to, upon which they were elected to Parliament, or on the other hand, it is up to the said political party to petition the High Court under **Article 86 (1)** to have the seats of the said Members of Parliament declared vacant on the basis that the party upon which they were elected in Parliament has expelled them. It is not the Rt. Hon. Speaker to resolve that dispute between the said four MPs and the political party upon which they were elected to Parliament. The responsibility of the Rt. Hon. Speaker under **Rule 9 of the Rules of Procedure of Parliament** is to “**have a seat reserved**” for the said four Members of Parliament.

#### **Issue No.7**

15 This is whether the court should grant a temporary injunction stopping the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to **Constitutional Petitions numbers 16, 19 and 21 of 2013** from sitting in Parliament pending determination of the consolidated petitions or as a permanent injunction.

20 On 06.09.2013 in a dissenting ruling, I declined to entertain the issue of granting or not granting a temporary injunction at that stage of the court proceedings when only what remained was delivery of the final judgement in the consolidated petitions. Their Lordships of this Court in a majority decision issued the prayed for temporary injunction.

I now deal with the issue whether or not a temporary injunction ought to have been granted to the petitioners in **Constitutional Petitions 16 and 21 of 2013** stopping the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents as members expelled by the political party upon which they were elected to Parliament from sitting in Parliament pending determination of the consolidated constitutional petitions.

The petitioners in **Constitutional Petitions 16 and 21 of 2013** through **Constitutional Applications numbers 14 and 23 of 2013** applied for the above stated injunction first as against the Attorney General only, but later on application of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents, they too were added on the applications as respondents. For reasons already given in my ruling of 06.09.2013 the Constitutional Court ordered that the two **Constitutional Applications 14 and 23 of 2013** be heard and disposed of together with the consolidated petitions.

A court injunction is an order which either prohibits (a prohibitory injunction) or requires one to do (a mandatory injunction) a particular act or thing. A breach of a court injunction is punishable as contempt of court and may, in some circumstances, lead to imprisonment.

The grant of an injunction by court is within the discretionary powers of the court. The test for consideration by court whether or not to grant an injunction is whether the applicant has made out a case as to whether there is a fair and bonafide question to be tried, whether damages would be an adequate remedy and, in case of doubt as to these two, whether the balance

of convenience favours the grant of an injunction. See: **Giella V Cassman Brown and Company [1973] EA 358** and also : **Noormohamed Jan-Mohamed Vs Kassamali Virjl Madhani [1963] 1 EACA 8.**

In practice, however, an applicant for a mandatory injunction has a higher  
5 burden to establish his/her case to be granted such an injunction than the one seeking a prohibitory one. This is because a mandatory injunction, if granted, imposes an additional degree of hardship or expense on the victim of the injunction. Therefore the jurisdiction as to a mandatory injunction is such that:-

10 **“It is a jurisdiction to be exercised sparingly and with caution but, in the proper case, unhesitatingly.”** See: **Redland Bricks Ltd V Morris [1970] AC 652.**

The injunction sought in **Constitutional Applications 14 and 23 of 2013** was mandatory in nature in that it required, if granted by Court, the Rt.  
15 Hon. Speaker of Parliament not to implement her ruling of 02.05.2013 whereby she retained in Parliament the four MPs expelled by their NRM political party, by restraining those same MPs from entering; sitting in Parliament or participating in any parliamentary proceedings or accessing premises, precincts of Parliament until the disposal of the consolidated  
20 constitutional petitions or until further orders of the court.

The application for the mandatory injunction was based, according to the applicants, on the fact that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents, having been expelled by the NRM political party from membership of that party,

each one of them had ceased to be a Member of Parliament and by reason thereof their respective seats in Parliament had been vacated and so each one ought not to be in Parliament.

Obviously therefore the application for the temporary injunction, 5 mandatory in nature, was based upon the very issues to be resolved by the Constitutional Court in the consolidated **Constitutional Petitions numbers 16, 19, 21 and 25 of 2013.**

In my humble view, given the fact that the issues to be resolved in the consolidated **Constitutional Petitions, particularly numbers 16 and 21 of** 10 **2013**, were not straight forward and clear cut but were complicated issues involving interpretation of the Constitution and being determined, on their special facts, for the first time by the Constitutional Court, the applicants for the injunction never made out a case, that this was the nature of the case where an application for a mandatory injunction should have been 15 made.

Further, the overriding consideration for an injunction is to preserve the status quo, but not to create a new one. The status quo in this case was that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to **Constitutional Petitions 16 and 21 of** 20 **2013** were and are sitting Members of Parliament representing their respective constituencies having been validly elected as such on the NRM political party ticket. The petitioners in the **consolidated Constitutional Petitions numbers 16, 19 and 21 of 2013** assert that this status of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents should now change to a new status whereby the

said respondents, not being Members of Parliament because of their having been expelled by and from the political party upon whose ticket they were elected to Parliament, have to vacate Parliament and their seats declared vacant so that fresh elections are held in their respective constituencies. It is in effect because there is a dispute as to whether or not the alleged new status is valid or not under the Constitution that this Constitutional Court is being called upon, to resolve the dispute through the said consolidated constitutional petitions. It was therefore not proper, in my view, for the petitioners in **Constitutional Petitions numbers 16 and 21 of 2013**, to seek to obtain a mandatory injunction purporting to preserve a status whose constitutional legitimacy was the very issue the very petitioners were calling upon the Constitutional Court to pronounce upon through **Constitutional petitions 16 and 21 of 2013**.

For the above reasons I would not have granted a temporary injunction prayed for in **Constitutional Applications 14 and 23 of 2013**.

Now in this judgement, by reason of the findings and holdings I have made in respect of the framed issues, particularly my holding that the expulsion of a Member of Parliament by his/her political party, on whose ticket he/she was elected to Parliament does not automatically result in the Parliamentary seat of that member becoming vacant, I refuse to grant the prayed for injunction.

**In conclusion by way of remedies I hold that:**

1. The expulsion from a political party is not an automatic ground for a Member of Parliament to lose his or her seat in Parliament under **Article 83 of the 1995 Constitution** but

5 (i) Where a Member of Parliament elected to Parliament on the ticket of a political party voluntarily leaves that party to join another political party or to remain an Independent in Parliament or having been an Independent in Parliament joins a political party, then that member vacates Parliament under **Article 83 (1) (g) and (h)**.

10 (ii) In any other cases, where the political party upon whose ticket a Member of Parliament was elected to Parliament, asserts that the said Member of Parliament through his/her voluntary conduct, has left that party and joined another one or has remained an Independent in Parliament, or having been elected  
15 as an Independent he/she has joined a political party, but that the said member has refused to declare to that effect, the issue whether the seat of that Member of Parliament has become vacant must be resolved upon by the High Court under **Article 86 (1) of the Constitution**. The political party concerned may  
20 use the evidence of the expulsion of such a member as part of the evidence in establishing a case against the Member of Parliament in a question as to why his/her seat should not be declared vacant by the High Court.



2. The Ruling of the Right Honourable Speaker of Parliament dated 02.05.2013 that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to **Constitutional Petitions numbers 16, 19 and 21 of 2013**, remain in Parliament did not contravene any provision of the Constitution.
- 5 3. The Rt. Hon. Speaker of Parliament did not create a peculiar category of MPs, unknown and contrary to the Constitution by ruling as she did in (2) above.
4. The continued stay of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents after their expulsion from the NRM political party on whose ticket they were  
10 elected to parliament is not contrary to or inconsistent with the Constitution.
5. The said 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents did not vacate their seats in Parliament. They are still Members of Parliament under the Constitution.
- 15 6. No temporary injunction or any injunction at all stopping the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents from sitting in Parliament should be granted.
7. The Rt. Hon. Speaker of Parliament had the jurisdiction to make the orders she made and she acted within and in compliance with the Constitution.
- 20 8. The Act of the Hon. Attorney General of advising the Speaker and Parliament is not inconsistent or contrary to the Constitution, but the said advice, while deserving all the respect from the Rt. Hon. Speaker

is not binding upon the Speaker, let alone Parliament, as the second arm of Government. To this extent, it is unnecessary in this case for court to determine the constitutionality or unconstitutionality of the nature of advice the Hon. Attorney General gave the Rt. Hon. Speaker, except in as far as that advice was part and parcel of the independent issues arising from **Constitutional Petitions numbers 16, 19 and 21 of 2013** which have been resolved upon separately in this judgement.

Having resolved the issues as above I decline to grant the declarations prayed for in **Constitutional Petitions numbers 16, 19 and 21 of 2013, Constitutional Applications numbers 14 and 23 of 2013** as well as the first respondent's (Attorney General) cross petition to **Constitutional Petition No.21 of 2013**. The said Constitutional Petitions, cross-petition and applications stand dismissed.

As to **Constitutional petition No.25 of 2013**, to the extent that the advice of the Attorney General is not binding upon the Rt. Hon. Speaker and Parliament as the second arm of Government, I find that on the mere basis of securing a copy of the said advice, which advice has not been acted upon, does not vest in the petitioner to that petition a cause of action to petition the Constitutional Court for the declarations he prays for which are all about the contents of such

advice. Accordingly **Constitutional Petition No. 25 of 2013** is also dismissed by reason thereof.

As to costs, the consolidated petitions raised issues of great public importance as regards the constitutional inter-relationship of political parties and Parliament, the office of Attorney General and that of the Speaker of Parliament and the functioning of the three arms of Government: The Executive, the Legislature and the Judiciary. It is therefore only fair and fitting that no particular party to the consolidated petitions and applications be punished by way of costs. I accordingly order that each party bears its own costs of all the proceedings in the consolidated constitutional petitions, cross petition and the applications.

Lastly I wish to thank counsel of all parties for the detailed research, exposition and clarity of submissions. This court was very much assisted by such. Thank you so much.

Dated at Kampala this 21<sup>st</sup> day of February, 2014.

Remmy Kasule  
**JUSTICE OF CONSTITUTIONAL COURT**

Judiciary COA

**THE REPUBLIC OF UGANDA**

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA.

**(1) CONSTITUTIONAL PETITION NO. 16 OF 2013**

5 1. HON. (RTD) SALEH M.W.KAMBA }  
2. MS. AGASHA MARY } .....PETITIONERS

VERSUS

10 (1) ATTORNEY GENERAL }  
(2) HON. THEODRE SSEKIKUBO } .....RESPONDENTS.  
(3) HON. WILFRED NIWAGABA }  
(4) HON. MOHAMMED NSEREKO }  
(5) HON. BARNABAS TINKASIMIRE }

**(2) CONSTITUTIONAL PETITION NO. 21 OF 2013**

NATIONAL RESISTANCE MOVEMENT .....PETITIONER

VERSUS

15 (1) ATTORNEY GENERAL }  
(2) HON. THEODRE SSEKIKUBO } .....RESPONDENTS.  
(3) HON. WILFRED NIWAGABA }  
(4) HON. MOHAMMED NSEREKO }  
(5) HON. BARNABAS TINKASIMIRE }

**(3) CONSTITUTIONAL PETITION NO. 19 OF 2013**

20 JOSEPH KWESIGA .....PETITIONER

VERSUS

ATTORNEY GENERAL .....RESPONDENT.

(4) CONSTITUTIONAL PETITION NO. 25 OF 2013

25 HON. ABDU KANTUNTU :::::::::::::::::::::::::::::::PETITIONER

VERSUS

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

CORAM: HON MR. JUSTICE S.B.K KAVUMA AG. DCJ/PCC

HON. MR. JUSTICE A.S NSHIMYE JA/JCC

30 HON. MR. JUSTICE REMMY KASULE JA/JCC

HON. LADY JUSTICE FAITH E.K. MWONDHA JA/JCC

HON.MR.JUSTICE RICHARD BUTEERA JA/JCC

**JUDGMENT OF MWONDHA ,JA/CC**

35 Although I agree with my learned brother Justices of the Court in the majority  
Judgment, declarations and orders made therein, I came to the same conclusion  
for different reasons in respect of issues, 1, 4, 5&6.

For clarity I will reproduce the issues 1, 4, 5 & 6.

(1)Whether the expulsion from a political party is a ground for a Member of  
40 Parliament to lose his or her seat in Parliament under Article 83(1) (g) of  
the 1995 Constitution.

(4) Whether the continued stay in Parliament of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents after their expulsion from the NRM party on whose ticket they were elected is contrary to and or inconsistent with **Articles 1(1)(2)(4), 2(1), 21(1),(2), 29(1)(e), 38(1), 43(1), 45, 69(1), 71, 72(1), 72(2), 72(4), 78(1), 79(1)(3) and 255(3)** of the Constitution.

(5) Whether the said expelled MPs who left and or ceased being members of the Petitioner vacated their respective seats in Parliament and are no longer Members of Parliament as contemplated by the Constitution.

(6) Whether the said expelled MPs vacated their respective seats in Parliament and are no longer Members of Parliament as contemplated by the Constitution.

I, also agree that the gist of the issues was whether the expelled members of Parliament left the party for which they stood and were elected to Parliament and whether they vacated their seats.

As a Court of first instance in Constitutional matters, I found it important to state the substance of the Petition Nos. 16, 21/2013, CP No. 19/2013 CP No. 21/2013, C.P No.25/2013 Cross Petition in CP No. 16/2013, and the responses. All Petitions were brought under **Article 137** of the Constitution, and the



Constitutional Court (Petitions & Reference) Rules S.1 91 of 2005 and all  
60 enabling laws. They were consolidated by Court after having been filed  
separately by the individual Petitioners. Petition No. 21/2013 was filed on  
20<sup>th</sup>May 2013 by the Petitioner's counsel, Mugisha & Co. Advocates & M/s  
Bakiza & Co. Advocates & M/S Twinobusingye Severino & Co. Advocates.

It was stated that the Petitioner is a Political party organization established and  
65 registered under the Political parties and organizations Act 2005 and is the  
Ruling National Political Party and thus having interest in or aggrieved by the  
following matters being inconsistent with and/or in contravention of the  
Constitution of the Republic of Uganda and contented as follows;-

(1) That the Petitioner has suffered and shall suffer the infringement of its  
70 rights and contravention of the Constitution by the act of the Rt. Hon.  
Speaker of Parliament of the Republic of Uganda in the Ruling made on  
2<sup>nd</sup> May ,2013 to the effect that the four Members of Parliament to wit  
Hon. Theodre Ssekikubo, Member of Parliament for Lwemiyaga County,  
Hon. Wilfred Niwagaba, Member of Parliament for Ndorwa East  
75 Constituency, Hon. Mohammed Nsereko, Member of Parliament for

Kampala Central Constituency and Hon. Barnabas Tinkasimire, Member of Parliament for Buyaga West Constituency (expelled MPs) who left the National Resistance Movement, a party for which they stood as candidates for election to Parliament, should retain their respective seats in Parliament is inconsistent and in contravention with **Articles 1(1)(2)(4), 2(1)(2), 20(1)(2), 21, 43(1)(2)(c), 45, 69, 70, 71, 72, 73, 74, 77(1)(2), 78(1), 79, 80, 81(2), 83(1)(g)(h) and 83** of the Constitution of the Republic of Uganda.

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(2) That the act of the Rt. Hon. Speaker culminated in the creation of a peculiar category of members of Parliament unknown to the Constitution and was inconsistent with and or in contravention of the above stated articles and ipso fact null and void.

85

(3) That the expelled MPs who left and or ceased being members of your Petitioner vacated their seats in parliament as contemplated by the Constitution.

90

(4) That the said expelled MPs who left and or ceased being members of the Petitioner are now politically wild people, aliens/anonymous/trespassers with no identity in the Parliament of the Republic of Uganda which is inconsistent with the above stated articles of the Constitution.

(5) That the Rt. Honourable Speaker has no jurisdiction to make a ruling on  
95 such matters and her action was inconsistent with and in contravention of  
the above stated Articles.

(6) That the act of the Rt. Hon. Speaker was illegal abinitio and ought not be  
left to stand once brought to the attention of this Court.

(7) That the Attorney General of Uganda had issued a legal opinion to the  
100 effect that the Rt. Hon. Speaker's Ruling is illegal and unconstitutional  
which is binding on her.

(8) That the impugned acts of the Rt. Hon. Speaker are inconsistent with and  
in contravention of the provisions of the Constitution due to the following  
reasons:

105 (a) That the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents who left and or ceased being  
members of the Petitioner vacated their seats in Parliament and are no  
longer members of Parliament as contemplated under the Constitution.

(b) That the said expelled MPs who left and or ceased to be members of  
the Petitioner do not have any identity, are not attached to or affiliated  
110 to any political party recognized by the Constitution of the Republic of  
Uganda.

(c) That the parliamentary Seats of the said expelled members of Parliament fell vacant upon their expulsion from the Petitioner.

115 (d) That the Rt.Hon. Speaker had no jurisdiction to make the ruling as she purportedly did on such a matter.

(e) That the continued stay of the said expelled MPs in Parliament is an affront on the multiparty dispensation which was ushered in by Ugandans in 2005, National Referendum and is bound to breed, impunity, anarchy which will in the end whittle down representative multiparty democracy.

120

(f) That if the Rt. Hon. Speaker's ruling is left to stand, it will set a dangerous precedent as it will leave political parties as mere empty shells instead of being key institutions of representative democracy or as linch pins thereof as provided for in the Constitution.

125 (g) That if the Ruling of the Rt. Hon. Speaker is allowed to stand, it will lead to the withering away of political parties and multiparty democracy, the safe guard for peace, order, security and tranquility the hall mark of the rule of Law and Constitutionalism.

130 (h) That the act of the Rt. Hon. Speaker is illegal abinitio and ought not be left to stand once drawn to the Court's attention.

(i) That the peculiar category of members of Parliament purportedly created by the Rt. Hon. Speaker is not envisaged by the Constitution and is bound to bring confusion and encourage indiscipline among other members and shall culminate in anarchy and mayhem.

135 The petitioner prays that this Honourable Court grants the following Declarations and orders:

(1) That the act of the Rt. Hon. Speaker of Parliament in ruling that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents who left the Petitioner should retain their respective Seats in Parliament is inconsistent with and in contravention of **Articles 1(1)(2)(4), 2(1)(2), 20(1)(2), 21, 43(1)(2)(c), 45, 69, 70, 71, 72, 73, 74, 77(1) and (2), 78(1), 79, 80, 81(2), 83(1)(g) and 83(3)** of the Constitution of the Republic of Uganda.

140  
145 (2) That the act of the Rt. Hon. Speaker of creating a peculiar category of members of Parliament unknown to the Constitution is in contravention or inconsistent with **Articles 1(1)(2)(4), 2(1)(2) 20(1)(2), 21, 43(1)(2)(c), 45, 69, 70, 71, 72, 73, 74, 77(1)**

and(2),78(1),79,80,81(2),83(1)(g)(h) & 83 of the Constitution ipso facto null and void.

150 (3) That the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents vacated their respective seats in Parliament upon expulsion from the Petitioner.

(4) That the respective seats of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents are presently legally vacant.

(5) That a by-election be conducted by the National Electoral Commission to fill the respective seats.

155 (6) That the respondents pay costs of this petition and a certificate for two counsel be issued.

The Petition is supported by the affidavits of Yoweri Kaguta Museveni, Chairman of the Petitioner and Amama Mbabazi, Secretary General of the Petitioner and supplementary affidavits

160 with documents annexed of the saiddeponents respectively,the Petitioner stated would rely on. The affidavits essentially had the same contents, so I will state them as follows:-

165

(1) That they were male adult Ugandan citizens of sound mind and the Chairman and the Secretary General and that they swore the affidavits in those capacities.

170

(2) That the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents were nominated as candidates for election as members of parliament by the Petitioner who sponsored their respective candidates in the 2011 as party Members of Parliament.

175

(3) That the respondents as above stated stood as candidates for the Petitioner as the Political party for which they stood for election to the 9<sup>th</sup> Parliament and they were elected as such.

180

(4) That on or about 14<sup>th</sup> April 2013 the central Executive Committee (herein referred to as CEC) of the Petitioner received a report and proceedings from the party Disciplinary Committee. The said Disciplinary Committee had found that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents had acted and or behaved in a manner that contravened various provisions of the party Constitution. The said party Disciplinary Committee had decided to expel them from the Petitioner and the decision was confirmed by the Central Executive



Committee of the party. (Copies of the communique of the central  
executions committee and the Executive summary) were attached  
and marked Annexures "A" & A<sup>1</sup>  
respectively.

185 (5) That having been expelled the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents left the  
petitioner and were no longer its members representing the party  
nor are they independents in Parliament.

190 (6) That the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> Respondents left the Petitioner and they  
legally vacated their Seats in Parliament as decided by the Central  
Executive Committee. The Secretary General was directed to write  
to the Rt.Hon. Speaker informing her to direct the clerk to  
Parliament to declare the seats of the said members of Parliament  
vacant so as to enable the Electoral Commission to organize by –  
elections in their respective Constituencies. The copy of the said  
195 letter was attached and marked Annexure "B".

(7) That on 2<sup>nd</sup> May 2013 the Right Hon. Speaker made a ruling to the  
effect that there is no specific Constitutional provisions on expulsion  
of members of Parliament by their Political parties leading to the

200

declaration of their seats in Parliament vacant, and that they should therefore not vacate their seats. The copy of the Ruling & Hansard was attached and marked Annexure “C” & “C1” respectively.

205

(8) That they know that by being expelled from the party, the Petitioner for which they stood as candidates for election to Parliament, and which party had sponsored their nomination, candidature and election, the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents, ipso facto vacated their seats in Parliament.

210

(9) That the said Ruling of the Rt. Hon. Speaker and the refusal or failure to direct that they vacate their seats in Parliament, infringed on the rights of the party and its members enshrined in **Articles 1(1),(2)(4),2(1)(2),20(1)(2),21,42,43(1)(2)(c),45,69,70,71,72,73,74,77(1) & (2),78(1),79,80,81(2),83(1)(g)(h)& 83(3)** of the Constitution of the Republic of Uganda.

215

(10) That as a party they are deprived of their Parliamentary Seats and those four Constituencies are not currently represented, yet the electorate preferred the Petitioner’s hitherto flag bearers to represent them.

(11) That they know that there is no way members of parliament who were nominated, sponsored and elected as candidates of the Petitioner on the basis of the Petitioners manifesto and ideology can continue to represent their Constituencies which elected them after they have been expelled from the party on whose ticket they had been elected.

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(12) That they know that the Attorney General has since issued a legal opinion to the effect that the Rt. Hon. Speaker's decision to allow the said expelled MPs to stay in Parliament is illegal and an abuse of the law and is inconsistent with the constitution and other pieces of legislation made there under. That they know that the Attorney General's opinion is binding on Government and all Government institutions and agencies and must be respected and acted on without question (A copy of the Attorney General's letter was annexed and marked "D").

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(13) That they know that the Ruling of the Right Hon. Speaker of Parliament infringed on the Petitioners Party structures in as far as

it cannot enforce strict disciplinary measures of its errant and  
disobedient members.

235

(14) That they know that one of the factors of our history which led  
to Political and Constitutional instability and which was the mischief  
the Constitution sought to cure was the action of members of  
Parliament crossing the floor of Parliament and leaving a political  
party which sponsored them while entering Parliament to another  
party without seeking a fresh mandate.

240

(15) That in 1962 the 1<sup>st</sup> Independent Government of Uganda was  
an alliance of two political parties the Uganda Peoples Congress  
(UPC) and Kabaka Yekka (KY) while the Democratic Party (DP)  
formed the opposition.

245

(16) That the UPC assumed power, the then Prime Minister Milton  
Obote realizing the danger of having a partner who could any time  
cross to another party and effectively bring his government to an  
end decided to persuade individual MPs of KY and DP to cross to  
UPC.

250

(17) That after 1964 the KY/UPC alliance collapsed and several KY,MPs and DP, MPs crossed from their respective parties to UPC without submitting themselves to seek fresh mandate such that by 1966 Obote's UPC had absolute majority in Parliament.

255 (18) That the then Prime Minister, Milton Obote had succeeded to build a majority in Parliament and accordingly by 1966 he felt strong enough to abolish the 1962 independence Constitution. This act plunged Uganda into Constitutional crisis and brought political instability from which Uganda has suffered for several decades and  
260 is only slowly recovering under the Constitutional dispensation ushered in by the NRM administration.

(19) That they know the people of Uganda promulgated the 1995 Constitution, mindful of the tragic period of our history and inserted clauses notably **Article 83(1)(g)** in the Constitution which ensured  
265 that a member of Parliament who leaves the party which had sponsored him and for which he stood for election to Parliament either to join another party or to remain in Parliament as an independent should seek a fresh mandate through a bye election.

270 (20) That the act of the Rt.Hon. Speaker of Parliament to rule that  
the MPs remain in Parliament despite having left the party that  
sponsored them to Parliament was out of step with the  
Constitutional provisions and threaten to drag the Country back to  
Constitutional mayhem and political instability.

275 (21) That they know that given the Constitutional mischief of our  
political history and the provisions of the Constitution notably  
**Article 83(1)(g)** which were meant to heal that mischief there is no  
way the four respondents who became Members of Parliament  
through nominations, sponsored and elected as candidates of the  
petitioner on the basis of the Petitioners manifesto and ideology can  
280 continue to represent their Constituencies after they had left the  
NRM.

(22) That they know that proportionality of a party representation  
in Parliament is a hall mark of Multi party political dispensation  
which the people of Uganda adopted in 2005 Referendum on  
285 political Systems. That they know that the proportionality of Political  
party representation in Parliament as determined by the People of

Uganda through the 2011 Parliamentary Elections is distorted by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents leaving the NRM, the party they stood for election and were elected to Parliament.

290 The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents in their filed reply affidavits to the Petition, opposed the Petition Nos. 21/2013, 16/2013, 19/2013 and the cross petition of the 1<sup>st</sup> respondent in all petitions. They stated among other things as follows:-

(1) They have never left the party but rather that they were forced out and have challenged that forceful eviction as distinct from the voluntary act of leaving and that they have never vacated their seats.

295

(2) That in Uganda proportionality of party representation is not a hall mark of Political party dispensation as it's that principle which is distorted by the presence of the Military in Parliament.

(3) That the rules of procedure as to sitting in Parliament among others is an internal decision by Parliament and not a Constitutional matter.

300

(4) That there was a lot of resistance in the House to the bill that sought to amend **Article 83(1) (g)** by inserting the word "expulsion" and as a result the Government withdrew the proposal.



(5) That they verily believe that the framers of the Constitution deliberately  
305 left out “expulsion” from the political party as a ground for vacating a seat  
in order to directly protect the rights of Ugandans and not political parties  
as per **Articles 38(1)** and **78(1)** of the Constitution.

(6) That they deny being with no known identity in the Parliament as alleged  
or at all and that they represent the people of their respective  
310 Constituencies in accordance with **Article 78(1)** of the Constitution and  
hence had not breached any provision of the Constitution.

(7) Hon. Theodre Ssekikubo denied having been nominated by the Petitioner  
to stand but by one Wamala Muzzanganda Kuwatana and Nakaala  
Prossy. That he had never left the Petitioner as his membership fee is  
315 being deducted.

### **Introduction to Resolution of issues 1,4,5 & 6**

(1) It was clear from Petition No. 21/2013 that, the Petitioner is a Political  
Party/Organization established and registered under the Political  
Parties and Organizations Act 2005. It is a body corporate. This gives  
320 the Petitioner the right to allege that any act or omission by any  
person or authority is inconsistent with or in contravention of the

provision of the Constitution and may Petition the Constitutional Court for a declaration to that effect and for redress where appropriate as per **Article 137(3)(b)**.

325 **(2) Political Parties/Organizations are creatures of the 1995 Constitution.**

The gist of the genesis of Political parties/organizations is evidenced from the preamble of our Constitution which states the general purpose of the Constitution. It states: **"We the people of Uganda recalling our history which has been characterized by Political and**

330 **Constitutional instability, recognizing the struggles against the forces of tyranny, oppression and exploitation, committed to building a better future by establishing a socio economic and Political order through a popular and durable National**

335 **Constitution on the principles of Unity, Peace, equality democracy, freedom, socio justice and progress...Do hereby in**

**and through the Constituent Assembly adopt , enact and giveourselves and our posterity, this Constitution of the Republic of Uganda this 22<sup>nd</sup> day of September, in the year 1995.**

**FOR GOD AND MY COUNTRY.**

340 The preamble stresses the commitment to building a better future  
through the popular and **durable National Constitution rooted in the  
principles of Democracy, Social Justice among others which  
should be guarded jealously by all Ugandans.**The Courts of law and  
the Judiciary in the administration of Justice have a duty to exercise  
345 judicial power bearing in mind that judicial power is derived from the  
people and exercised by Courts established under this Constitution in  
the name of the people and in conformity with the law and with the  
values, norms and aspirations of the people. See **Article 126(1)** of the  
Constitution.

350 (3) The Constitution provides the National Objectives And Directive  
Principles of State Policy Part 1 is on Implementation of Objectives  
and provides as follows:

(i) *“The following objectives and principles shall guide all organs  
and agencies of the state, all citizens, organizations and other  
355 bodies and persons in applying or interpreting the Constitution or  
any other law and implementing any policy decisions for*

*establishment and promotion of a just, free and democratic society.”*

Political Objectives: Part II: Democratic Principles:- It provides among others,

360

**(ii) “All people of Uganda shall have access to leadership positions at all levels subject to the Constitution.**

**(V) Provides:- “All Political and Civic Associations aspiring to manage and direct public affairs shall conform to the democratic principles in their internal organizations.”**

365

**The Constitution Article 29(1)(e) provides: “ Every person shall have the right to... (e) freedom of association which shall include the freedom to form and join associations or Unions including trade unions and Political and other Civic Organizations.”**

370

**Article 69** of the Constitution provides for the 3 types of Political Systems as hereunder:

375 **(1)** The people of Uganda shall have the right to choose and adopt a political Systems of their choice, through free and fair elections or refranda.

**(2)** The political System referred to in clause (1) of this article shall include:-

380 (a) The Movement Political system

(b) The Multi party political system and

(c) Any other democratic and representative Political System.”

**Article 71** provides : (1) A Political party in the multi Party Political System shall conform to the following principles (a)...(b) ...(c) **the internal**

385 **Organisation of a Political Party shall conform to the democratic principles enshrined in this Constitution,** (See also ii & v Supra- Political objectives & Democratic principles).

**Article 72(1)** provides: “Subject to the provisions of this Constitution the right to form Political Parties and any other Organisationis guaranteed.

390 (2) An organisation shall not operate as a Political Party or organisation  
unless it conforms to the principles laid down in this Constitution, and it is  
registered.

**Article 72(4)** provides: “Any person is free to stand for an election as a  
Candidate, independent of a political organization or political party.

395 **Article 83(3)** ‘The provisions of clauses (1)(g) and (h) and (2) of this  
article shall only apply during any period when the multiparty system of  
government is in operation.’

#### **Resolution of issues:**

From the evidence on record by the Petitioner in Constitutional Petition No.  
400 21/2013, and the responses of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents it was clear  
that the above MPs joined the Petitioner (Party) after it complied with all the  
Constitutional requirements as provided in **Article 71** above stated. They were  
flag bearers of the Petitioner in the 2011 elections based on the Democratic  
principles and practice as required by the Constitution. Those material facts  
405 were not disputed or challenged by the four respondent MPs. They freely  
exercised their freedom to join the Petitioner in accordance with **Article 29**

**(1)(e)** and in line with the democratic principles and political objectives of the Constitution.

410 The submission by counsel for the four respondents that the respondents' conduct that culminated in their expulsion from the party/Petitioner was not a matter for Constitutional interpretation but a matter between the Petitioner and the four respondents internally, was too far fetched as it was not supported by evidence or principles of Constitutional interpretation. But even if I was to agree, which I do not, it was a matter between the petitioner and the four  
415 respondents, so the Rt. Hon. Speaker had no right to interfere with the party's internal organization, to rule that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents remain in Parliament, when the party had expelled them.

Democratic Principle (ii) is clear and for avoidance of doubt I will reproduce it:-

420 "All people of Uganda shall have access to leadership positions at all levels subject to the Constitution. "This objective is made justiciable by **Article 29(1)(e)** and **72** of the Constitution. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents, under **Article 29(1)(e)** exercised their freedom to join the party in accordance with the internal



organization of the party as provided by law. By the internal organization of the  
425 Petitioner's party they accessed their respective leadership positions in the  
respective Constituencies as Members of Parliament.

It will be too casual to say that the contravention of the Petitioner's constitution  
was not of importance to the National Constitution. The internal Organisation of  
the Party is the agreement between the members of a party and the Party itself  
430 and it connects both the members and the Party to the National Constitution. It is  
the umbilical cord of all parties concerned. Ugandans consented to be governed  
in accordance with the Constitution. The petitioner's party constitution was  
availed to Court by the 5<sup>th</sup> respondent. It provides in **article 39(2)** thereof "For  
every elective National and Local Government Office, there shall be primaries  
435 held within NRM to determine NRM candidates as follows:

***"Parliamentary** - the NRM Parliamentary candidate for a constituency shall be  
elected by a college consisting of members of the sub county, Town council,  
Municipal Divisions and Parish conferences within the Constituency."*

This is how the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents accessed their candidature in  
440 elections and consequently elected to those leadership positions. The word "

Access” according to Websters Universal Dictionary means: broach (open, pierce, enter, approach, avenue, entrance, entry, passage way admission) to mention but a few. While Collins Dictionary 3<sup>rd</sup> Edition 2009, explains that “If you have access to a building or other place, you are able or allowed to go into it. If you have access to a person you have opportunity or right to see or meet them...”

The Constitutional provisions stated above put in place the three Political Systems i.e **Article 69**, and provides for Political Parties and Organizations Act and how they are regulated i.e **Article 72(2). Article 73** of the Constitution regulates by way of limiting the activities of each political system when one of the political systems has been chosen and adopted by Ugandans. It provides among others “... *during the period when any of the political systems provided for in this Constitution has been adopted, organisations subscribing to other political systems may exist subject to such regulations as Parliament shall by law prescribe.*”

The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents after contravening their party/ petitioner’s constitution, disciplinary proceedings were commenced against them. There is

evidence as contained in Annexure "A" & A1 attached on the Petition, to the effect that they were invited to attend the proceedings but they declined to attend. They denied themselves the right to be heard as per **Article 28(1)** and **44(c)** of the Constitution cannot be invoked in their favour. There were 5 MPs who were invited and only one attended. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents who did not honour the invitation were found to be in breach of the constitution of the party which resulted in their dismissal and or expulsion as provided by the petitioner's constitution.

The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents in clear terms in their responses to the Petition 21/2013 denied that they do not represent the Petitioner in Parliament but represent their constituencies which constituencies lawfully elected them for representation in Parliament. They also stated that they did not voluntarily leave but forced out of the party. The validity or lawfulness of their election is not in issue at all. What is in issue for this Court to interpret is whether the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents left the party for which they stood as candidates for election to Parliament within the meaning of **Article 83(1)(g)** and whether they vacated their seats.

475 To answer that issue, it was pleaded by the 2<sup>nd</sup>,3<sup>rd</sup>,4<sup>th</sup>& 5<sup>th</sup> respondents in their  
responses, that the reason why expulsion was not provided in the Constitution  
was deliberate and was intended to protect the rights of Ugandans and not  
political parties as per **Article 38** and **78(1)** of the Constitution. They further  
stated in their responses that they filed a case against the party which is  
480 pending determination.

According to the documents they attached, the case filed was Application No.  
251/2013 in the High Court brought under Article 42 of the Constitution, S.34 of  
the Judicature Act .and the Judicature (Judicial Review Rules) S.1.No. 11/2009.  
S.34 provides for habeas corpus!! It was seeking nevertheless for prerogative  
485 orders of Court and in particular sought for quashing the decisions of the  
respondent (Petitioner)***from initiating and prosecuting the applicants by the  
disciplinary committees. It was also seeking for an order of prohibition  
prohibiting the Secretary General of the Respondent from taking part in  
the disciplinary proceedings against the applicants.*** The application was not  
490 challenging their expulsion at all.

Besides, they never challenged the allegations that they contravened the party/petitioner's constitution/internal organisation rules in their responses to the petition. They kept silent about it. It is trite law that; an omission or neglect to challenge the evidence in chief of a material or essential part of cross  
495 examination would lead to an inference that the witness' evidence was accepted to its being assailed to inherently or probably credible" (**See James Sawabiri and another V. Uganda SCCR Appeal NO. 5 of 1990**).

Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents submitted that the four respondents were not agents of the party (Petitioner). This did not have any merit what  
500 soever.

By the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents' denying that they were not representing the Party on whose ticket they stood as candidates to be elected to those leadership positions, they were admitting that, they had actually left party (petitioner). This apparently explains in my view why they never honoured the invitations to the  
505 national disciplinary party proceedings and denied themselves the opportunity to be heard. Their conduct before and after expulsion manifestly showed that they left the party /Petitioner which gave them access to the Public office they

held. Their physical leaving of their seats where they were sitting in Parliament as members of the party (Petitioner) whose ticket they stood for election, was an act that confirmed their voluntary leaving which act culminated in the creation of a peculiar membership in Parliament which was inconsistent with and in contravention of the Constitution. Their pleadings in their responses that 'expulsion' as a ground was left out in the Constitution to protect individuals not parties under **Article 38(1)** and **78(1)** of the Constitution was a misconception on their part. **Article 38(1)** of the Constitution provides for Civic Rights and activities. It provides:

*“ 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”* It is a cardinal principle of Constitutional interpretation that “ the entire Constitution has to be read as an intergral whole. No one provision of the Constitution should be segregated from the others and be considered alone, *but all provisions bearing on a particular subject are to be brought into view and be interpreted to effectuate the greater purpose of the instrument.” This is the rule of harmony, the rule of completeness and exhaustiveness and rule of*

525 *paramountancy of the Constitution . See Cases Paul K. Semwogerere and 2  
others V. Attorney General Constitutional Appeal NO. 1/2002, Okello  
Okello V. Attorney General, Constitutional Petition No. 4/2005, Thomas  
Kweyalo alias Latoni, Constitutional Petition , Appeal No. 36/2011.*

530 **Article 78(1)** of the Constitution provides for the composition of Parliament and  
states: Parliament shall consist of:

- (a) Members directly elected to represent Constituencies.
- (b) ...
- (c) ...
- (d) ...

535 It is general in nature, as it provides for all political systems as provided  
in **Article 69** of the Constitution.

**Article 38(1)** and **78(1)** of the Constitution are fundamentally connected  
to other provisions like part II(ii) and (v) of the National objectives and  
Directive Principles of State Policy, **Article 1** and **2** of the Constitution,  
540 **Articles 29 (1)(e) & Article 43(1)(c), Article 71 (1)(c), Article 72 ,  
Article 73, Article 74.** There is no way therefore **Articles 38(1) and  
78(1)** can be segregated from **Article 83(1)(g)** of the Constitution and the  
others above quoted.



545 It is important to note that it's a cardinal principle of constitutional interpretation that the "Constitution is the Supreme law of the land and forms the standard on which all other laws are justified. Any law that is inconsistent with or in contravention of the Constitution is null and void to the extent of its inconsistency (see **Article 2** of the Constitution)

550 It was submitted by counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents that the word "leave" had the word voluntary embedded in it. That those respondents were forced to leave or were just dismissed by the petitioner in Constitutional Petition No.21/2013.

555 From the evidence on record, as summarised herein and the above foregoing, it is clear that the 4 MPs left the Party/Petitioner at their own volition in other words they left voluntarily as evidenced by their pleadings and they are bound by their pleadings and no amount of words can change them (pleadings).

'Voluntary' according to the Blacks law Dictionary 9<sup>th</sup> Edition means, free, deliberate, designed, intended discretionary, optional, willing.

The word 'leave' means, according to Webster's Universal English Thesaurus,  
560 to abandon, decamp, go quit, vacate, withdraw, desert, forsake, relinquish,  
renounce, consign, refer cease, desist from, discontinue, refrain stop.

The 2<sup>nd</sup>,3<sup>rd</sup>,4<sup>th</sup>& 5<sup>th</sup> respondents exercised their freedom to associate when they  
joined the Petitioner (Party) and they exercised their freedom to leave it when  
they contravened the party Constitution and refused or neglected to attend the  
565 disciplinary proceedings as per their internal organisation rules despite the  
invitations. They therefore chose not to associate or belong when the  
disciplinary proceedings according to the Party Constitution were commenced,  
so they left. Joining a party is an act of association and an act of belonging in  
accordance with **Article 29(1) (e)** of the Constitution and it is voluntary. Their  
570 expulsion was merely a formality to formalize their having left the party to pave  
way for fresh elections to be held in the respective Constituencies.

**“Leaving”** is the object or focus of **Article 83 (1)(g)**. Expulsion is merely for  
effectuating the purpose or intention of the **Article**. Expulsion in my view is a  
preserve of the party during multiparty dispensation and it's not exercised by  
575 parties arbitrarily or capriciously and was not exercised on the basis of

sentiment. A member of a party is expelled when that member violates the democratic principles and practice within the party Constitution or internal organization, in that allowing such member to remain in the party would affect negatively the promotion of a just, free and democratic society as intended by the Constitution. Counsel for the Petitioner in C.P 21/2012 and counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents submitted that the word 'leave' was clear and unambiguous and that therefore the literal and natural meaning should be given to it. My view is that the facts of the instant Petition are different from the case of **George Owor V. Attorney General & Another Constitution Petition No.38/2010** relied on by counsel for the petitioner. In that case the members had clearly left their respective parties/organization. They had subjected themselves to elections afresh in other parties and as independents which were different from the parties which provided them access to their then positions in Parliament. Those MPs had not been subjected to disciplinary proceedings and they had not been expelled from their respective parties for having contravened their parties constitution. While the literal and natural principle of constitutional interpretation could be applicable in that Petition of

George Owor Supra, it's the purposive approach of interpretation which is appropriate to be adopted in the instant case.

595 Once the word voluntary is read in the word leave, then it follows naturally that the word involuntary can be read in it as well. This creates the ambiguity and therefore it becomes imperative to adopt the purposive approach to interpretation.

It has been held consistently by the Supreme Court and this Court that, "***In determining the Constitutionality of legislation, its purpose and effect must be taken into consideration. Both purpose and effect are relevant in determining constitutionality of either an unconstitutional purpose or constitutional effect animated by the object the legislation intends to achieve.***" (See the cases already cited (Supra).

605 Counsel for Petitioner in Constitutional Petition No. 25/2013 cited the case of **Attorney General V. Major General Tinyefuza Constitutional Appeal No.1 of 1997** and particularly the Judgment of Odeh JSC. It was emphasized that, *'the purposive rule entails the looking and understanding of the history of the enactment to know the intention of the Legislature which led to the*

610 *legislation.* Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents relied heavily on the  
Constitutional Commission Report Analysis and Recommendations. The  
affidavit of Hon. Ssekikubo was annexed and the relevant part Annexure 'D',  
the debate of the 7<sup>th</sup> Parliament in 2005 on the Constitutional (Amendment) Bill  
NO.3 of the 28<sup>th</sup> July, 2005. All those were reproduced in the majority judgment,  
615 I will not reproduce them. It had been proposed by the Attorney General that  
expulsion be included as a ground for leaving a political organization or political  
party for which one stood as candidate for election to Parliament. After the  
debates the amendment was withdrawn. It was stated that it was opposed on  
the basis that (1) it would lead to dismissals and counter dismissals from  
620 Political parties and (2) that it would be used for internal strict discipline of  
Political parties. Others opposed it on the basis that it was redundant. It's  
important to note that the history to the enactment of the Constitution and in  
particular **Article 83(1)(g)** started much earlier than 1995 and 2005. This is clear  
from the preamble to the Constitution Supra. It should also be noted that as part  
625 of the history of the enactment the Uganda Constitutional Commission was  
established by Statute No. 5 of 1988 and the terms of reference of the  
commission were provided in S. 4 and 5 of that Statute. The functions were,

among others, to establish a free and democratic system of Government that will **guarantee the fundamental rights and freedoms of the people of Uganda.**

630 (a) (i) *To study and review the Constitution (old Constitution) with the view to making proposals for enactment of the National Constitution that will create viable political institutions that will ensure maximum consensus and orderly succession.*

**(b) Formulate and structure a draft Constitution that will form the basis for the Country's new Constitution.**

635 (v) *Develop a system of Government that ensures people's participation in the governance of the country.*

**(vi) Endeavour to develop a democratic free and fair election system that will ensure the peoples representation in the legislature and at other levels.**

640 **(vii) Establish and uphold the principles of public accountability by the holders of public officers and political posts.**

The Constituent Assembly Statute 1993 (is part and parcel of the history to the enactment of the legislation) established and provided the

645 composition of the Constituent Assembly. It also provided the functions of  
the Constituent Assembly in S.8 therein as follows;-

**(a) To scrutinise, debate and prepare a final draft of the**

**Constitutional text prepared and submitted to the minister by the**

**Uganda Constitutional Commission under the provisions of**

650 **section 6 of the Uganda Constitutional Commission Statute 1988.**

(b) To enact and promulgate a new Constitution of the Republic of  
Uganda.

The Report And Analysis of Recommendations was just one of the working  
documents and was not final, neither did it contain a draft Constitution. The  
655 Constituent Assembly was tasked, under S.8 of the Constituent  
Assembly Statute 1993 to scrutinize, debate and prepare a final draft of the  
Constitutional text prepared and submitted to the Minister among others. It  
was also tasked to enact and promulgate a new Constitution. Again as part of  
the history of the enactment, **the Constituent Assembly during the**  
660 **consideration stage of the draft Constitution of the Republic of Uganda,**  
**chapter 8 –the Legislature, Article 135 Tenure of office of Members of**



**Parliament**, on Thursday 23<sup>rd</sup> March, 1995 starting from page 3519 of the Constituent Assembly proceedings particularly page 3533, **Article 135** of the draft Constitution was scrutinized, debated and was passed as it was in the  
665 Draft Constitution This became the present **Article 83(1)(g)** of the Constitution which is in issue in this Petition. On page 3534 Mr. Lumala Deogratius (Kalungu West) had this to say, and I quote:

*“Madam Chairman, I am seeking clarification with regard to changing of parties from one to the other. In practice, someone may decide not to formerly resign  
670 from one party to another for fearing that he will not be elected if he did so. So he sits on benches of the opposition but will always vote with the other party.”*

This clarification is spot on of the purpose and intention of the enactment of **Article 83(1)(g)** of the Constitution.

**Deputy Chairman:** Hon. Lumala, I think we had finished on that one. You are  
675 taking us back. Does it relate to No.(2) which we are going to. I have been very alert if you had put up your hand I would have seen you. “Hon. Mulenga.

**Mr. Mulenga:** *Perhaps to put the minds of Hon. Lumala and others at ease, the word used is leaves. He can either leave voluntarily or by expulsion. If that*

party notices that he is no longer supporting them, they might expel him from the  
680 party and therefore he leaves the party.”

This answer shows that expulsion was not the object of Article 83(1) (g) as  
it would, stifle the establishment and promotion of a just, free and democratic  
society as contemplated by the Constitution. The parties are independent, that is  
why there is the requirement of compliance with the democratic principle as  
685 provided in the Constitution. That is why expulsion is a preserve of the party. The  
significance of Mr. Mulenga’s clarification is that when the party notices that a  
member is no longer with it, the party expels them and it was not left out to  
protect individual members as the four respondents replied in their pleadings. I  
hasten to add, that, that is why the word “leave” in **Article 83(1)(g)** is neutral to  
690 cause in my view. Since they had left the party by their conduct, to be  
democratic they would have just vacated their seats so that fresh elections were  
conducted. Since they did not do so, it is only the party which had the mandate  
to reject them by expelling them. The deliberations at the consideration stage of  
the Constituent Assembly shows the mischief the enactment intended to cure.  
695 So the amendment which was withdrawn was actually redundant.

The 1995 Constitution was framed in that way to provide safeguards which were lacking in the independence, the Pigeon hole Constitution of 1966 and the so called Republic Constitution of 1967.

Counsel for the four MPs submitted that he was buttressed by Mr. Yoweri

700 K. Museveni evidence in the affidavit to the effect that, he recognized that the crossing was voluntary. That “**Dr. Milton Obote merely persuaded the MPs in opposition**” this submission cannot stand in light of what has been stated in this Judgment and the history of the enactment.

705 The act of Dr. Milton Obote of persuading the members of Parliament from the opposition, to cross on the floor without them seeking fresh mandate from the electorate was the actual mischief that, **Article 83(1)(g)** was intended to cure. He was obviously depriving the people of Uganda of their freedom to choose leaders of their choice. . He took away their sovereignty. His acts of persuasion  
710 were out of step with the establishment and promotion of a just free and democratic society to say the least. It is therefore no wonder that the alliance he

formed of UPC & Kabaka Yekka (KY) collapsed and eventually we got into Constitutional instability as per the Petitioner's evidence.

715 Uganda became a one party state, which, the new order as embodied in the 1995 Constitution out laws.

The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents want to superficially appear to belong to the Petitioner when they made themselves defacto independents by passing off as members of the Petitioner, whereas not. The petitioner had not used unconstitutional means to throw them out of the party. On the contrary it is the 720 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents who are suffering from the Movement Political System which has individual merit as a basis for election to political offices as per **Article 70** of the Constitution. This is inconsistent and in contravention of the Constitution. See **Article 73(1)** of the Constitution. The Cross petitioner and first respondent in all petitions pleaded that a referendum on political 725 systems was conducted in accordance with **Article 74** of the Constitution and the people of Uganda chose and adopted the multi-party political system.

During the multi-party political dispensation/period, it is the party which one subscribes to which has the key of access to the people in constituencies.

730 It was submitted by counsel for the cross petitioner and 1<sup>st</sup> respondent in all  
petitionsthat electing a candidate of a political party is an act of association  
which I agree with I would add that much as the voters can vote in any way, they  
want a party flag bearer has no option but to follow the party's line in the  
manifesto and ideologyduring multiparty dispensation. Counsel further  
submitted that, **Article 29(1)(e)**, of the Constitution cited supra guarantees the  
735 right to associate. This means that if the right to associate is guaranteed along  
with it, flows the right not to associate. That because the four MPs had the  
freedom to join the NRM party, by their joining the party they associated with the  
party and its supporters in accordance with constitutional provisions Article  
**29(1) (e),38(1), 43(1)(c)&71(1) (c)**. That the people under **Article 1** exercising  
740 theirsovereignty, expressed their will and consent on who shall govern  
them...through free and fair elections of their representatives...See (**Article**  
**1(4)**).

It was further submitted that by choosing a party flag bearer or candidate, the  
party they support the people think that it will form a government and that  
745 candidate who is the flag bearer will influence the affairs and policies of

Government by advancing the party ideology and manifesto. By electing, the people exercise their sovereignty in accordance with **Article 38(1)** of the Constitution in a multi-party political system dispensation.

750 By electing the 2<sup>nd</sup>,3<sup>rd</sup>,4<sup>th</sup> and 5<sup>th</sup> respondents as their flag bearers they were exercising their right to participate in the affairs of government through their representatives in accordance with the **Article 38(1)** of the Constitution.

I accept the above submission as it's in line with the evidence and the law. The party Constitution was the agreement between the four MPs which provided access or opening for them to the people in the Constituencies concerned.

755 The moment they contravened their party internal organisation, they legally closed the access to & from their constituencies and **Article 38** cannot not be applied in their favour. They are prejudicing the rights and freedoms of the people in their Constituencies who elected them and the party after joining the Petitioner and having access to the Public offices they held through the Party.

760 Apparently they infringe and or contravene **Article 43(1) (c)** of the Constitution and their continuous stay in Parliament becomes inconsistent with that provision and the others cited Supra.

The submission of counsel for the 2<sup>nd</sup>,3<sup>rd</sup>,4<sup>th</sup> and 5<sup>th</sup> respondents that you cannot be compelled to be an independent, cannot be sustained. He based his  
765 submissions on *Constitutional Appeal No. 2/2006 Brigadier Henry Tumukunde V. Attorney General*. He relied on the Judgment of Hon. Justice Kanyeihamba JSC as he then was, and quoted as follows: “A Member of Parliament the Supreme legislative organ of the land should never have to resign under the threat or directions of any one but in accordance with provisions of the Country’s  
770 Constitution and laws made by Parliament and do so voluntarily.”

The Brigadier Tumukunde case supra is distinguishable from the facts of this case. I accept the submissions of counsel for the petitioner in constitutional petition No. 19/2013, that, in that case the petitioner was a representative of an interest group (UPDF) which is not a body corporate and not a party or  
775 political Organisation. Article **83(1) (f)** is not applicable at all to the facts of this case.

The evidence embodied in the responses of the 2<sup>nd</sup>,3<sup>rd</sup>,4<sup>th</sup> and 5<sup>th</sup> respondents and the evidence of the Petitioner in C.P 21/2013 show that, they voluntarily

made themselves defacto independents and left the party as earlier discussed  
780 in this judgment.

The submissions are neither supported by evidence nor by law. To accept such  
submissions would be perpetuating impunity and indiscipline. This Court  
adhering to the judicial oath and **Article 126(1)**, is under an obligation to deter  
any kind of precedent which would plunge this Country into turmoil again.

785 The Rt. Hon. Speaker in the impugned ruling applied a precedent in the pre-  
Commonwealth period. She cited the incident of King Charles 1 of England in  
1642 which was a time of absolute monarchy when he wanted to arrest five  
members of the House of Commons. My view is that it was very unfortunate as  
we are in the 21<sup>st</sup> Century during which the Commonwealth came into being in  
790 1949. A precedent in an absolute monarchy cannot be a precedent to be  
followed in this era since there is nothing democratic in an absolute monarchy, to  
be compared with the people's popular Constitution of 1995. The ruling to retain  
the expelled MPs who had left the Petitioner was inconsistent with and was  
in contravention of the provisions of the Constitution (supra).



795 Hon. Mohammed Nsereko stated in his affidavit in reply to CP 21/2013 that,  
there was infringement of their rights as individual MPs, but as counsel for the  
Cross Petitioner and for the 1st Respondent argued, the electorate in those  
respective Constituencies were not enjoying their right to representation in  
Parliament and that in interpreting **Article 83(1) (g)** there is need to balance the  
800 competing rights and interests i.e. the MPs, the voters and the party.

Some other comparable case law I found informative and persuasive was the  
**Malawi Presidential Referral No, 2/2005. On the question of Crossing the  
floor by Members of Parliament, an authority provided by counsel for  
Petitioner and Cross Petitioner in Constitutional Petitions 19/2013&  
805 16/2013 -[http://www.malawillii.org/mw/judgment/high court-  
general/Division/2006/22](http://www.malawillii.org/mw/judgment/high-court-general/Division/2006/22).Cite visited on 09/08/2013.** The provision the Court  
was interpreting was about voluntary leaving of the party, and this is my line of  
argument. The Supreme Court of Appeal of Malawi (in the Judgment of Twea J)  
held that,“**the freedoms of Association, conscious and expression are  
810 largely all embodied in the political rights under S. 40 in respect of MPs. (**  
*S. 40 of the Malawi Constitution is equivalent to Article 29 (1)(e) of our Uganda*

*Constitution*).is born out of the fact that when one decides to join a political party one exercises his right to associate. The consequence of joining an association is that, one becomes subject to the rules and regulations of the association. One will exercise one's freedom of conscious and expression in respect of matters pertaining to the objectives of the said associations within the scope of the rules and regulations of that Association, if one is not happy with the rules thereof is free to exercise his or her own right not to belong to that association any more. It cannot be heard to be said that members of the National Assembly who are members of the Political parties are denied their freedoms of associations' conscious and expression. The fact of the matter is that as members of political parties, which is a right exercised under S.40, they have acquiesced to have the freedoms and rights limited. This notwithstanding, as submitted the rights and freedoms have not been removed. The rules and regulations of their political parties provide and limit the legitimate avenues that, the restriction of the right of Members of Parliament in this respect has been held to be reasonable and recognized by the

international human rights standards and necessary in an open and  
830 democratic society: (Experte chairperson of Constituent Assembly.

**In Re certification of Constitutions of the Republic of South Africa – 1996  
(4) SA, 744(1) (2)...)**”

The provision which was being interpreted was S.65 of the Malawi Constitution.  
It provides;“ **The speaker shall declare vacant the seat of a member of the  
835 national Assembly who was, at that time of his own, or her election, a  
member of one political party, represented in the National Assembly, other  
than by that member alone, but who has voluntarily ceased to be a  
member of that party or has joined another political party represented in  
the national Assembly, or has joined any other political party, or  
840 association or organization whose objectives or activities are political in  
nature.**”

By the four MPs’ pleadings and conduct they voluntarily ceased to be members  
of the Petition (NRM party) and they made themselves defacto  
independents which compelled the party to exercise its prerogative to expel  
845 them.

The purpose of **Article 83(1) (g)** was to prohibit floor crossing in whatever form as long as the democratic principles and practice as per the Constitution were violated as shown in this Judgment. They had indirectly and voluntarily left the party and therefore they voluntarily ceased to be Members of Parliament and  
850 vacated their seats upon expulsion.

To promote multiparty democracy and to discourage disappearance of party politics the framers of the Constitution put all those various provisions above, including **Article 83(3)** of the Constitution which provides "**The provisions of clauses (1)(g) and (h) and (2) of the article shall only apply**  
855 **during any period when the multiparty system of government is in operation.**" This further explains the intention of the enactment.

Finally I conclude that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents voluntarily (freely, deliberately, intentionally, optionally, willingly) left the Petitioner in Constitutional Petition 21/2013, and consequently contravened the Constitution. The issues  
860 therefore, 1, 4, 5 and 6, are answered in the affirmative that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents had actually left the party/Petitioner and they therefore vacated their seats upon expulsion.

I agree with the conclusion, declarations and orders reached by my learned  
brother Justices for the above reasons in resolution of issue 1,4,5,6 and agree  
865 with all the resolutions on the rest of the issues.

Dated this .....day of .....2014.

**HON.LADY JUSTICE FAITH E.K.MWONDHA, JA/CC**

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Judiciary CoA