THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA

AT KAMPALA

CONSTITUTIONAL PETITION NO. 08 OF 2014.

1. PROF. J OLOKA-ONYANGO
2. HON. FOX ODOI-OYWELOWO
3. ANDREW M. MWENDA
4. PROF. MORIS OGENGA-LATIGO
5. DR. PAUL NSUBUGA SEMUGOMA
6. JACQUELINE KASHA NABAGESERA
7. JULIAN PEPE ONZIEMA
8. FRANK MUGISHA
9. HUMAN RIGHTS AWARENESS & PROMOTION FORUM (HRAPF)
10. CENTRE FOR HEALTH HUMAN RIGHTS & DEVELOPMENT (CEHURD)

:::::::PETITIONERS.

VS

ATTORNEY GENERAL :::RESPONDNENT

Coram: Hon. Mr. Justice S.B.Kavuma, Ag. DCJ
Hon. Mr. Justice A.S Nshimye, JA
Hon. Mr. Justice Eldad Mwangusya, JA
Hon. Mr. Justice Rubby Aweri Opio, JA
Hon. lady Justice Solomy Balungi Bossa, JA

PETITION BROUGHT UNDER ARTICLES 137(1) & (3)(A) AND (B),(4) OF THE CONSTITUTION OF UGANDA AND THE CONSTITUTIONAL COURT (PETITIONS AND REFERENCES) RULES, SI 91/2005)

JUDGMENT OF THE COURT

The above 10 petitioners moved this Court by petition under the above mentioned Provisions of the Constitution alleging;

(a) That the enactment of the Anti-Homosexuality Act 2014 by the 9th Parliament on 20th December 2013, without quorum in the house was in contravention of **Articles 2(1) & (2), 88 and Rule 94(1) of the Constitution of the Republic of Uganda and Rule 23 of the Parliamentary Rules of Procedure;**

(b) **That Sections 1,2, and 4 of the Anti Homosexuality Act 2014,** in defining the criminalising consensual same sex/gender sexual activity among adults in private, are in contravention of the right to equality before the law without any discrimination and the right to privacy guaranteed under **Articles 2(1) &(2), 21(1),(2) &(4) and 27 of the Constitution of the Republic of Uganda** respectively;

(c) **That Section 2(1)(c) of the Anti-Homosexuality Act 2014,** in criminalising touching by persons of the same sex creates an offence that is overly broad and is in contravention of the principle of legality under **Articles 2(1) & (2), 28(1), (3b), (12), 42 and 44(c) of the Constitution of the Republic of Uganda;**

(d) **That Section 2, of the Anti-Homosexuality Act 2014,** in imposing a maximum life sentence for Homosexuality provides for a disproportionate punishment for the

offence in contravention of the right to equality and freedom from cruel, inhuman and degrading punishment guaranteed under **Articles 2(1) &(2), 24 and 44(a) of the Constitution of the Republic of Uganda.**

(e) **That Section 31(b) of the Anti-Homosexuality Act 2014,** in criminalising consensual same sex/gender sexual activity among adults in which one is a person living with HIV is in contravention of the freedom from discrimination guaranteed under **Articles 2(1) & (2) and 21(1) & (2) of the Constitution of the Republic of Uganda 1995.**

(f) **That Section 3(1)(e) of the Anti Homosexuality Act 2014,** in criminalising consensual same sex/gender sexual activity among adults in which one is a person with disability is in contravention of the freedom from discrimination and the right to dignity of persons with disabilities guaranteed under **Articles 2(1) &(2), 21(1), (2) & (4c) and 35 of the Constitution.**

(g) **That Section 3(3) of the Anti-Homosexuality Act 2014,** in subjecting persons charged with aggravated homosexuality to a compulsory HIV test, is in contravention of the freedom from discrimination, the right to privacy, freedom from cruel, inhuman and

degrading treatment and the right to the presumption of innocence guaranteed under **Articles 2(1) & (2), 21, 24, 27, 28, 44 and 45 of the Constitution of the Republic of Uganda;**

(h) **That Section 4(2) of the Anti-Homosexuality Act 2014** in imposing a maximum life sentence for attempted aggravated homosexuality, provides for a disproportionate punishment for the offence in contravention of the right to equality, and the freedom from cruel, inhuman and degrading punishment guaranteed under **Articles 2(1) &(2), 21, 24 and 44(a) of the Constitution of the Republic of Uganda 1995;**

(i) **That Sections 7 and 13(1) & (2) of the Anti-Homosexuality Act 2014,** in criminalising aiding, abetting, counselling, procuring and promotion of homosexuality, create offences that are overly broad, penalise, legitimate debate, professional counsel, HIV related service provision and access to health services, in contravention of the principle of legality, the freedoms of expression, thought, assembly and association, and the right to civic participation guaranteed under **Principle XIV of the National objectives and Directive Principles of State Policy, Articles 2(1) &(2), 8A, 28(1),**

(3b), & 12, 29(1), 36, 38(2), 42 and 44(c) of the Constitution of the Republic of Uganda.

(j) **That Section 8 of the Anti-Homosexuality Act 2014,** criminalising conspiracy by any means of false pretence or other fraudulent means, is vague, uncertain and ambiguous and in contravention of the principal of legality under **Articles 2(1) & 2, 28(1), & (3b), 42, 44(c) 28(12) of the Constitution of the Republic of Uganda 1995.**

(k) **That Section 11 of the Anti-Homosexuality Act, 2014,** in classifying houses or rooms as brothels merely on the basis of occupation by homosexuals, creates an offence that is overly broad and in contravention of the principle of legality guaranteed under Article 28(12) of the Constitution; and is further in contravention of the rights to property and privacy guaranteed under **Articles 2(1) & (2), 21,26,27 and 28 (12) of the Constitution of the Republic of Uganda 1995;**

(l) That the spirit of the **Anti-Homosexuality Act 2014**, by promoting and encouraging homophobia, amounts to institutionalised promotion of a culture of hatred and constitutes a contravention of the right to dignity and is inconsistent with and in contravention of **the National**

Objectives and Directive Principles of State Policy especially objection NO. III,V,VI and XIV and Articles 2(1) & (2), 8A, 24 and 44(a) of the Constitution of the Republic of Uganda of 1995;

(m) **That the Anti- Homosexuality Act 2014,** by encouraging homophobia and stigmatisation, is in contravention of the duty of the government to respect, protect and promote the rights and freedoms of persons likely to be affected by the Act as stipulated under **Articles 2(1) & (2), 20(2),21(1), 32(1) and (2) of the Constitution.**

(n) **That the Anti Homosexuality Act 2014** in criminalising consensual same sex/gender sexual activity among adults, is in contravention of obligations with regards to the rights guaranteed under international Human Rights instruments ratified or acceded by Uganda, including the African Charter on Human and People's Rights, the Protocol to the African Charter on Human and Peoples' Rights, Rights on the Rights of Women in African, the UN Covenant on Civil and Political rights; and the UN Covenant on Economic, social and Cultural rights; and in contravention of **Objectives XIV, XXXVIII(i) (b) of the National Objectives and Directive Principles of State**

Policy, Articles 2(1) &(2), 8A, 20 45 and 287 of the Constitution;

Counsel Rwakafuzi L, Alaka Caleb, Nicholas Opiyo and John Francis Onyango represented the petitioners While the Attorney General was represented by M/s Patricia Mutesi, a Principal State Attorney and Bafilawala Elisha a Senior State Attorney at the Attorney General's Chamber.

Eleven issues were framed to be resolved by this Court. However, at the commencement of the hearing counsel for both parties agreed with us that we should first hear them on the first issue which has the proability of disposing of the whole petition, namely;

> ***"Whether the Anti-Homosexuality Act 2014, was enacted without quorum in the House in a manner that is inconsistent with and in contravention of Articles 2(1) & (2) and 88 of the Constitution of the Republic of Uganda 1995 and Rule 23 of the Parliamentary Rules of Procedure."***

Counsel Nicholas Opiyo submitted that the gist of the above issue was that the process, procedure, and manner of the enactment of the Anti Homosexuality Act, particularly the proceedings of the 9th Parliament on December 20th 2013, was in

contravention of and inconsistent with the provisions of **Article 88 clause 1, 94 of the Constitution of the Republic of Uganda** and in violation of **Rule 23 of the rules of Procedure of the 9th Parliament.**

He argued that the doctrine of legislative sovereignty is crafted in **Article 79 (1) of the Constitution** giving powers to Parliament to enact laws for the peace, order and good governance of Uganda and to exercise it alongside the provisions of **Article 91** and **79 of the Constitution.**

According to counsel, legislative sovereignty must be exercised in accordance with the provisions of the Constitution. The rationale was to preserve the principle of Constitutional supremacy entrenched **in Article 2 (1)** of the Constitution. In his view, Parliament was accordingly expected to be guided by the provisions of the Constitution. He cited the decision of this court in the case of **Twinobusingye Severino vs. the Attorney General Constitutional petition number 47 of 2011** to fortify his submission on Constitutional supremacy.

Counsel pointed out the particular acts of violation complained of which are contained in the affidavits, particularly of Professor Maurice Ogenga Latigo, the former leader of opposition in the 8th Parliament and that of the Hon. Fox Odoi, who was the chairperson of the Parliamentary Committee on Rules and Privileges.

In brief, they are that on 20th December, 2013 when the Anti Homosexuality Act was being put to vote before Parliament, a procedural question as to Corum in the house was raised by none other than the Rt Hon. Prime Minister of this country Amama John Patrick Mbabazi who is also the leader of Government business in Parliament as recorded in the certified Hansard of Parliament VOl. 1 at pages 168 and 177 annexed to the affidavit of the 2nd petitioner. The Prime Minister said;

> ***"Madam Chair I rise on a point of procedure because I wasn't aware, you should be very careful that if you pass this law it must be with Coram. Please these are not joking matters, Therefore I would like to raise that point and to say that certainly I would like to see a Coram realized in this house to pass this bill therefore rise on a point of procedure one on consultations and the second on Coram."***

The Prime Minister raised this point twice. According to counsel, the concern was also supported by Hon. Betty Aol Ochan who said that the house should only pass the law if there was Corum. Counsel pointed out that the **Rules of Procedure of the 9th Parliament** particularly **Rule 23** require that when a procedural question is raised about Coram, the question has to be determined. The speaker of the house shall suspend

proceedings of the house for an interval of 15 minutes and a bell shall be rang. On resumption of the proceedings after the expiry of the 15 minutes, if the number of members present is still less than the required Coram for voting, the speaker shall proceed with other business or suspend the sitting of the house or adjourn the house without putting the question and the Chairperson shall adjourn the committee.

To counsel, it was a fundamental provision to protect the integrity of Parliament and to ensure that Parliament is not turned into a cacoon of people conniving to pass laws without Coram. This procedure was ignored by the Hon. Speaker of the house who went ahead to put the question to vote. Counsel referred to the affidavit of Hon. Fox Odoi particularly in paragraphs 7-11 which highlights what happened in the house on the named date. He further relied on the affidavit of the Hon. Professor Maurice Ogenga Latigo which elaborates the mandate of the speaker to determine the business of the house under the rules of procedure and in doing so, she has got to follow the law, and rules of Parliament and the dictate of the Constitution.

Counsel Alaka, associated himself with the submissions of his colleague, Nicholas Opiyo and reminded Court of the basic principles of constitutional interpretation such as interpreting the constitution as a whole, the rule of harmony, completeness

and exhaustiveness. He relied on the authority of ***John Livingstone Okello Okello and others Vs. Attorney General Constitutional Petition Number 4 of 2005.***

He submitted that **Article 79 of the Constitution of the Republic of Uganda** empowers Parliament to make laws on any matter for the peace, order development and good governance of Uganda. **Article 88 of the Constitution deals with** Coram of Parliament which shall be prescribed by the Rules of Procedure of Parliament made under **Article 94 of the Constitution. Article 89** of the Constitution deals with voting in Parliament. Article 94 of the Constitution provides that Parliament may make rules to regulate its own procedure including the procedure of the committees. The Constitution is a Supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda and if any other law is inconsistent with any of the provisions of this Constitution, the constitution shall prevail and that other law shall to the extent of its inconsistence be void.

Counsel referred to the debate by Mr. Katoto appearing on page 177 of the Hansard where he was recorded to have said;

> ***"Madam chair we passed several bills yesterday and he was around (referring to the Prime Minister) why didn't he stop us on the basis that there was no***

Coram, we passed several bills why are you stopping this one madam chair we should continue and pass this bill to save the people of Uganda, what is your worry about this'

Counsel cited the authority of **Paul K. Ssemwogerere and Zackary Olum Vs. Attorney General both Constitutional Appeal NO. 1 of 2000 and also Constitutional Petition NO. 7 of 2000** in which court has pronounced itself on Acts passed without a coram.

In that petition the issue was about the passing of the referendum and other provisions Act of 1999. The Supreme Court held that the concern of Coram is very fundamental. In that case, the Speaker resorted to the register of attendance of members to determine whether there was a Coram and the Supreme Court held that it was a contentious matter as to whether any or all the members allegedly registered and being somewhere in the Parliament building or precincts of parliament or proved to have been present in the chamber of the house and able to vote in accordance with the provision of Article 89 of the Constitution so as to satisfy the requirement of a Coram within the meaning of Article 88. In **Constitutional Petition NO. 7 of 2000, (supra)** the Constitutional Court held that any Act or any bill which is passed without the Coram is null and void. Counsel invited us to look at the affidavits of Hon. Fox

Odoi, Professor Maurice Ogenga Latigo and that of Professor J. Oloka Onyango and the Hansard,

Counsel submitted that the answer to the petition by the Attorney General in paragraph 4 does not in any way rebut or answer the question of the Bill being passed without a Coram.

Equally, according to him, in the affidavit of Dennis Bireije, Commissioner Civil Litigation, there is no single denial or mention about Coram. He kept quiet about it so there was no evidence to rebut the assertion which was ably raised on the floor of Parliament and which the Speaker ignored.

In his conclusion, he submitted that it was crystal clear from the petitioner's affidavit evidence and Hansard that that, evidence has not been rebutted and ought to be accepted and find that that Bill or the Act was passed without a Coram and it contravened and was inconsistent with or in contravention of ***Article 2 Sub Rule 2 of the Constitution, 88, 94 and 79 of the Constitution and Rule 23 of the Rules of procedure of Parliament.*** He prayed that on that basis alone the petition be allowed.

In reply, learned counsel Mutesi opposed the petition and relied on their answer to the petition and the supporting affidavit of Mr. Dennis Bireije. According to her, the only issue in respect of

Speaker ignored the matter of Coram and in complete violation of **Article 88 and 94 of the Constitution and Rule 23** that in accordance with **Rule 23(3)** the Speaker is required to ascertain whether the members of Parliament present in the house form a Coram and on that day the Speaker didn't ascertain the number in the house, and that the Speaker ignored the Rules and decided that the Bill be voted upon.

Counsel highlighted the averments in paragraphs 10 to 13. In summary, the witness stated the laid down procedure that was followed in passing the Anti-Homosexuality Act

According to her, entire affidavit adduced evidence to show that the speaker did not follow the rules of Parliament, she didn't act in accordance with **Rule 23** by not ascertaining Coram and that her act was contrary to the law, the constitution and the rules.

She reiterated that the pleading before this Court is that the Act was passed without Coram and re-emphasized that paragraph 9, mentions that she ignored the Rules and decided that the Bill be voted upon when there was no Coram. According to her, there is no evidence on record on the alleged fact on absence of Coram.

passing of the Act is pleaded in paragraph 12 of the 2nd petitioner which states that the enactment of the Anti-Homosexuality Act by the 9th Parliament on 20th December 2013 without Coram in the house was in contravention of the stated Articles and the Parliamentary Rules of Procedure.

The key aspect to this petition was an allegation that Parliament in passing that Act without a Coram, violated the constitution, so the key issue arising from the pleading is "the absence of Coram". She wondered how Court would determine either the existence, or absence of Coram as alleged by the petitioners. She contended that it's very clear that it's a matter of fact and it requires evidence. She argued that when an allegation of fact is made in any court of law, it can only be proved by evidence. She referred us to the evidence of the petitioners that was filed and said that the only relevant affidavits in respect to the passing of the Act was that of Hon Fox Odoi and Hon. Prof. Ogenga Latigo.

She argued further that Hon. Prof. Ogenga Latigo is not a member of the 9th Parliament. His affidavit clearly states that he was a member of the 8th Parliament and he never alleged to have been present when the Act was passed. In the affidavit of Hon. Fox Odoi, the relevant provisions are paragraphs 7-13, where he stated that during the proceedings in plenary on that date when the Bill was being put to vote, the Rt Hon. Prime Minister raised a procedural question as to Coram. Th, the Hon.

She argued further that the fact of absence of Coram, is what is alleged to have made the Act inconsistent to the Constitution. The two deponents did not state what is the required number of Coram in the present Parliament. Maybe going by Rule 23, She wondered what was equivalent of the third. She cited the case of Semwogerere in which there was a specific allegation that there were less than 93 MPs. It was a matter of fact which can't be wished away.

Counsel contended further that there was no single allegation by any of the deponents that they know the number of MPs who were in chambers and that they were below the required one third. There was equally no allegation that anybody ascertained from the register or from those in chambers so as to be able to know that there was no Coram. She emphasized that there was nothing in the pleadings which alleges that the failure of the Speaker to act in accordance with **Rule 23** is inconsistent with the Constitution. In her view, counsel for the petitioners were arguing a hypothetical case that was not before Court. What was before Court was that an Act was passed without Coram which omission is inconsistent to the Constitution.

Counsel submitted that the Hansard, is a record of what was spoken in Parliament, and not a record of the numbers of MPs who were in the chambers because it's well known that not

every member in the chamber has to speak, it's only a record of anybody who spoke.

She explained that the challenge by the Hon. Prime Minister was not evidence of the existence or absence of Coram. His statement according to counsel was evidence that he raised a challenge about Coram and that's all.

Counsel referred us to the statement of Hon. Aol, the last paragraph where she stated;

> ***"Madam chair you know one of us must be serious, when we don't come here we should not blame this house , the house should just move on especially right now if there is Coram we should move on, I believe since you have raised that point of procedure if we tried to check may be we have the Coram".***

Counsel argued that, both those statements can't be relied on to ascertain as a matter of fact, whether or not there was Coram. There was only evidence that certain members were of the opinion that may be there was no Coram. It could only be ascertained on the basis of the evidence presented. She asserted that the two deponents did not produce factual evidence to establish the alleged fact for absence of Coram.

On the burden of proof, Counsel Mutesi asserted that the burden of proof that there was no Coram was upon the petitioners which they had failed to discharge. Counsel relied on the lead Judgment of Hon, Justice A. Twinomujuni, **Paulo Kawanga Ssemwogerere and Zachary Olum Vs Attorney General Constitutional Petition NO. 3/1999.**

Counsel contended that on the basis of the Semwogerere case, (supra) the petitioners failed to establish a prima facie case that the Act was enacted without Coram.

She contended further that the allegations of fact contained in the petition paragraph 12(a) which is the only paragraph challenging the passing of the Act required to be proved in accordance with the evidence Act because they are only allegations of fact. She drew our attention to **Article 126 of this Constitution** which enjoins this court to exercise its judicial power in accordance with the law which includes the law of evidence. The evidence adduced by the petitioners that the Speaker didn't comply with Rule 23 by failing to ascertain Coram is not itself evidence of the absence of Coram.

Lastly, she cited **Legal Brains Trust Ltd against the AG in Uganda** to the effect that the cardinal principle that a Court of law will not adjudicate hypothetical questions a court will not hear a case in the abstract one which is purely academic or speculative in nature about which there is this no underlying

facts in contention and that the reason for this doctrine is to avoid the scenario of the court engaging its efforts to apply a specific law to a set of speculative facts.

She prayed that we dismiss the petition with costs to the Attorney General.

In rejoinder Counsel Alaka Caleb clarified that the enactment of the Anti-Homosexuality Act 2014, by the 9th Parliament on 20th December 2013 without Coram in the house was in contravention of **Articles 21 and 2, 88 and 94 1 of the Constitution of the Republic of Uganda and Rule 23 of the Parliamentary Rules of Procedure**. The affidavit evidence of Hon. Fox Odoi brought out the fact clearly.

Rule 23(1) which is made pursuant to **Article 94** of Constitution imposes on the Speaker a Constitutional command to ascertain that there is a Coram. According to the evidence adduced, she disobeyed that commission.

Counsel adopted the definition of ascertainment from the case of Ssemwogerere cited by learned Principal State Attorney Mutesi Patricia where It was stated to mean; ***"find out with certainty, to make certain or definite."***

Counsel Alaka did not agree with counsel Mutesi who submitted that this was a hypothetical case. He asserted that there was a real dispute as to whether in passing the Anti-Homosexuality Act, the Speaker of Parliament flouted **Article 88 of the Constitution and Rule 23 of the Parliamentary Rules of Procedure** and that this was alive dispute and not academic or hypothetical.

He submitted further that failure to comply with **Rule 23 of the Rules of Procedure** was an illegality. Once an illegality is brought to the attention of court it overrides all questions of pleadings and It becomes immaterial whether that was pleaded or not. He cited the celebrated case of ***Makula International vs. Cardinal Nsubuga***.

Counsel John Francis Onyango supplemented by submitting that our Parliament has no power to ignore the conditions of law making process that are imposed by our Constitution. He prayed that a declaration that the act of Parliament in passing into law and enacting the Anti Homosexuality bill without Coram is inconsistent and in contravention of **Article 2, 88, 94 of the Constitution and Rules 23 of the Parliamentary Rules of Procedure** and that the Act ought to be declared null and void.

Counsel Nicolas Opio also supplemented what his colleagues submitted with four brief points.

(1) That the Hansard is a record of proceedings and includes more than just words spoken on the floor of Parliament and the entire proceedings should be looked at.

Secondly, an enactment is not an event but a process. He submitted that the Affidavits of the Rt. Hon. Moses Latigo and Fox Odoi describe that entire process of enactment of the Act in detail and includes ignoring determination of the question on the Coram.

It includes the willful violation of rule 23 of the rules of procedure of this Parliament.

Thirdly the question of illegality the case of **Makula International Vs Emmanuel Nsubuga is** in point.

Fourthly on burden of proof, counsel submitted that the facts being alleged are within the knowledge of the learned Attorney General who sits in Parliament, and advises government. If they allege that there was no Coram, the burden is on them to show that there was Coram.

Counsel reiterated their earlier prayer that he issue be decided in their favour and that the declaration sought be granted with costs.

Decision of the Court.

We have heard and considered the useful submissions made by both counsel and we are highly indebted to them. Though much has been said, two simple questions emerge for our answer on issue one.

1. Was the Anti Homosexuality Act passed in accordance with the law?

2. Whether the petitioners had proved that during the enacting process of the Anti Homosexual Act, the Rt. Hon Speaker ignored to invoke Rule 23 when the Prime Minister and Hon. Betty Aol raised an objection that there was no quorum at the time the Bill was put to vote at the 2nd and 3rd reading as alleged?

Answer to question one

The petitioners in their petition and evidence allege that the Anti-Homosexuality Act was not passed in accordance with the Law. On the other hand, the respondent states that there is no evidence to prove that there was no Coram and that the burden to prove that fact rested with the petitioners.

We agree with learned counsel Mutesi Patricia that the burden of proof of that fact rested with the petitioners who alleged violation of various provisions of the Constitution and Rule 23 of the rules of Procedure of Parliament.

An exception to the above Rule is that where one has alleged a fact and the person against whom the fact is alleged, does not deny, he is presumed to have accepted that fact.

The respondent was served with the petition and accompanying affidavits of Hon. Fox Odoi and Professor Ogenga Latigo, among others, alleging violation of the Constitution and Rules of Procedure in the process of passing of the Anti-Homosexuality Act.

In his reply, and accompanying affidavit of Mr. Bireije, Commissioner, Civil litigation, the respondent did not specifically deny the said allegations of violation and lack of Coram.

The law applicable to determine what happens when there is no specific denial is the Civil Procedure Act and the Civil Procedure Rules.

Rule 23 of the Constitutional Court (Petitions and References) Rules, 2005 SI 91 empowers this court to apply

the Civil Procedure Act and Rules there under to regulate Practice and procedure in Petitions and references with such modifications as the court may consider necessary in the interest of Justice.

Order VIII Rule 3 of the Civil procedure rules provides;

> ***"Every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted except as against a person under disability but the court may in its discretion require any facts so admitted to be proved otherwise than by that admission".***

In view of the above rule and in the absence of a specific denial by the respondent in his pleadings with regard to issue one, we are unable to accept the submission of learned counsel Patricia Mutesi that the petitioners had a burden to do more than what they did. The evidence contained in the affidavit (including the annexure of the Hansard), of Hon. Fox Odoi stood strong and unchallenged. Lutaya Vs Gandesha.....

It is clear from that evidence, that at least three members of Parliament including the Prime Minister expressed concern about the issue of lack of Coram.

Court is enjoined under Section 56 of the Evidence Act to take judicial notice of the following fact;

56

"(a).....

(b).....

(c) The course of Proceeding of Parliament and of councils or other authorities for the purpose of making laws and Regulations published under any law for the time being relating thereto.

(d).....

(e).....

(f) The accession to office, names, titles, functions and signatures of the persons filling for the time being of any public office in any part of Uganda if the fact the their appointment to that office is notified in the gazette"(underlining is ours).

Coram is defined in the Rules of Procedure of Parliament to mean at least a third of all the members entitled to vote. As indicated above, Court may take judicial notice of the Uganda Gazette where Members of Parliament representing deferent constituencies are published and court may easily ascertain what a third of eligible voting members is equal to.

It is our decision that the respondent having been presumed to have admitted the allegations of the petitioners in the petition

that there was no Coram, we find that on the balance of probabilities, the petitioners had proved that at the time the Prime Minister (twice) and Hon. Betty Owol, raised objection that there was no Coram and that was in contravention of the Constitution and the Rules.

Answer to question 2.

We find that the respondent in his pleadings and submissions did not even attempt to suggest that the Rt. Hon. Speaker responded in any way to the objection raised that there was no Coram.

We come to the conclusion that she acted illegally. Following the decision of **Makula International Vs Cardinal Emmanuel Nsubuga, supra** failure to obey the Law (Rules) rendered the whole enacting process a nullity. It is an illegality that this Court cannot sanction.

In the result, we uphold issue one in favour of the petitioners and grant them the following declarations under prayer (e).

(i) That the act of the 9th Parliament in enacting the Anti-Homosexuality Act 2014 on 20 December 2013 without quorum in the House is inconsistent with and in contravention of **Articles 2(1) and (2) and 88 of the Constitution of the Republic of Uganda 1995 and**

Rule 23 of the Parliamentary Rules of Procedure and thus null and void.

(ii) That the act of the Rt. Hon. Speaker of not entertaining the objection that there was no Corm was an illegality under Rule 23 of the Rules of Procedure which tainted the enacting process and rendered it a nullity. The Act itself so enacted by this reason is unconstitutional. The issue therefore of disposes of the whole petition.

We award the petitioners 50% of the taxed costs.

In the course of the hearing, the respondent was aggrieved by our decision not to grant counsel for the respondent adjournment to enable her to correct further evidence. she indicated that the respondent intended to appeal against our decision and sought stay of the hearing under Rule 2(2) of the Rules of this Court pending the said intended appeal.

We declined to give the said stay and he promised to give our reasons in this judgment. The above Rule talks of inherent powers of this court. In the absence of evidence that the appeal process had been commenced, we refused to invoke the said inherent powers.

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

HON. MR. JUSTICE S.B.K KAVUMA,
ACTING. DCJ

HON. MR. JUSTICE A.S NSHIMYE,
JUSTICE OF APPEAL

HON. MR. JUSTICE ELDAD MWANGUSYA,
JUSTICE OF APPEAL

HON. MR. JUSTICE RUBBY AWERI OPIO,
JUSTICE OF APPEAL

HON. LADY JUSTICE SOLOMY BALUNGI BOSSA,
JUSTICE OF APPEAL