

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**

**MISCELLANEOUS CAUSE NO. 241 OF 2017**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

- 1. MRS. SEFOROZA NYAMUCHONCHO (Administrator of the Estate of the Late Justice Polycarp Nyamuchoncho)**
- 2. ANDREW MUSOKE (Administrator of the Estate of the Late Justice Saul Musoke ::::::::::::::::::::::::::::::::::::::APPLICANTS**

**VERSUS**

- 1. ATTORNEY GENERAL**
- 2. THE PERMANENT SECRETARY MINISTRY OF PUBLIC SERVICE**
- 3. THE PERMANENT SECRETARY /SECRETARY TO THE TREASURY OF MINISTRY OF FINANCE,PLANNING AND ECONOMIC DEVELOPMENT :::::::::::::::::::::::::::::::::::::: RESPONDENTS**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

The Applicant filed an application for Judicial Review under Section 36(a),(b) & (c), 37 & 38 of the Judicature Act as amended, Rules 3(1) & (2), 5, 6, 7 and 8 of the Judicature (Judicial Review) Rules, 2009 for the following Judicial review orders that;

- 1.) An order of Certiorari issues to call to the High Court and quash the decision of the 2<sup>nd</sup> respondent who is the Permanent Secretary of Ministry of Public Service in which she directed the non-payment of**

the applicants in her letter dated 8<sup>th</sup> May 2017 in defiance of the resolution of Parliament of Uganda.

- 2.) An order of Mandamus do issue directing the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondents who are Attorney General of Uganda, the Permanent Secretary of Ministry of Public Service and the Secretary to Treasury/Permanent Secretary of Ministry of Finance, Planning and Economic Development respectively to pay the applicants the said monies, as per the resolution passed by Parliament.
- 3.) An order of Prohibition do issue prohibiting and restraining the respondents from denying the applicants the allowances owing to past Presidents of the Republic of Uganda as stipulated under Section 3 of the Parliament (Remuneration of Members) Act ( saved by Act 19 of 2010 as resolved by Parliament on the 16<sup>th</sup> day of March 2017. s.
- 4.) A declaration that the Administrators of the Estates of the deceased former holders of the office of President of the Republic of Uganda are legally entitled to receive payment of allowances as stipulated by Section 3 of the Parliament (Remuneration of Members) Act (saved by Act 19 of 2010) as resolved by Parliament on the 16<sup>th</sup> day of March 2017.
- 5.) General damages
- 6.) Costs for this application

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavits in support of the applicants of **Mrs.**

**Seforoza Nyamuchoncho and Andrew Musoke** but generally and briefly are as follows;

- 1) That on the 16<sup>th</sup> day of March 2017, the Parliament of the Republic of Uganda lawfully passed a Resolution to pay the three former joint holders of the office of the President namely; Justice Polycarp Nyamuchoncho, Justice Saul Musoke, and Mr. Yoweri Hunter Wacha Olwol, a sum of UG shs 2,400,000,000/= to be shared in equal amounts.
- 2) That the 2<sup>nd</sup> respondent who is the Permanent Secretary, Ministry of Public Service acted irrationally, and arbitrary by disregarding and refusing to follow and implement the Parliamentary Resolution passed calling for the payment of all three former holders of the office of the President.
- 3) That the Permanent Secretary acted ultra-vires and irrationally in taking into account and following a non-binding opinion from the office of the 1<sup>st</sup> Respondent given through the office of the Solicitor General that the Estates of the deceased former heads of state should not be paid under Section 3 of the Parliament.
- 4) That the Permanent Secretary's decision not to pay the applicants was illegal, as it was contrary to the provisions of the Parliament (Remuneration of Members) Act and done in defiance of a Parliamentary resolution which becomes binding while passed.

The respondents opposed this application and the 1<sup>st</sup> respondent filed an affidavit in reply through its Assistant Commissioner/ Human Resource Management in Charge of compensation in the Ministry of Public Service- Victor Bua Leku.

The deponent confirmed that the Ministry of Public Service received the resolution of Parliament dated 16/03/2017, directing (Ministry) to request for a supplementary appropriation to facilitate the payment of the three former Titular Heads of State.

That the Ministry of Public Service informed Parliament on the 19/04/2017 about the steps being taken to implement the resolution.

That the Ministry of Public Service wrote to Solicitor General on the 24/04/2017 seeking guidance on the resolution of Parliament. The Ministry of Public Service on the same date wrote to the Former Presidential Commissioner H.E Wacha Lwol (late) and Administrators of the Estates of the Late H.E Justice Saul Musoke and the Late H.E Nyamuchoncho requesting for information to facilitate implementation of the Parliamentary resolution.

That the Solicitor General replied to the letter from Ministry of public Service on 8<sup>th</sup>/05/2017 and guided that in accordance with section 3 of the Parliament 9Remuneration of Members) Act cap 259 , only H.E Wacha Olwol who was alive at the time of the resolution qualifies to be paid as directed by Parliament and therefore the benefits can be given to his legal representatives.

## **BACKGROUND**

In May 1980, the Military Commission by Legal Notice No.5 of 1980 established a Presidential commission composed of three persons as the Titular heads of state. The members of this Presidential commission were Justice Saulo Musoke, Justice Polycarp Nyamuchoncho and Mr. Wacha Olwol. These three members were therefore the President/Head of State of the Republic Of Uganda for that time. The Legal Notice Vested in the commission all privileges, prerogatives, functions and exemptions enjoyed by the president.

Two of the members of the Presidential Commission were judges/justices of the courts, and were picked from the courts to serve their country and perform duties which at the time were almost impossible. It should be noted that during that time, there was total political, structural breakdown in the country, disregard for law and order and gross insecurity.

The presidential Commission served the country for more than six months between May 22 and December 15<sup>th</sup> 1980 until the country organized a national election for a new head of state. The commission diligently served the country for the time they held office as President.

On 1<sup>st</sup> July 1981, the Parliament enacted The Parliament (Remuneration Of Members) Act, Cap 259. This Act is in force to date. This act provides for, among other things, the Remuneration of past presidents and vice presidents.

ON 8<sup>th</sup> October, 2010, the Parliament enacted the Emoluments and Benefits Of The President, Vice President and Prime Minister Act, no.19 of 2010. This act provided for the continued application of some provisions from the Parliament (Remuneration Of Members) Act, Cap 259, as regards to former Presidents or Vice Presidents, who had held Presidential office before the 1995 constitution.

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and consider in the determination of this application.

## **ISSUES:**

The following issues arose for resolution

1. Whether the decision of the second respondent, as portrayed in the letter dated 8<sup>th</sup> May 2017 was legal.
2. Whether the parties are entitled to the remedies sought.

**Mr. Rajab Adams Makmot-Kibwanga** and **Yovino Okwir** from **Makmot-Kibwanga & Co. Advocates** appeared for all the applicants while **Mr. Kodoli Wanyama** from the **Attorney General's Chambers** appeared for all the respondents.

In Uganda, the principles governing Judicial Review are well settled. Judicial review is not concerned with the decision in issue but with the decision making process through which the decision was made. It is rather concerned with the courts' supervisory jurisdiction to check and control the exercise of power by those in Public offices or person/bodies exercising quasi-judicial functions by the granting of Prerogative orders as the case may fall. It is pertinent to note that the orders sought under Judicial Review do not determine private rights. The said orders are discretionary in nature and court is at liberty to grant them depending on the circumstances of the case where there has been violation of the principles of natural Justice. The purpose is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. *See; John Jet Tumwebaze Vs Makerere University Council & 2 Others Misc Cause No. 353 of 2005, DOTT Services Ltd Vs Attorney General Misc Cause No.125 of 2009, Balondemu David Vs The Law Development Centre Misc Cause No.61 of 2016.*

For one to succeed under Judicial Review it is trite law that he/she must prove that the decision made was tainted either by; illegality, irrationality or procedural impropriety.

The dominant consideration in administrative decision making is that public power should be exercised to benefit the public interest. In that process, the officials exercising such powers have a duty to accord citizens their rights, including the right to fair and equal treatment.

## **ISSUE ONE**

*Whether the decision of the second respondent, as portrayed in the letter dated 8<sup>th</sup> May 2017 was legal.*

The applicant's counsel made extensive submission challenging the decision contained in the letter dated 8<sup>th</sup> May 2017, to the Principal Private Secretary, State House.

The gist of the content of the said letter was that only H.E Wacha Olwol who was alive at the time of the resolution of parliament qualified to be paid under the law. That since the other two members of the Presidential Commission were not alive at the time parliament passed the resolution, they are not entitled to the allowances through their estates.

The applicants' counsel contended that the decision by the second respondent is illegal, as the same contravenes the law that provides for the payment of allowances to the past Presidents.

The Parliament (Remuneration of Members) Act, Cap 259, at section 3 provides for Remuneration of past Presidents and Vice Presidents, states

*"Parliament may, by a resolution supported by votes of not less than half of all members of parliament, authorize the payment to a former holder of the office of president or of Vice President of an allowance not less than two thirds of the salary of the President or of the Vice President, respectively.*

*S.3(2) Every resolution under subsection (1) shall –*

- 1. State the name and particulars of the person to whom payment shall be made:*
- 2. be laid before parliament prior to the approval of the annual estimates.*
- 3. For the avoidance of doubt, unless special provision to the contrary is made in any Appropriation Act, every appropriation by parliament of Public monies for the purposes of this section shall lapse and cease to have any effect at the close of that financial year...."*

The application of the above provisions is upheld in the **Emoluments and Benefits of the President, Vice President and Prime Minister Act, 2010, Act 19**, wherein at section 29 it provides;

*“For the avoidance of doubt, section 3 of the Parliament (Remuneration of Members) Act shall continue to apply to a president or Vice President who ceased to hold that office before the commencement of the 1995 constitution.”*

From the wording of Section 3 of the *Parliament (Remuneration of Members) Act*, it is clear that for someone to benefit from that provision, they ought to be *“... a former holder of the office of the president ....”*

It should be clearly outlined that from the wording of that provision, there is no mention made of a **“Living”** former holder of the office of president being subject to benefit or be paid such allowance.

The second respondent, through her letter indicated that she relied on the guidance of the Solicitor general to make her decision. The guidance/opinion of the solicitor general was provided through the letter dated 8<sup>th</sup> May 2017, and marked **“annexure C”** to the affidavit in reply sworn on behalf of the respondents, wherein that letter/legal opinion at page three, line 13 he was of the opinion

*“... At the time of passing the resolution, only Mr. Wacha Olwol was alive. The other two were deceased. The payment of allowance envisaged under s.3 of the Parliament (Remuneration of Members) Act is for a living former president/vice president. The section was not meant to cater for the deceased presidents benefits and emolument nor for their estates...”*

The Solicitor general further went ahead in his opinion/guidance to the second respondent, at page 4, line 10 and stated,

*“The allowances appropriated by parliament for the benefit of the members of the former Presidential Commission, under Section 3 are personal to holder and payable when the beneficiary is alive. Only the late Wacha Olwol may benefit from*



*the payment authorized by the resolution of Parliament because he was alive at the time of its passing. The allowance may be given to his legal representative."*

The solicitor general validly offered his opinion to the second respondent, who then adopted the same. In the case of **Bank of Uganda V. Banco Arabe Espanol, SCCA no.1/2001**, Kanyeihamba JSC (as he then was) held that;

*"... the opinion of the Attorney General as authenticated by his own hand and signature regarding the laws of Uganda and their effect or binding nature on any agreement, contract or legal transaction should be accorded the highest respect by government and public institutions and their agents..."*

Therefore with regard to the above, the opinion of the solicitor general being properly given and the second respondent then adopting the said opinion to make her decision, the said opinion shall be taken as her own.

To make a proper understanding, and interpretation of this law, it is important that we define the terms "Estate", and "Legal Representative"

*The Black's Law dictionary, 8<sup>th</sup> Edition, at page 1659, defines an Estate as, "The property that one leaves after death; the collective assets and liabilities of a dead person"*

Legal Representative is defined at page 4064/5 as, *"A person who manages the legal affairs of another because of incapacity or death, such as an executor of an estate."* This definition is upheld/similar in the Succession Act.

It is seen from the above that the opinion as extracted, *inter alia* from the letter of the solicitor general, formed the foundation of the decision of the second respondent to deny payments of the allowances to the estates of the past holders of the office of President.

The interpretation of the provision of the law by the second respondent, in essence forms the foundation of this application before this honourable court. In interpreting section 3 of the *Parliament (Remuneration of Members)*

Act, the second respondent inserts the word “**Living**” to form part of the prerequisites for a former holder of the office of president to qualify for the allowance payable under the act.

The rules of statutory interpretation properly need to be applied in order to make a proper interpretation of what the makers of the law had in mind.

Words of a statute must be interpreted according to their literal meaning and sentences according to their grammatical meaning. If the words of the statute are clear and unambiguous and complete on the face of it, they are conclusive evidence of the legislative intention. This is what is today is referred to as *the literal rule* of statutory interpretation, and was defined in *Wicks V. DPP (1947)A.C 362*

In the Supreme Court case of *Hon. Theodore Ssekikubo & Others V. The Attorney General and 4 Ors, Constitutional Appeal no.1 of 2015*, this rule of statutory interpretation was applied by the court in interpreting Article 83(1) of the constitution, and it was held that, “...‘leave’ as it is used in Article 83(1)(g) is plain, clear and unambiguous, and must be interpreted using the literal rule of statutory interpretation.”

Therefore, the wording of section 3(1) of the *Parliament (Remuneration of Members) Act* is clear to the effect that “*Parliament may, by a resolution supported by votes of not less than half of all members of parliament, authorize the payment to a former holder of the office of president or of Vice President of an allowance not less than two thirds of the salary of the President or of the Vice President, respectively.*” And it is prudent that when court is to interpret this provision, the words of the statute have to be given their ordinary meaning to ascertain if the same make sense. It’s trite law that a word cannot be inserted in a statute while interpreting it where the legislature did not use such word. The wording of this provision is very clear, that a person has to be a former holder of the office of the president, so as to be entitled to an allowance as passed by a parliamentary resolution.

Whether or not the former holder of the office of the president is alive or dead by the time a parliamentary resolution is passed for them to be paid under that provision is immaterial, which aspect we believe the legislature were aware of at the time of enacting this law and for a person to construe the same in that regard, would be misinterpreting the provision.

The two former members of the Presidential Commission, that is Justice Saulo Musoke and Justice Polycarp Nyamuchoncho were/are “...*former holders of the office of President...*” and that prerequisite under section 3 of the act is clear and unambiguous, for which the second respondent should have paid attention to and put into consideration when making her decision as communicated in the letter dated 8<sup>th</sup> May 2017.

The law must be read, word for word and should not divert from its true meaning.

It was the submission of the applicant’s counsel, that the decision of the second respondent as communicated through her letter dated 8<sup>th</sup> may 2017, was illegal as the same was based on a wrong interpretation of the law, and accordingly contravened the provisions of the *Parliament (Remuneration of Members) Act*.

Often times, courts apply the Mischief rule/Purposive rule of statutory interpretation, where the words of the statute are not clear, then recourse must be made to the spirit of the statute.

It is firstly the applicant’s submission that the words of the provisions in the *Parliament (Remuneration of Members) Act*, Section 3 are Clear and unambiguous and therefore, no recourse must be made to the spirit of the statute.

The supreme court in the case of *Hon. Theodore Ssekikubo & Others V. The Attorney General and 4 Ors, Constitutional Appeal no.1 of 2015*, in reacting to the application of the purposive rule where the words of the statute were clear by the lower court, had this to say,

*“The Constitutional court itself found that the word ‘leave’ as it is used in Article 83(1)(g) is plain, clear and unambiguous, and must be interpreted using the literal rule of statutory interpretation. However, inspite of this finding it went out of the provision of the constitution itself to look for aid elsewhere for its interpretation. We respectfully think that this was an error on the part of majority justices of the constitutional court. The words of Article 83(1)(g) being plain, clear and unambiguous should not have necessitated the Constitutional court going to the Hansard to look for their interpretation”*

However, since the decision of the second respondent was based on the guidance of a legal opinion by the solicitor general, wherein the solicitor general stated, “... At the time of passing the resolution, only Mr. Wacha Olwol was alive. The other two were deceased. The payment of allowance *envisaged* under s.3 of the Parliament (Remuneration of Members) Act is for a living former president/vice president. The section was not meant to cater for the deceased Presidents benefits and emolument nor for their estates...”

With emphasis on the word “Envisaged” as highlighted from the above text, it seems that the solicitor general was adopting the purposive rule of statutory interpretation, whereby his opinion was looking at what was envisaged, or what was the intention of the law makers at the time of enacting the said law. And for that reason, we shall go ahead and make further submission under this rule of statutory interpretation.

In the case of *Kasampa Kalifani vs Uganda Revenue Authority High Court Civil Suit No.579/2007* , Justice Yorukamu Bamwine (as he then was), in echoing the words of Lord Denning, stated that Acts of Parliament are construed according to their object and intent.

To establish the object and intent of Parliament, when enacting the Parliament (Remuneration of members) Act, Cap 259, we could use the internal aids to construction such as the Title to the act, the preamble, the

Punctuation, headings, schedules, interpretation clauses among others to easily ascertain what they envisaged.

The long title to the *Parliament (Remuneration of Members) Act*, states,

*“An Act to consolidate the law relating to the remuneration of members of parliament; to make provision for the remuneration of past presidents and vice presidents and other purposes connected therewith.”*

From the long title of the act, it is our submission that the legislature in intending to show gratitude to the past presidents of the country, given the political instability in the country prior to 1981, and having regard to the fact that the leaders at the time did a wonderful job to keep the country together in such times, the legislature enacted this law to appreciate these leaders for their work, and in so doing the appreciation through allowances as provided for was not meant to be enjoyed by a living former president in person.

To insert the aspect of the former holder of the office of president, being alive in order to benefit from this law, would in no way remedy the “mischief” that the previous laws did not cover.

It is further our submission that the spirit and intent of the legislature in enacting this law was to protect the country from embarrassment of having her former Presidents and their families living in destitute or in bad health. Such a scenario would cause embarrassment to the nation.

In line with the above, it should be noted that despite there being an act to provide for a sitting President at the time, in the form of *The Presidential Emoluments and Benefits Act (Now repealed)*, there was no provision catering for the past holders of the office of the president, and that was the mischief that was being cured in enacting the *Parliament (Remuneration of members) Act*, wherein the legislature made provision for past holders of the office of president, with disregard to where they had to be living or dead to benefit from the act.

Currently, the *Emoluments and Benefits of the President, Vice President and Prime Minister Act, 2010* is the law that was enacted to provide for benefits of a president, and it is this act that actually repealed The Presidential Emoluments and Benefits Act, at section 32(1). To understand the application and intention of the law makers, these two acts should be read together.

In helping to interpret the Parliament (Remuneration of members) Act, we may have to pay attention to specific provision of the *Emoluments and Benefits of the President, Vice President and Prime Minister Act, 2010*, that is sections 29, section 30, and section 5.

Section 29 of the *Emoluments and Benefits of the President, Vice President and Prime Minister Act, 2010* provides,

*“For avoidance of doubt, section 3 of the Parliament (remuneration of members) Act shall continue to apply to a President or Vice President who ceased to hold that office before the commencement of the 1995 constitution.”*

On the reading of this provision, we can see that the legislature in 2010 was mindful of the fact that former Presidents had to be catered for to avoid the embarrassment, of having them or their families living in destitute, and the legislature mindful of the fact that by the year 2010, many of such presidents were dead, and were having surviving estates. The legislature intended to have the estates of the former holders of the office of President before 1995 benefit under the law, and that is why a provision (section 3) of the Parliament (Remuneration of Members) act was given continued application in the act of 2010.

The 2010, *Emoluments and Benefits of the President, Vice President and Prime Minister Act*, is one which was enacted with modifications and special regard to the 1995 Constitution, as seen in its long title, but that notwithstanding, provisions from the old law are given continuous

application, mindful of the fact that the beneficiaries from the same are deceased and therefore their estates to benefit from the act.

Section 5(2) of the *Emoluments and Benefits of the President, Vice President and Prime Minister Act, 2010*, is a provision that was carried or adopted in verbatim from section 3(1) and (2) of the repealed Presidential Emoluments and Benefits Act.

*“Section 5, provides for the Benefits of a President ceasing to hold Office.*

*Section 5(1) A president who ceases to hold office otherwise than by being removed under article 107(1)(a) or (b) of the Constitution shall be granted the benefits specified in the fifth schedule of this act.*

*Section 5(2) A President to whom subsection (1) applies shall not qualify for a grant of benefits under that subsection-*

- (a) If he or she is convicted for subversive activities against Uganda or another country;*
- (b) If he or she is convicted of extra judicial killing*
- (c) If he or she is convicted of a crime involving dishonesty or moral turpitude; or*
- (d) If he or she is convicted for stealing, money laundering, fraud or any similar unlawful activity.”*

The above provisions in the *Emoluments and Benefits of the President, Vice President and Prime Minister Act, 2010* as was in the repealed Presidential Emoluments and Benefits Act, were/are the benchmarks for precluding any former holder of the office of President from enjoying the benefits under those laws, and given that the Parliament (Remuneration of Members) Act, provides for the same subject matter, the acts are read together. Therefore from that provision, it is not stated therein that death of the former president, shall be a ground disqualifying him/his estate from enjoying the benefits from those stated laws.

Therefore, it is the applicants' submission that with the proper due regard to the intent of the legislators or law makers, and application of the mischief/purposive rule of statutory interpretation, it was in no way their intention that a deceased former holder of the office of president or their estate must not enjoy the benefits/allowances provided for in the act.

The insertion of the aspect of a living former President, as was done by the second respondent in making her decision not to pay the applicants, and in interpreting the provision of that law, was unfounded and misguided, thereby contravening that law, thus rendering her decision illegal.

We would like to turn attention to the part of second respondent's basis for her decision, the legal opinion, wherein it was stated,

*"The allowances appropriated by parliament for the benefit of the members of the former Presidential Commission, under Section 3 **are personal to holder and payable when the beneficiary is alive.** Only the late Wacha Olwol may benefit from the payment authorized by the resolution of Parliament because he was alive at the time of its passing. The allowance may be given to his legal representative."*

The second respondent in adopting the legal opinion of the solicitor general to make her decision, the same shall be taken as her own.

From the wording of the provision of the act, for the payment of the allowances to the former holders of the office of the president, no mention whatsoever is made that such payment shall be enjoyed in *personam*, and with no basis whatsoever, the second respondent interpreted the law in this regard.

It is trite law and over time has been appreciated in laws regarding payments of pensions, benefits, compensation and the like, that payments provided for under a such laws, unless an intention is expressed specifically to the contrary, these payments are payable to estates of the deceased persons to whom they were entitled.



If such payments were to be enjoyed in person, it would in itself defeat the whole intention as to why they were established. The allowances provided for in section 3, of the Parliament (Remuneration of Members) Act, as has been stressed above were to be in appreciation of the former heads of state, and to cure instances of embarrassment to the state if the former presidents or their families were to live in destitute.

The payments/allowances provided for in the act, form part of the assets of the deceased, to which the estate is entitled, and not personal rights that lapse with the death of the person, as interpreted by the second respondent.

This principle is well enunciated in the Kenyan case of *Jane Sella Wanja Amos V. Mary Igandu Njagi, Succession cause no.1122 of 2015*, where court held that

*"... the assets of the deceased including the insurance policy, pension, terminal dues and compensation are only payable to the person nominated."*

It is with this reasoning of the principles that in other laws in the country, such The Pensions Act, provisions are made for payments in the form of pensions to be payable to the estate of the worker or pensioner even after their death.

Furthermore, it is quite contradictory, that whereas the second respondent decided not to pay the applicants, due to the interpretation that the allowance payable under section 3 is *"personal to the holder and payable when the beneficiary is still alive"*, the second respondent's commissioner in his affidavit in reply to this application, at paragraph 10, informed court that the second respondent is in the process of making payments of Ug.Shs 400,000,000 (Four hundred million shillings) to the estate of the deceased Wacha Olwol, who died on 2<sup>nd</sup> May 2017, although was alive at the time of passing the resolution by parliament for the payment.

If the interpretation of the second respondent was to be applied, the allowances payable under section 3 of the Parliament (Remuneration of Members) Act, would have to be enjoyed by a living former President in person, and it would be immaterial whether they were alive a day before the payment itself was made, but unfortunately pass on subsequently, before the actual payment is made.

In this regard, applying the interpretation of the section by the second respondent, if the Ministry public service was in the process of paying money under this law to a former president, X, and the payment is to be effected on a Friday of that week, but unfortunately that former president X, dies on Wednesday of that same week, then such payment would not be effected, because the payment was “personal to the holder and payable when they are alive” and therefore as long as they are not alive, even their estate or representatives cannot enjoy the same.

Therefore it is our submission that the second respondent in purporting to make the payment of the allowance to only one member of the presidential commission that is H.E Yoweri Wacha Olwol, the second respondent is acting in contravention of the law, and the interpretation of the law in this regard is completely baseless.

The second respondent’s decision not to pay the applicants was made on an improper and wrong interpretation of the law, which resulted into contravention of the said law, and thus illegal. It is trite law that once court finds an illegality, it cannot enforce it.

In conclusion therefore, it is our submission that the second respondent in misinterpreting the law, and accordingly making the decision, that the applicants are not entitled, as legal representatives, for the deceased former holders of the office of President, to the allowances provided for under section 3 of the Parliament(Remuneration of Members) Act, because the said former holders were not alive by the time parliament explicitly and stating their names passed the resolution to pay them, the Second

respondent contravened the said law, and therefore her decision was illegal for which this court should be pleased to grant the applicants the orders sought.

The respondents' counsel submitted that the applicants' case is fundamentally and legally flawed. This is because nowhere in the application is the evidence availed to show that the impugned letter was tainted with illegality, unfairness and irrationality. To the contrary the evidence as can be deduced from the affidavit in reply deposed by **Victor Bua Leku** dated 27/06/2018 showed that the decision was legal.

The respondents buttressed his case by referring to the different paragraphs of the affidavit in reply to confirm to court that the impugned letter is legal, fair and rational.

The respondents' counsel further submitted that the Ministry of Public Service is legally bound to follow the advice as given by the Solicitor General vide Article 119 and principle laid in various decided cases like **Bank of Uganda vs Banco Arabe Espanol SCCA NO. 1/2001 In which Justice Kanyeihamba held ..'** the opinion of the Attorney General as authenticated by his own hand and signature regarding the laws of Uganda and their effect or binding nature on any agreement, contract or legal transaction should be **accorded the highest respect by Government and any Public institutions and their agents.**

It is on this premise that we invite court to find that the Ministry of Public Service was legally justified to seek for the said legal guidance and, it is subsequently bound to follow the advice given by the Solicitor General

It is clear that the applicants' claim arises from a resolution of Parliament and it was on this basis that the applicants premised their case. In the said resolution of parliament it was categorically stated as follows;

**MOTION FOR A RESOLUTION OF PARLIAMENT FOR PAYMENT OF EMOLUMENTS AND BENEFITS TO MEMBERS OF THE PRESIDENTIAL COMMISSION, UNDER THE LAW**

**(Moved Under Rule 47 of the Rules of Procedure of Parliament)**

.....  
**FURTHER NOTING THAT** Section 3 of the Parliament (Remuneration of Members) Act empowers Parliament by a resolution supported by the votes of not less than half of all the Members of Parliament to authorize the payment to a former holder of office of President or of Vice President of an Allowance not less than two-thirds of the salary of the President or of the Vice President;

**RECOGNISING THAT** whereas members of the Presidential Commission held office of the President of Uganda and are entitled to the benefits enumerated under the Parliament (remuneration of Members) Act, save for ex gratia payments in 2012;

**FURTHER RECOGNISING THAT** former Presidents contributed to the development and social transformation of Uganda and need to be looked after during their retirement; and

**NOW THEREFORE** be it resolved by Parliament:-

- i) To request Government to fulfill its obligation to pay the holders of the office of the Presidency under the Uganda national Liberation Front.
  - a) H.E Yoweri Hunter Wacha Olwol
  - b) H.E Polycarp Nyamuchoncho
  - c) H.E Saulo Musoke
  
- ii) To request Government to make provision in the Supplementary appropriation for the Financial year 2016-2017 for such payment to the tune of 1,200,000,000/= and in the same vein make provision in the Annual Budget Estimates for the Financial Year 2017-2018 for a sum of 1,200,000,000/= all being emoluments and benefits of the holders of the Office of the Presidency under Uganda National Liberation Front (UNLF) Government

The above resolution of Parliament is very clear and unambiguous, in that it was intended for the three named persons and it never alluded to living or deceased.

Indeed at the time of making the said resolution, Parliament was very much aware that two of members of the Presidential Commission were deceased. The intention of the Parliament in this resolution was very explicit and ought to have been applied without any question.

It is not clear why the 2<sup>nd</sup> respondent decided to seek legal advice on the resolution of Parliament which was quite clear and unambiguous. It is the legal advice of the Solicitor General which is the basis of the confusion that could have misled the 2<sup>nd</sup> respondent.

This court is in agreement with submission of counsel for the respondent about the effect of the advice of Attorney General on government offices however this does not mean that the advice or legal opinion of Attorney General is always right.

The 2<sup>nd</sup> respondent had already written a letter dated 4<sup>th</sup> April 2017 to Ministry of Finance requesting for a supplementary Budget to cater for payment of Emoluments to Members of the Presidential Commission. At that stage the respondent were in agreement that the all the three members were entitled to benefits and emoluments and this is the amount they sought in the supplementary budget.

The letters requesting for legal opinion attached to the affidavit in reply by the Permanent Secretary of the 2<sup>nd</sup> respondent were attached but they were unsigned.

The interpretation of the law given by the Solicitor General was to the effect that under Section 3 of the Parliament (Remuneration of Members) Act is for a living President/Vice President. The section was not meant to cater for the deceased Presidents benefits and emoluments nor for their estates.

The said interpretation is flawed to the extent that it is importing words in the legislation which were included and if at all Parliament wanted that to be the position of the law they should have stated so. A resolution of Parliament shall state the name and particulars of the person to whom payment shall be made.

This court agrees with the submission of counsel that the Estates of former Presidents would equally be entitled since the benefit should not accrue to a living President only but the family and their obligations and entitlements are extended to their estates and different beneficiaries.

The former 'first lady' Seforoza Nyamuchoncho and other beneficiaries equally need financial assistance. She is aged 93 years old and sickly and she taking care of several orphans. The purpose was to give former Presidents favourable retirement benefits together with their families. It is clear that the said benefits are not restricted to themselves and the same emoluments assist them to cater for their families for which they would be obliged to cater for in their lifetime.

The cardinal rule of construction of Statutes is to read the Statute liberally, that is, by giving to the words used by the legislature their ordinary , natural and grammatical meaning. If, however, such a reading leads to an absurdity and the words are susceptible to another meaning, the Court may adopt the same. However, if no such alternative construction is possible, the Court must adopt an ordinary rule of literal interpretation.

Construction, which commends itself to justice and reason, should be adopted. It is the duty of the courts to give broad interpretation, keeping in view with the purpose of the concerned legislation. The interpretation should further the object.

The letter dated 8<sup>th</sup> May 2017 by the permanent Secretary in defiance of the Parliament Resolution was illegal since it was premised on wrong interpretation of the law.

## ISSUE TWO

*Whether the parties are entitled to the remedies sought?*

### Certiorari

The ever-widening scope given to judicial review by the courts has caused a shift in the traditional understanding of what the prerogative writs were designed for. For example, whereas *certiorari* was designed to quash a decision founded on excess of power, the courts may now refuse a remedy if to grant one would be detrimental to good administration, thus recognising greater or wider discretion than before or would affect innocent third parties.

The grant of judicial review remedies remains discretionary and it does not automatically follow that if there are grounds of review to question any decision or action or omission, then the court should issue any remedies available. The court may not grant any such remedies even where the applicant may have a strong case on the merits, so the courts would weigh various factors to determine whether they should lie in any particular case. See *R vs Aston University Senate ex p Roffey* [1969] 2 QB 558, *R vs Secretary of State for Health ex p Furneaux* [1994] 2 All ER 652

The decision of the Permanent Secretary of Ministry of Public Service dated 8<sup>th</sup> May 2017 is quashed since it was premised on legal opinion of the 1<sup>st</sup> respondent which was erroneous.

### Mandamus

An order of Mandamus issues directing the 2<sup>nd</sup> respondent (Permanent Secretary- Ministry of Public Service and 3<sup>rd</sup> respondent (Permanent Secretary/Secretary to the Treasury Ministry of Finance, Planning and Economic Development to pay the applicants the said monies as per the resolution passed by Parliament.

### Declaration

Court declares that the administrators of the estate of the deceased former holders of the office of the president of the Republic of Uganda are legally entitled to receive payment of allowances as stipulated by S 3 of the Parliament (Remuneration of Members) Act as resolved by Parliament on the 16<sup>th</sup> day of March 2017.

### General damages

*Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage; it is not enough to write down particulars and so to speak, throw them at the head of the court, saying, "This is what I have lost, I ask you to give these damages" They have to prove it. See **Benedicto Musisi vs Attorney General HCCS No. 622 of 1989 [1996] 1 KALR 164 & Rosemary Nalwadda vs Uganda Aids Commission HCCS No.67 of 2011***

The applicants did not guide court on the nature of the loss or damage suffered by the estate in the affidavit in support. This court declines to award any general damages.

### Interest

The applicants shall receive an interest of 15% per annum in case the said amounts are not paid within 8 months from the date of this ruling.

### Costs

The application is allowed with to costs against the respondents.

**I so order**

**SSEKAANA MUSA**

**JUDGE**

**1<sup>st</sup> /10/2018**