THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISCELLANEOUS CAUSES NO. 70 of 2020 & 117 OF 2020 AND 119 OF 2020

1. **MOHAMMED ALLIBHAI**
2. **MINEX KARIA**
3. **PRADIP NANDLAL KARIA---APPLICANTS**

VERSUS

ATTORNEY GENERAL ---RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The applicants brought separate applications for judicial review combined with enforcement of rights under Articles 28, 42, 44(c) and 50 of the Constitution and Sections 36 and 38 of the Judicature Act cap 13 and rules 3, 6, 7 and 8 of the Judicature (Judicial Review) Rules, S.I No. 11 of 2009 for the following judicial reliefs and orders that;

1) **A DECLARATION** that the respondent's Parliamentary sub-committee on Commissions, Statutory Authorities and State Enterprises' COSASE acted ultra vires when it held out to act as a court of law, sat in judgments of court and issued Warrant of Arrest against Applicants and the same is null and void.

2) **A DECLARATION** that the Respondent's COSASE decision to hear disputes involving private individuals and make decisions and order of a criminal nature usurped and hijacked the jurisdictional mandate of the Constitutional Court by continuing to conduct parallel proceedings to and interfered with the independence of the judiciary and is ultra vires, illegal, unfair, null and void.

3) **A DECLARATION** that the Respondent's directive to Applicant to cede his statutory rights and privileges to Petition the Speaker and get her decision excusing him from proceedings and production of documents without her making a decision or else to contemporaneously/forcefully issue a criminal Arrest Warrant against him is irrational, illegal unfair, null and void.

4) **A DECLARATION** that the Speaker of Parliament's decision to abdicate and/ or not to act on the Applicants petition and objections and letting the COSASE Committee to continue with the impugned proceedings was a breach of discretion and the law governing Parliament, is ultra vires, illegal, null and void.

5) **A DECLARATION** that COSASE acted irrationally when it usurped and subjected the Applicants petition to the Speaker of Parliament to their jurisdiction whose very decision it was against orders and pronouncements without awaiting the Speaker's decision and this was ultra vires and denial of a fair hearing and null and void.

6) **A DECLARATION** that the COSASE decision to disregard the Applicant's petition to the Speaker of Parliament before she exercised her discretion on excusing him from the hearing and producing documents as part of his statutory right and privilege under S. 12 of the Parliamentary (Powers & Privileges) Act and proceeding to make contrary pronouncements, orders and directives was denial of a right to a fair hearing and the same is ultra vires, null and void.

7) **AN ORDER OF CERTIORARI** doth issue to call for and quash the Respondent's decision and proceedings of 10th March 2020 & 16th March 2020 into court for quashing for being an illegality.

8) **AN ORDER OF PROHIBITION** doth issue barring the respondent, their agents or any other person acting under them from enforcing the decision to issue an Arrest Warrant without the involvement of the Speaker of Parliament as required by law or proceed to commence criminal proceedings against the applicants.

9) **AN ORDER OF INJUNCTION** doth issue restraining the Respondent, their servants, agents or any other person acting under their authority from subjecting the Applicant to any criminal proceedings arising from the decision contained in the Respondent's impugned proceedings dated 10th March 2020 & 16th March 2020.

10) Punitive and Exemplary damages for the Respondent's arbitrary, highhanded and oppressive treatment of the Applicants.

11) General damages.

12) Costs.

BRIEF FACTS (APPLICANTS)

The Applicants (by consolidation) Ugandans, were invited by the Parliamentary Committee on Commissions, Statutory Authorities and State Enterprises for a meeting to discuss meddling in properties the subject of audit reports of the Auditor General. These properties were originally vested with the Departed Asians Property Custodian Board. Among others, he was "required" to provide the committee with some documents including; Certificates of repossession, Current status report in terms of current tenure and ownership etc.

At the time, the Applicants were not in the country but instructed their Legal Representatives; M/s Muzamiru Kibeedi, Yesse Mugenyi and Derrick Tukwasiibwe respectively to appear for them. They appeared and tendered to the committee a letter written to the Speaker of parliament. It was an application seeking that their clients (including the Applicant) be excused from appearing and producing documents as provided for under the Parliament (Powers and Privileges) Act 1955. The Committee members went ahead and not only condemned the Applicant but issued a warrant for his arrest and accused him of fraud, forgery etc. At the time, a constitutional petition had been filed to challenge the constitutionality of these actions.

The Applicants (by consolidation of their respective applications herein)are victims of the Respondent's Parliamentary Committee on COSASE acting as a

court of law, sitting in Judgments of court and threats to issue Warrants of arrest against him among others. The subcommittee is entertaining disputes of a private nature but proceeding to make decisions and issue orders of a criminal nature. It has usurped and hijacked the jurisdictional mandate of the constitutional court by continuing to conduct parallel proceedings to it. It is interfering with the independence of the Judiciary.

They through their lawyers raised their objections to the irregular proceedings stated above and these were also put in writing. However, the Committee shut them down and refused to listen to their lawyers and the written presentation. Instead, the Respondent's COSASE went on a character assassination media campaign, openly giving press interviews in which their Chairperson aggravatingly described the Applicant and his colleagues as fraudsters and criminals who dubiously got certificates of repossession and took over the physical possession of the properties. This shows that the Committee had a pre-conceived biased mind and decision that the Applicant and his colleagues were criminals who did not deserve a hearing. This not only threatened their constitutional non derogable right to a fair hearing which Parliament is duty bound to respect under the law but also their inalienable right to own private property as Ugandan citizens.

The COSASE which was supposedly inviting the Applicant as mere witnesses turned them into the accused, without giving them prior notice, Exhibits and the charges against them which they were to answer before the Committee.

The Applicants raised procedural irregularities in writing to the Committee through his lawyers but was ignored.

The Committee while purporting to be investigating its Public Enterprises and Statutory Commission, specifically the Departed Asian Properties Custodian Board, they were sitting with its officials specifically the Secretary George William Bizibu, in their proceedings. This further makes the Committee partial and biased for its wrong composition. The Applicants then petitioned the Speaker of Parliament in exercise of his statutory rights and privileges under the Parliamentary Powers and Privileges Act, specifically S.12 thereof, invoking the Speaker's powers to exercise statutory discretion and excuse them from the hearing.

The Speaker received the Petition but never took any action or made any decision on it. She thus failed to exercise her legally required discretion. Instead the COSASE sitting on 16/3/2020, still ignored the Petition to the Speaker and proceeded with their irregular hearing at which they threatened the Applicant and his colleagues with issuance of Arrest warrants unless they attended.

On 20/3/2020, the country went into lockdown due to the Coronavirus COVID-19 pandemic and the Committee work ceased. In the meantime, the Applicant had travelled out of the country where the International lockdown found him and he is still locked there and unable to travel. In June 2020, when the lockdown is still in place internationally, the COSASE Committee resumed business and is still threatening to issue international Arrest warrants against the Applicant despite being aware of the international lockdown and the Corona virus pandemic.

BRIEF FACTS (RESPONDENT)

The Respondent also stated in her affidavit that Parliament of the Republic of Uganda set up a sub Committee of the Public Accounts Committee in charge of Commissions, Statutory Authorities and State Enterprises (PAC - COSASE) to investigate the handling of the property of the departed Asians by the Departed Asians Property Custodian Board (DAPCB). The subcommittee is conducting the inquiry into the activities of the DAPCB under the following terms of reference-

To investigate the allegations that some properties of the Indians expelled by H.E. President Idi Amin Regime were repossessed yet the owners had been compensated fully by the Governments of Uganda and India;

1. *To establish the total amount of proceeds from the sale or rent of the properties;*
2. *To establish the number of court cases with the Board, for how long they have been in courts of law;*
3. *To establish the number of concluded cases and how they were concluded;*
4. *To establish any possible fraudulent activities committed during the repossession of the properties as per documents submitted by Hon. Members during with DAPCB;*
5. *To propose measures to safeguard the assets against any fraudulent disposal; and*

6. *To obtain any other relevant information concerning the management of the assets under the trusteeship of the Custodian Board.*

The investigation arose from the consideration of the Auditor General's Special Audit Report on the DAPCB.

In the conduct of its mandate, the subcommittee of COSASE invited officials of the DAPCB as witnesses to testify in the inquiry. Mr. Bizibu George William being the Executive Secretary of the DAPCB and as such the technical head of the DAPCB participates in the inquiry to only to clarify technical issues that may come up and to help the subcommittee understand the technical aspects of the DAPCB activities.

He does not and has not been part of the decision making processes, especially since no report has thus far been drafted. The Committee has also been inviting persons of interest to testify before it to aid it in its subsequent findings and recommendations to the house. In the same spirit the committee summoned the Applicants to testify before it.

The Applicants herein, having appeared once and on seeing the evidence against them chose to snub the subsequent invitations. The applicants then instructed their lawyer to complain to the Speaker questioning the legitimacy of the subcommittee and seeking her intervention to prevent them from participating in the important inquiry.

Due to their dilatory conduct, the committee exercised its powers under article 90 (3) of the Constitution of the Republic of Uganda and rule 205 of the Rules of Procedure of the Parliament of Uganda to compel the attendance of the witnesses. The Applicants then went on forum shopping by filing **Constitutional Petition No. 22 of 2019: Mohamed Alibhai and Others v. The Attorney General in the Constitutional Court, Miscellaneous Cause No. 117 of 2020: Mohammed Allibhai v. Attorney General, Miscellaneous Application No. 176 of 2020: Mohammed Allibhai v. Attorney General** and the two other applications being considered herein in the High Court of Uganda.

The 1st applicant was represented by *Dr. Akampumuza James* while the 2nd and 3rd Applicants were represented by *Mr.Brian Kusingura Tindyebwa* whereas the respondent was represented by *Mr. Ebila Hillary Nathan* (State Attorney).

The parties proposed the following issues for determination by this court.

ISSUES:

1) ***Whether the actions of COSASE, the respondent's committee are amenable to judicial review.***

2) ***Whether the application for judicial Review is premature?***

3) ***Whether the application raises any grounds for judicial review?***

4) ***What remedies are available to the parties?***

The parties were directed to file written submissions; the 2nd and 3rd applicants accordingly filed the same. But the 1st applicant refused or failed to file submissions and this court shall proceed to determine the matter without their submissions. The 2nd and 3rd applicant's submissions have been considered by this court.

This court consolidated the three applications upon an oral application by the respondent's counsel and the applicants conceded to the consolidation since the facts were very similar.

<u>DETERMINATION OF ISSUES</u>

Whether the actions of COSASE, the respondent's committee are amenable to judicial review.

The 2nd and 3rd applicants submitted that the actions of COSASE, which is a committee of the Respondent's Parliament, are amenable to Judicial Review.

Under Rule 3 of the Judicature (Judicial Review) (Amendment) Rules 2019, "a public body is defined as …(c) Parliament…" Under Article 90 (1) of the Constitution, Parliament is empowered to appoint standing committees and other committees for the effective discharge of its functions. This is substantially reproduced by Rule 144 (1) of the Parliament Rules of Procedure 2012. The Committee on Commissions, Statutory Authorities and State Enterprises is set up under Rule 146 (1) (i) of the Parliament Rules of Procedure 2012. The general

functions of this Committee are provided under Rule 147 and 169 (1) of the Parliament Rules of Procedure 2012.

It is clear that Parliament is a public body and it derives its power or exercises its powers as granted by the Constitution and Parliament Rules of Procedure by investigating meddling with properties which were the subject of two special audit reports of the Auditor General and where it was being alleged that they had been meddled with. These powers being exercised can be classified as public acts and duties under the definition for Judicial Review.

The Respondent agrees with the Applicant's submission in so far as it acknowledges that the decisions of COSASE are amenable to judicial Review.

However, the respondent submits that that this Application is premature and presumptuous as the same was brought in haste before the sub Committee of COSASE could perform any action subject to judicial review i.e. there are no findings, no report or any decision whatsoever on the Applicants save for an invitation to testify before the committee.

In fact, the sub Committee of COSASE only summoned the Applicants to appear and testify before it and the Applicants snubbed the said summons. Hence forth, the sub-committee of COSASE proceeded to exercise constitutionally given powers to compel their attendance to testify before it. The same powers are also given by the Rules of Procedure of the Parliament of Uganda, 2017 as enacted in compliance with article 94 of the Constitution of Uganda, 1995.

The Applicants have been given an opportunity as it is their right to testify and give evidence before the Parliamentary sub-Committee of COSASE, but instead, the Applicants have chosen to scoff and snub at the opportunity; and instead are speculating and anticipating what will happen in case they appeared before the committee. *How then do the Applicants know that their right to a fair hearing is going to be abused and yet they have not appeared? How do they allege bias of the Committee before they have appeared before it and raised the same? How do they refuse to attend a committee of Parliament simply because they complained to the Rt. Hon Speaker of Parliament?* This is akin to refusing to answer court summons or file a defence simply because one has a suspicion that the judge will not fairly adjudicate the dispute. It is contended in the respondent's submission

that one has to subject themselves to the jurisdiction of court then raise whatever issues they may have.

The sub-committee of COSASE as a quasi-judicial body is competent enough to afford the Applicants a fair hearing and decide on whether any part of the Applicant's 'would be evidence' breaches any laws or not.

In the present case, the respondent submitted that the Applicants herein were summoned to testify before a committee of Parliament which is an Arm of Government, under authority conferred under article 90 (3) of the Constitution, and instead of the Applicants appearing to testify, they filed a constitutional petition challenging the same, they then wrote to the speaker to stop the committee from summoning them and there after filed a multitude of case in this court (4 in total) to stop them from appearing before the committee.

The Applicants in short are inviting this court to curtail the operation of another independent Constitutional Arm of Government without any concrete evidence of any violations of the law save for speculation, conjecture and unfounded fears.

Analysis

According to the ***Black's Law Dictionary*** at page 1013 **11th Edition Thomson Reuters, 2019** Judicial review is defined as a court's power to review the actions of other branches or levels of government; especially the court's power to invalidate legislative and executive actions as being unconstitutional. Secondly, a court's review of a lower court's or administrative body's factual or legal findings.

The power of Judicial review may be defined as the jurisdiction of superior courts to review laws, decisions and omissions of public authorities in order to ensure that they act within their given powers.

Judicial review per the Judicature (Judicial Review) (Amendment) Rules, 2019 means the process by which the high Court exercises its supervisory jurisdiction over proceedings and decisions of subordinate courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties;

Broadly speaking, it is the power of courts to keep public authorities within proper bounds and legality. The Court has power in a judicial review application, to declare as unconstitutional, law or governmental action which in inconsistent with the Constitution. This involves reviewing governmental action in form of laws or acts of executive for consistency with constitution.

Judicial review also establishes a clear nexus with the supremacy of the Constitution, in addition to placing a grave duty and responsibility on the judiciary. Therefore, judicial review is both a power and duty given to the courts to ensure supremacy of the Constitution. Judicial review is an incident of supremacy, and the supremacy is affirmed by judicial review.

It may be appreciated that to promote rule of law in the country, it is of utmost importance that there should function an effective control and redressal mechanism over the Administration. This is the only way to instil responsibility and accountability in the administration and make it law abiding. Judicial review as an arm of Administrative law ensures that there is a control mechanism over, and the remedies and reliefs which a person can secure against, the administration when a person's legal right or interest is infringed by any of its actions.

When a person feels aggrieved at the hands of the Administration because of the infringement of any of his rights, or deprivation of any of his interests, he wants a remedy against the Administration for vindication of his rights and redressal of his grievances. The most significant, fascinating, but complex segment in judicial review is that pertaining to judicial control of administrative action and the remedies and reliefs which a person can get from the courts to redress the injury caused to him or her by an undue or unwarranted administrative action in exercise of its powers.

The effectiveness of a system of judicial review under Administrative law depends on the effectiveness with which it provides remedy and redress to the aggrieved individual. This aspect is of crucial significance not only to the person who has suffered at the hands of the administration but generally for the maintenance of regime of Rule of Law in the country.

The weakness of the "remedial and redressal" aspect of administrative law will directly contribute to administrative lawlessness and arbitrariness. According to ***WADE & FORSYTH Administrative Law, 29, 10th Edition*** 2009, "Judicial review thus is a fundamental mechanism of keeping public authorities within due bounds and for upholding the rule of law.

In Uganda, great faith has been placed in the courts as a medium to control the administration and keep it on the right path of rectitude. It is for the courts to keep the administration within the confines of the law. It has been felt that the courts and administrative bodies being instruments of the state, and the primary function of the courts being to protect persons against injustice, there is no reason for the courts not to play a dynamic role in overseeing the administration and granting such appropriate remedies.

The courts have moved in the direction of bringing as many bodies under their control as possible and they have realized that if the bodies participating in the administrative process are kept out of their control and the discipline of the law, then there may be arbitrariness in administration. Judicial control of public power is essential to ensure that that it does not go berserk.

Without some kind of control of administrative authorities by courts, there is a danger that they may be tempted to commit excesses and degenerate into arbitrary bodies. Such a development would be inimical to a democratic constitution and the concept of rule of law.

It is an accepted axiom that the real kernel of democracy lies in the courts enjoying the ultimate authority to restrain the exercise of absolute and arbitrary powers by the administration. In a democratic society governed by rule of law, judicial control of administration plays a very crucial role. It is regarded as the function of the rule of law, and within the bounds of law and due procedure.

It is thus the function of the courts to instil into the public decision makers the fundamental values inherent in the country's legal order. These bodies may tend to ignore these values. Also between the individual and the State, the courts offer a good guarantee of neutrality in protecting the individual.

The courts develop the norms for administrative behaviour, adjudicate upon individuals grievances against the administration, give relief to the aggrieved person in suitable case and in the process control the administration.

It may be emphasized that judicial review has a significant role to play even in a parliamentary system where, in theory, government is regarded accountable to Parliament. In the first place, in practice, parliamentary supervision over the government is not effective. Secondly, government is accountable to Parliament only in respect of matters of policy and not efficiency and not legality of action which the courts can probe into. In the case of ***Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd [1981] 2 All ER 93 at 107*** Lord Diplock noted; *"government officers and departments 'are accountable to Parliament for what they do as regards efficiency and policy, and of that Parliament is the only judge; they are responsible to a court of justice for the lawfulness of what they do and of that the court is the only judge."*

In the present case, the applicants are challenging the decision of the respondent's Committee of Parliament –COSASE of summoning them to appear before it and testify in the Investigation and inquiry into the activities of the DAPCB in respect of the Departed Asians arising out of the Audit reports.

In the case of ***Oloka Onyango & 9 Others v Attorney General, Const. Court Petition No. 8 of 2014,*** the Court stated that *"Parliament as a law making body should set standards for compliance with the Constitutional provisions and with its own rules."* Similarly, in the Kenyan case of ***Republic v Assembly Committee of Privileges & Others JR Case No. 129 of 2015*, Judge W. Korir** stated that *"Failure to comply with rules regulating the execution of business by the legislature will surely attract the court's intervention. Parliament like any other constitutional organ must play by the rules set for it by the Constitution. Where it has made rules to guide its operations, it ought to comply with such rules".*

The nature of the complaints made by the applicants fall squarely within the ambit of judicial review as seen from the above authorities and it is the duty of this court to interrogate the actions of the decision makers and give appropriate orders or satisfy itself that there is no wrongdoing on part of Parliament.

Whether the application for judicial Review is premature?

The respondent has raised another issue which is pertinent to the circumstances under which this application was filed i.e that the application for judicial review is premature.

It is indeed clear that the applicants were being summoned as witnesses to clarify on a few facts arising out of the Audit reports of DAPCB arising out of several Auditor General statutory audits and special audits on the operations of DAPCB. What is being interrogated by the sub-committee are two reports authored in 2016 and 2018.

The nature of the remedies being sought are made or arise out of the applicant's appearance in Parliament sub-committee and later the subsequent filing of a Constitutional petition to halt the proceedings in Parliament as they question the legality of the actions of Parliamentary Committee-COSASE.

The vastness of the power of judicial review has, however, induced the courts to introduce self-limitations. One such limitation is that a court would not pronounce itself merely on hypothetical questions, or entertain an application for judicial review without any damage having been caused to the applicant, or without any likelihood thereof.

The court would not embark on an advisory opinion, or give a declaratory ruling/judgment on the constitutionality of decisions or validity of administrative action apart from some concrete injury or controversy. This arises where the court has no facts and no justifiable facts or controversial issues before it and in absence of these, the court does not feel sure of its intervention.

It would appear the court is invited to determine abstract questions of law and is highly speculative and presumptuous since it is filed in anticipation of wrongdoing against the applicants which had not yet been done. A mere possibility of threat of the fundamental rights of any of the petitioners being invaded would not be a ground to invite the court to pronounce itself upon the legality of any of the intended actions of the respondent.In **Miria Matembe and 2 Ors v. Attorney General, Constitutional Petition No. 02 of 2005** the Constitutional Court held that:

"Court must be on its guard to avoid premature adjudications and entanglements in abstract and speculative disputes between potential petitioners. In gauging the fitness of any issue before it for adjudication, this court should not get involved in in uncertain or contingent future events which may or may never occur at all. It is also vital for the judicial process of this country that this court must see that that the petitioners have exhausted all the constitutionally available remedies before seeking protection and adjudication from it.

While adjudicating a similar matter in **Constitutional Petition No. 47 of 2011: Twinobusingye Severino v. The Attorney General** the Constitutional Court at paragraphs 17 – 20, page 25 held that-
*"In agreement with counsel for the Attorney General, we are also of the view that the fear by the petitioner that the Prime Minister and other Ministers concerned may not get a fair hearing is **premature**."*

It is clear the Parliamentary Committee will issue a report after the whole exercise of the probe or inquiry. It would highly speculative to stop and muzzle the investigation before conclusively dealing with the issues under investigation. The action of the applicants running to court i.e Constitutional court and later this court would indeed appear to have been intended to forestall the Parliamentary Committee (COSASE) from doing what it mandated to do under the Constitution (oversight mandate).

The applicants appeared once in Parliament and raised preliminary objections to the nature of work of the Committee and its jurisdiction. They wanted to get a cause of action for judicial review or the basis of stopping the whole process and this was followed with a petition to the Speaker to exercise jurisdiction to stop Investigations since the applicants had filed Constitutional petitions.

When an administrative authority undertakes investigation against a party for an alleged infringement of the law or any wrongdoing, the court may be reluctant to quash or stop investigations. Ordinarily, the High Court ought not to interfere with an on-going investigations or criminal investigations. At this stage of investigation it is risky for the court to intervene except where manifest injustice cries for the order of court. ***Asst Collector of Central Excise v Jainson Hosiery Industries [1979] AIR 1899***

This court held in ***ACP Bakaleke v. Attorney General Miscellaneous Cause No. 212 of 2018*** while quoting Constitutional **Petition No. 10 of 2008: Jim Muhwezi and Ors v the Attorney General and the Inspector General of Government** held that:

Court is cautioned against stopping of criminal trials on allegations that the trial would not be free and fair. Court further noted that the trial court is capable of fairly and accurately pronouncing itself on the matter without prejudice to the accused. Where any prejudice occurs, the appeal system of this country is capable of providing a remedy. Was it otherwise, a situation would arise whereby any one charged with an offence would rush to court with a request to stop the prosecution pending hearing of his challenge against the prosecution. In due course, this court would find itself engaged in petitions to stop criminal prosecutions and nothing else. This could lead into a breakdown of administration of criminal justice system and affect the operation of the constitutional court.

By analogy from the above decision, the court should act with restraint in cases intended to restrain or stop investigations in any wrongdoing and the same may be challenged afterward with the final decision or report or recommendation but not prematurely before conclusion of the whole process.

I agree with the respondent's counsel that the Applicants in short are inviting this court to curtail the operation of another independent Constitutional Arm of Government without any concrete evidence of any violations of the law save for speculation, conjecture and unfounded fears.

The actions of the applicants and the nature of the remedies sought are clearly intended to muzzle the Parliamentary Committee (COSASE) sub-committee from exercising its Constitutional mandate and this would be contrary to the principle of Separation of Powers of ensuring public accountability under system of checks and balances.

This application, on this ground would fail but for completeness I will proceed to determine the remaining issue.

Whether the application raises any grounds for judicial review?

The Applicants' counsel submitted that they are challenging the Respondent's failure to exercise discretion, decision making process, ultra vires decision, injustice and mistreatment. Therefore it is a proper case for judicial review based on the following grounds as set out in verified by Applicants' affidavits in support.

1. The Respondent acted in bad faith, unjustly and unfairly discriminated against the Applicant.

2. The impugned arbitrarily decision threatens to deprive the Applicants of their freedoms and the right to own private property and a source of livelihood.

3. The Applicants were threatened with issuance of a Warrant of Arrest against him in respect of the above mentioned Parliament's COSASE Committee whose proceedings he challenged; Before the Speaker exercised the jurisdiction to make and render decision under the statutory conferred privileges and rights to object under S.12 and 13 of the Parliamentary (Powers and Privileges) Act.

4. The Applicant had a pending Constitutional Petition No. 22 of 2019 challenging the illegality of purporting to; Sit in matters long concluded by courts of law; To entertain disputes/investigations over repossessed properties contrary to Supreme Court Judgments; Continuing with investigations parallel to the court when there is a pending Constitutional court challenge among others.

5. The decision complained of will violate a bundle of Applicant's constitutionally guaranteed rights, namely, the presumption of innocence, right to fair hearing, right to receive just and fair administrative treatment.

6. The Respondent's above decision denied the Applicant a local remedy as there is no right of appeal from a decision taken by Respondent's Parliament or COSASE provided for under the governing law, the Parliamentary (Powers & Privileges) Act and the Regulations thereunder.

7. The Regulations also do not provide for an Appellate body to handle appeals from decisions made by the Respondent’s sub-committee of COSASE.

8. There is no alternative remedy available to the Applicant and Judicial Review of the impugned decisions is the most appropriate, beneficial and convenient remedy available to Applicant in order to expunge the decisions complained from the public records.

9. The Respondent’s COSASE which sits with George William Bizibu, Secretary DAPCB is a Judge in its own cause and sits as a Kangaroo Court.

10. The Respondent is abusing authority and power to act with impunity without following the governing law.

The applicant’s counsel submitted that the Committee on Statutory Authorities and State Enterprises overstepped their mandate due to their failure to interpret, appreciate and recognise the limits of their powers and hence their decisions are illegal, null and void.

The Applicants contend that COSASE is dealing with a private dispute. This objection was raised before the Speaker. That no nexus was drawn between the Applicant and the Statutory Authorities and Enterprises that the Committee is empowered to investigate The Courts cannot grant leave to authorities to overstep their power under the guise of doing their work.

The applicants further submitted that there was a failure to comply with the provisions of the Parliament (Powers and Privileges) Act 1955 and this rendered their deliberations and any outcome of that deliberation null and void.

The applicants contend that a letter seeking redress from the Speaker under section 12 of the Parliament (Powers and Privileges) Act 1955 was tendered to the Committee. Even though the members of this body were informed of their duty to wait for a decision on the matter, they decided to proceed and made directions and orders of issuing Arrest Warrants against the Applicant. The failure to give the Speaker time to make a decision basing on the reasons advanced by the Applicants is a blatant disregard of the rules which Parliament should and must

comply with. The applicants, at least had a legitimate expectation that their Petition to the Speaker would be addressed basing on the Act.

This decision to ignore the Applicant's objection addressed to the Speaker was irrational, prejudiced the Applicant and violated the Act which should render the decisions of the COSASE Committee null and void *ab initio*. It is also not proper for the Committee to give themselves the powers of a Speaker and they make her decisions.

The applicants also contended that Investigating and examining a matter which was already before the Constitutional Court vide Const. Petition No. 22 of 2019 was in breach of the *sub-judice rule*.

The Committee should not be allowed to pre-empt the Court in its work. This would be one arm of government interfering with the work of another arm of Government which is unacceptable.

The Applicant s also contended they were subjected to an illegal disciplinary process before a COSASE Sub-Committee. The Respondent allowed its biased officials including the Chairperson COSASE and George William Bizibu, to sit in Applicants' case.

The Applicants further submitted that the Speaker of Parliament abdicated and ceded its powers/jurisdiction to the so-called COSASE Sub-committee which continued to execute her full statutory functions. This resulted in the arbitrary decision to threaten to issue a warrant of Arrest against the Applicant.The subcommittee was not the Speaker of Parliament petitioned under S.12 of the Act. It was not a court of law to purport to sit in matters determined or before court or ignore court judgments on jurisdiction to hear matters of fraud in repossession and certificates of repossession among others. The Parliament had no power to sit parallel in matters before the courts of law or to sit to hear disputes of purely a private nature. It was thus acting and continues to act ultra vires.

Respondent's submission

The respondent submitted that it is trite that the Constitution of the Republic of Uganda, 1995 in article 163 (1) of the Constitution provides for the Auditor General of Uganda whose functions are well enumerated in article 163 (3) and they include:

(a) auditing and reporting on the public accounts of Uganda and of all public offices, including the courts, the central and local government administrations, universities and public institutions of like nature, and any public corporation or other bodies or organisations established by an Act of Parliament; and

(b) conducting financial and value for money audits in respect of any project involving public funds.

In article 163 (4) of the Constitution the Auditor General is required to submit to Parliament annually a report of the accounts audited by him or her under clause (3) of this article for the financial year immediately preceding and Parliament, under article 163 (5) Parliament shall, within six months after the submission of the report referred to in clause (4) of this article, debate and consider the report and take appropriate action.

In exercise of the mandate given to him under the Constitution and the National Audit Act and section 8 of the Assets of Departed Asians Act, Cap. 83 of the Laws of Uganda, the Auditor General is mandated to carry out statutory audits on the Departed Asians Property Custodian Board (DAPCB) but was limited to conducting special audits on the operations Departed Asians Property Custodian Board due to the absence of a Board for a period of over 15 years.

The reports of the audits by the auditor General once submitted to Parliament, by constitutional command in article 163 (5), must be debated and considered by the Parliament. It is therefore not in dispute that the audit from which the inquiry

arose was legal and indeed lawful as the same was anchored in the Constitution and the Assets of Departed Asians Act.

In relation to the handling of the inquiry by a committee of Parliament, the Constitution of the Republic of Uganda, in article 90 (1) empowers Parliament to appoint committees necessary for the efficient discharge of its functions. Indeed, under article 90 (2), Parliament is required by its rules of procedure to prescribe powers, composition and functions of its committees. The same article empowers the committees to call any Minister or any person holding public office and private individuals to submit memoranda or appeal before them to give evidence and by virtue of clause 3 (c) (i) a committee of Parliament has the powers of the High Court to enforce the attendance of witnesses and examine them on oath, affirmation or otherwise.

In light of the above, the Parliament of the Republic of Uganda while acting under the authority vested upon it under article 94 (1) of the Constitution of Uganda made rules to regulate its own procedure, including the procedure of its committees. In this respect, the Parliament of Uganda made rule 156 on the general functions of committees of Parliament wherein clause (c) it empowers committees of Parliament to assess and evaluate activities of Government and other bodies. The inquiry into the activities of the DAPCB in respect to the properties of the departed Asians is premised on rule 178 (1) (a) of the Rules of Procedure which permits PAC-COSASE **to examine the reports and audited accounts of Statutory Authorities, Corporations and Public Enterprises and in the context of their autonomy and efficiency, ascertain whether their operations are in accordance with the required competence and where applicable, in accordance with sound business principles and prudent commercial practices.**

The DAPCB is such a public body that falls within the jurisdiction of the PAC-COSASE qualifying the inquiry as well within the jurisdiction of Parliament and therefore lawful as can be deduced from article 90, 94 and 163 of the Constitution, rule 178 of the Rules of Procedure and section 8 of the Assets of Departed Asians Act. The application therefore fails on the legality test.

In the instant case, the sub Committee of COSASE while exercising its lawful mandate invited the Applicants to testify before it on matters regarding the

DAPCB. The nexus between the Applicants and DAPCB is that in the last over 25 years property previously held under the DAPCB in line with the Expropriated Properties Act have been repossessed by or transferred to the Applicants and as such the Applicants have relevant information which aid COSASE will originate a report to be presented before the house of Parliament in compliance with the terms of reference of the committee herein already highlighted.

Once the said audit report was presented to Parliament by the Auditor General, Parliament in accordance to **Article 163(5)** of the Constitution Referred the matter for investigations to one of its Committees COSASE to investigate the workings of the DAPCAB under the terms of reference.

The respondent's counsel submitted that the Parliament of Uganda acted lawfully in appointing a committee to conduct an inquiry into the activities of the DAPCB as part of interrogating the audit report of the Auditor General of Uganda.

It is also lawful for the Parliamentary subcommittee of COSASE to invite the Applicants who have admitted to own property which was formerly under the custodianship and management of DAPCB to testify before it under article 90 (3) of the Constitution and rule 205 of the Parliamentary Rules of Procedure.
The powers for Committees to invite witnesses to testify before it are derived from **Article 90(3) of the Constitution of Uganda** which provides that:

> *(3) In the exercise of their functions under this article, committees of Parliament—*
>
> *(a) may call any Minister or any person holding public office and private individuals to submit memoranda or appear before them to give evidence;*
>
> *(b) may co-opt any member of Parliament or employ qualified persons to assist them in the discharge of their functions;*
>
> *(c) shall have the powers of the High Court for—*

(i) *enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;*

(ii) *Compelling the production of documents; and*

(iii) *Issuing a commission or request to examine witnesses abroad.*

Parliament also has the powers to co-opt any person who is not a member of the committee for a specific purpose and period with the necessary expertise as provided under Article 90(3) (b) and Rule 206 of the Parliamentary Rules of Procedure of 2017. It is clear in rule 206 (2) such a person shall have no right to vote.

In the instant case COSASE exercised its powers and required Mr. Bizibu George William, the Executive Secretary of the DAPCB and custodian of all official documents of the Board, to attend as a witness to aid and facilitate it during the said investigations in terms of answering issues that may arise during the inquiry in respect of transactions handled by the DAPCB. Mr Bizibu has not participated in any decision making of the committee and no such evidence has been provided to this Honourable court.

The respondent contend that the Applicants in a bid to stop investigations by COSASE filed petition before the Constitutional Court contesting the authority of COSASE to summon them and have them testify before it. The content of the said petition is identical to this Application seeking similar remedies.

The petition in issue was filed long after commencement of the parliamentary inquiry in issue. It was only filed to frustrate a parliamentary process.

The petitioners ran to court after their appearance before the committee ruling out any contempt or breach of the *sub judice* rule. There was no action in any court in relation to the matters before the committee. It is therefore a lame attempt to suffocate the institution of Parliament in execution of its constitutional mandate. For the Rule to apply the matter alleged to be pending before the Court or other legal body **must be active** and there **must be a likelihood of prejudice to the fair determination of the issue** under consideration if the House or its

Committees refer to it in debate. The matter must have been filed prior to commencement of the parliamentary inquiry.

It must be noted from the reading of rule 72 (5) of the Rules of Procedure that the House voluntarily imposes the Rule on itself, subject to the discretion of the Chair to allow reference to a matter notwithstanding that it is active and that there is a likelihood of prejudice to its fair determination by the courts.

The respondent counsel submitted that the Applicants' complaint to the Speaker of Parliament was responded to in a letter dated 9th July, 2020 which was served on the Applicants lawyers M/s Akampumuza and Co. Advocates, who had authored the complaint. If there was any delay in responding, such a delay was neither deliberate nor mala fide.

The Applicants while quoting Section 12 of the Parliamentary (Powers and Privileges) Act, Cap 258 contends that upon receipt of their complaint, the committee was supposed to stay its proceedings pending a response. This is a total and absurd misconception and does not reflect the true position of the law.
It was the respondent's contention that the committee is not seeking to review the decisions of the Minister, which is a preserve of the High Court, and no evidence has been adduced before this Honourable court to prove the same, but is seeking to answer the ToRs in respect to the conduct of business by the DAPCB under rules 178 (1) (a) and 156 (c) of the Rules of Procedure.

It is the respondent's submission that the investigation being carried out on the DAPCB is borne of special audit reports by the Auditor General and yet is of great public importance especially in relation to the image of Uganda as a country, court should not be used to suffocate parliamentary processes unless there is eminent danger of violation of rights.

The respondent submitted that the Respondent have followed due process and all the procedures in fact and law to the latter in performing its constitutional mandate, the Respondents have shown that they have exercised judiciously and fairly the powers in the above circumstances to execute its constitutional mandate and there was no breach of legitimate expectation by Parliament as contended.

Analysis

The judiciary must exercise self-restraint and not encroach into the executive or legislative domain. Judges must maintain judicial self-restraint while exercising the powers of judicial review of administrative or legislative decisions. Excessive interference by the judiciary in the functions of the executive or legislature is not proper. The machinery of the government would work if it were not allowed some free play in its joints. In ***R v Secretary of State for the Environment, ex p Nottinghamshire County Council, [1986] AC 240*** it was held by *Lord Scarman* that *"Judicial review is a great weapon in the hands of judges: but the judges must observe the Constitutional limits set by our Parliamentary system upon their exercise of this beneficent power."*

Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and *malafides*. Its purpose is to check whether the choice or decision made is 'lawfully' made and not to check whether choice or decision is 'sound'.

The power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is intended neither to review governance under the rule of law nor do the courts step into areas exclusively reserved by the *superma lex* to other organs of the State. A mere wrong decision, without anything more, in most of the cases will not be sufficient to attract the power of judicial review. The supervisory jurisdiction conferred upon a court is limited to see that the authority concerned functions within the limits of its authority and that decisions do not occasion a miscarriage of justice.

The concept of justiciability means that all decisions are not justiciable before the court of law. In other words there are matters in relation to which the court because of the doctrine of separation of powers between the executive and the judiciary may be exceedingly reluctant to review. There is no hard and fast rule as to justiciability of a controversy.

The scope and extent of power of the judicial review would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative.

The applicants in this case have made general allegations of illegality without substantiating the same. For example the applicant contends that the Committee on Statutory Authorities and State Enterprises overstepped their mandate due to their failure to interpret, appreciate and recognise the limits of their powers and hence their decisions are illegal, null and void. This is not supported by evidence from the affidavit in support apart from contending that they are investigating private property.

The actions leading to a probe by Parliamentary Committee-COSASE are directly linked to the Departed Asian Property Custodian Board and its reports on the repossession exercise through which the applicant obtained repossession certificates.

This court has not found any support of the allegations of illegality. The applicants' counsel came up with grounds of application which are at variance with the grounds for judicial review of illegality, irrationality and procedural impropriety.

The court's power should have been to establish whether the Parliamentary committee has exceeded its powers conferred or to ensure that in performing its duty it has acted in the manner which the law requires. This court should always remember the limits of jurisdiction and the scope to intervene with the Parliament procedures and processes. The task of the courts is to ensure that powers are lawfully exercised by those to whom they are entrusted, not to take those powers into their own hands and exercise them afresh. ***R v Secretary of State for the Home Department, ex parte Fire Brigades Union [1995] 2 AC 513***

The applicants further contend that there was procedural impropriety in the whole process but I have not come upon any supporting evidence of anything which the COSASE committee did that was procedurally improper. According to the facts of the case, the applicants appeared once and raised their objections and refused to appear for the Committee. Then, how was this procedurally improper.

Procedural impropriety connotes to procedural fairness and requires that persons affected by any acts, decisions or proceedings are given an opportunity to make

representations, notice. Public authority is deemed to act fairly and objectively unless the contrary is established, and would act consistent with public interest.

The applicants also contended that Investigating and examining a matter which was already before the Constitutional Court vide Const. Petition No. 22 of 2019 was in breach of the *sub-judice rule*.

It is clear from the evidence on court record that the applicants run to the constitutional court challenging the Parliamentary Committee and this was premised on the fact that they had already appeared before the Parliamentary committee (COSASE). The argument that the matter is now *sub judice* by the applicants' counsel would be the greatest abuse of the *sub judice rule* and a total misapplication.

This court agrees with the respondent's submission that the petitioners ran to court after their appearance before the committee and there was never any action in any court in relation to the matters before the committee. It is therefore a lame attempt to suffocate the institution of Parliament in execution of its constitutional mandate. For the Rule to apply the matter alleged to be pending before the Court or other legal body must be active and there must be a likelihood of prejudice to the fair determination of the issue under consideration if the House or its Committees refer to it in debate. The matter must have been filed prior to commencement of the parliamentary inquiry.

The applicants set out all the grounds of judicial review and failed to show with cogent evidence how the actions of the Parliamentary Committee-COSASE acted illegally, irrationally and with procedural impropriety. He tried to find any preconceived reasons and categorised them under the limbs of judicial review without any evidence.

This application therefore fails and is dismissed with costs.

I so order.

Dated, signed and delivered be email at Kampala this 07th day of October 2020

SSEKAANA MUSA
JUDGE