

5
THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO.5 OF 2016

BETWEEN

1. ANDREW KARAMAGI

10 2. ROBERT SHAKA PETITIONERS

VERSUS

ATTORNEY GENERAL RESPONDENT

CORAM: Hon. Mr. Justice Richard Buteera, DCJ

Hon. Mr. Justice Kenneth Kakuru, JA/JCC

15 Hon. Mr. Justice Geoffrey Kiryabwire, JA/ JCC

Hon. Lady. Justice Elizabeth Musoke, JA/ JCC

Hon. Lady. Justice Monica Mugenyi, JA/ JCC

JUDGMENT OF HON. JUSTICE KENNETH KAKURU, JA/ JCC

The Petition is brought under *Article 137* of the 1995 Constitution of Uganda and the
20 Constitutional Court (Petitions and References) Rules 2005 Statutory Instrument No.
91 of 2005. The petitioners allege that Section 25 of the Computer Misuse Act, No. 2
of 2011 ("the impugned Section") which declares it an offence for any person to
"willfully and repeatedly use electronic communication to disturb or attempt to
disturb the peace, quiet or right of privacy of any person with no purpose of legitimate
25 communication" is inconsistent with and in contravention of Article 29(1)(a) of the
Constitution.

The petitioners also state that: -

- 30 a. *The impugned Section is an insidious form of censorship which restricts the free flow of opinions and ideas essential to sustain the collective life of the citizenry in the digital age;*
b. *It is vague and overly broad, and*

5 c. *There is no evidence that Government could not achieve the intended purpose with less drastic measures.*

Being aggrieved with the above stated section of the Computer Misuse Act, No. 2 of 2011, they petitioned this Court seeking the following declarations, orders and reliefs: -

- 10 a. *Make a declaration that Sec. 25 of the Computer Misuse Act, No. 2 of 2011 is inconsistent with or in contravention of Article 29 (1)(a) of the Constitution and is to that extent null and void.*
- b. *Grant an order of redress in the following terms.*
- (i) *An order directing the DPP to stay the prosecution of all and any citizens currently on trial for violating the impugned rule;*
- 15 (ii) *An order staying the enforcement of Sec. 25 of the Computer Misuse Act, No. 2 of 2011 or similar provisions of the law which disproportionately curtail enjoyment of the freedom of speech and expression by citizens; and*
- (iii) *An order directing the respondent to pay the costs of the petition.*

20 The petition is accompanied by an affidavit sworn by Andrew Karamagi and filed in this Court on 3rd February, 2016, the relevant parts are as follows:

1. *That I am a male adult Ugandan of sound mind, a lawyer by training and the 1st petitioner herein. Like scores of other citizens in Uganda, I am a regular user of the internet, especially social networking sites such as Facebook and Twitter.*
- 25 2. *For the reasons stated in the petition, it is my firmly held belief that Sec. 25 of the Computer Misuse Act No. 2 of 2011 is inconsistent with and in contravention of Article 29 (1)(a) of the Constitution.*
3. *That I find the impugned Section to be an excessive restriction on my freedom of speech and expression. It provides the Director of Public Prosecution unbridled administrative and prosecutorial discretion which has indeed resulted in several*
- 30 *cases of selective prosecution of Internet users based on certain views deemed objectionable by the Government or high ranking politicians and public officers.*
4. *The enforcement of the impugned Section has placed me in constant fear of violating the law. I know that its enforcement is tantamount to a mutilation of*
- 35 *my thinking process as a citizen against which Art. 29(1)(a) as enacted.*

5 5. *The impugned Section is also vague and overly broadly. It fails to give proper
notice of the conduct it seeks to proscribe and terms such as "disturb or attempt
to disturb the peace, quiet or right of privacy" are not defined in the Act, and
cannot be conclusively defined by a regular user of the Internet. As a result, the
police and governmental authorities will arrest and prosecute otherwise
10 confused citizens in an arbitrary and whimsical manner.*

The respondent filed an Answer to the Petition in which he denied the allegations in
the petition and described it as misconceived. It reads, inter alia: -

- 15 3. *The Respondent shall contend that the said Petition does not raise any questions
for constitutional interpretation thus devoid of any merit.*
4. *The Respondent denies in toto the contents of paragraphs 1 and 2 of the Petition
and the Petitioners shall be put to strict proof of the contents therein.*
5. *In response to paragraph 1 and 2 of the Petition, the Respondent contends that
section 25 of the Computer Misuse Act, 2011 is not inconsistent with and/or in
contravention of Articles 29(1) (a) of the Constitution.*
- 20 6. *The Respondent shall put the Petitioners to strict proof of all the allegations
contained in the Petition.*
7. *The Respondent shall aver that the Petitioners are not entitled to any of the
declarations, orders or reliefs sought in the Petition.*

The Answer to the Petition is also accompanied by an affidavit sworn by Bafirawala
25 Elisha a State Attorney in the Attorney General's chambers and prays that the petition
be dismissed as it discloses no question for constitutional interpretation. The relevant
parts are as follows: -

2. *That I know that the said Petition is devoid of any merit, does not raise questions
for constitutional interpretation and the same ought to be dismissed with costs.*
- 30 3. *That I know that the provision of Section 25 of the Computer Misuse Act, 2011 is
not inconsistent with and/or in contravention of Article 29 (1) (a) of the Constitution
as alleged.*
4. *That I know that the decision to prosecute any person of a criminal offence is
entirely a Constitutional prosecutorial discretion of the Director of the Public
35 Prosecution which is exercised depending on whether there is cogent evidence to
prosecute the matter.*

5 5. *That I know that the Computer Misuse Act, 2011 does not infringe and/or contravene a person's right to freedom of speech and expression guaranteed under Article 29(1) (a) of the Constitution as alleged.*

6. *That in addition to the above, I know that the provisions of Articles 29(1) (a) are not absolute and can be derogated in special circumstances as provided in the law.*

10 **Representations**

At the hearing of this petition, *Mr. Eron Kiiza*, learned Counsel, represented the petitioners, whilst *Mr. Ojambo Bichachi*, learned State Attorney, represented the respondent.

Issues

- 15 1. *Whether the Petition raises any questions for Constitutional interpretation.*
2. *Whether section 25 of the Computer Misuse Act No. 2 of 2011 threatens or infringes online/digital freedom of expression and is inconsistent with and or contravenes Article 29 (1) of the 1995 Constitution of the Republic of Uganda.*
3. *Whether the Petitioners are entitled to the reliefs sought.*

20 **Resolution**

I have carefully considered the submissions of both Counsel on the constitutionality of *25 of the Computer Misuse Act No. 2 of 2011*. I have also carefully perused the affidavits as well as the relevant provisions of the law, authorities cited by the parties and the issues set out above.

25 In matters involving interpretation of the Constitution or determination of the Constitutionality of the Acts of Parliament, Courts are guided by well settled principles, which have been consistently set out in a number of decisions of this Court and the Supreme Court. For emphasis only, I have chosen to reproduce the following:-

1. In the interpretation of constitutional provisions and Acts of Parliament, the
30 entire Constitution must be read as an integrated whole and no particular provision should destroy the other but sustain the other. This is the rule of

5 harmony, rule of completeness and exhaustiveness and the rule of
paramountcy of the written Constitution See: *David Tinyefuza vs Attorney
General Constitutional Petition No. 1 of 1996.*

2. In determining the constitutionality of a legislation, its purpose and effect must
be taken into consideration. Both purpose and effect are relevant in
10 determining the constitutionality of either an unconstitutional purpose or an
unconstitutional effect animated by the object the legislation intends to
achieve. Court should consider the purpose and effect of an Act of Parliament
to determine its constitutionality. See: *The Queen vs Big M. Drug Mart Ltd.
(1996) LRC (Const.) 332. In Attorney General vs Salvatori Abuki Constitutional
15 Appeal No. 1 of 1998*, it was held that: - "A Statutory provision can be declared
unconstitutional where its purpose and or effect violates a right guaranteed by
an Article of the Constitution." See also: *South Dakota vs North Carolina 192, US
268 1940 LED 448.*

3. Provisions relating to the fundamental human rights and freedoms should be
20 given purposive and generous interpretation in such a way as to secure
maximum enjoyment of the rights and freedoms guaranteed. See: *The Attorney
General vs Major General David Tinyefuza, Supreme Court Constitutional Appeal
No. 1 of 1997.*

4. In construing the impugned provisions, we are obliged not only to avoid an
25 interpretation that clashes with the Constitutional values, purposes and
principles but also to seek a meaning of the provisions that promotes
constitutional purposes, values, principles, and which advances rule of law,
human rights and fundamental freedoms in the Bill of Rights. We are obliged
to pursue an interpretation that permits development of the law and
30 contributes to good governance. See: - *Apollo Mboya vs Attorney General and*

5 *others, High Court of Kenya, Constitutional and Human Rights Division Petition No. 472 of 2017*

See also: *Male Mabirizi and others, Constitutional Court Consolidated Constitutional Petitions Nos. 49 of 2017, 3 of 2018, 5 of 2018, 10 of 2018, and 13 of 2018.*

Issue 1

10 Whether the Petition raises any questions for Constitutional interpretation. The answer to this issue is provided for under *Article 137 of the Constitution*, which provides as follows: -

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

15 (2) ...

(3) *A person who alleges that—*

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

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

In *Raphael Baku Obudra vs Attorney General, Supreme Court Constitutional Appeal No. 1 of 2003*, *Odoki CJ* observed as follows: -

25 *“In my opinion, where a petition challenges the constitutionality of an Act of Parliament, it sufficiently discloses a cause of action if it specifies the Act or its provision complained of and identifies the provision of the Constitution with which the Act or*

30 *its provision is inconsistent or in contravention and seeks a declaration to that effect a liberal and broader interpretation should in my view be given to a Constitutional petition than a plaint when determining whether a cause of action has been established. ”*

In view of the above decision and those I have not cited, I am satisfied that the issue raised by the petitioners as to whether section 25 of the Computer Misuse Act No. 2

5 of 2011 is inconsistent with and or in contravention of Article 29 (1) (a) of the 1995
Constitution raises an issue for constitutional interpretation. The Petition is not
frivolous nor is it vexatious. I therefore answer the 1st issue in the affirmative.

Issue 2

10 Whether Section 25 of the Computer Misuse Act No. 2 of 2011 threatens or infringes
online/digital freedom of expression and is inconsistent with and or contravenes
Article 29 (1) of the 1995 Constitution of the Republic of Uganda?

15 It was contended by Mr. Eron Kiiza that, the aforesaid provision criminalizes
communication, yet it is vague, overly broad and ambiguous as it does not give fair
warning regarding conduct that is deemed illegal under the right and freedom of
speech and expression provided for under Article 29(1) (a) of the Constitution. He
submitted that the impugned Section creates an offence and punishment without
precisely defining key terms and phrases like “disturbing the peace, quiet and privacy
of anyone” and “with no purpose of legitimate communication”. The terms are broad
and vague because there are no attempts to define them and cannot be defined. The
20 result being that innocent persons are roped together with those who are not.

He contended that where no reasonable standards are laid down to define guilt in a
penal section and where no clear guidance is given to either law abiding citizens or
authorities and courts, a section which creates an offence and which is vague as in the
instant case must be struck down ad being arbitrary and unreasonable. He cited
25 *Musser v Utah, 92 L.Ed 562 and Winters v People of State of New York, 92 L.Ed. 840.*

Counsel argued that, the impugned Section is an unnecessary, unjustifiable and
disproportionate restriction of the freedom of expression and speech. He submitted
that the primary goal of the state is to protect the right to freedom of expression and
the secondary goal can be to restrict it but in a permissible way. The impugned section



5 serves no legitimate purpose and the restriction is unnecessary and unjustifiable in a free and democratic society.

He further contended that the impugned provision is disproportionate as it loops all protected speech without any clear boundaries. Its criminalization of speech and communication is the intrusive method of restricting the right and freedom of speech
10 and expression. There are less intrusive measures that would have been taken to achieve the intended purpose such as formulating a precise, clear and specific law than a broad law that covers all forms of electronic communication speech including speech and expression protected in the Constitution. He argued that ambiguous laws are inherently disproportionate. He prayed Court to nullify that impugned Section of
15 the Computer Misuse Act No. 2 of 2011 and also to grant to reliefs sought.

The respondent opposed the petition through an answer to the petition in which he denied the allegations in the petition and described it as misconceived. However, there is no reply to the petitioners' submissions.

Section 25 of the Computer Misuse Act No. 2 of 2011 provides as follows: -

20 *"Offensive communication*

*Any person who willfully and repeatedly uses electronic communication to disturb or attempts to disturb the peace, quiet or right of privacy of any person with no purpose of legitimate communication whether or not a conversation ensues commits a misdemeanor and is liable on conviction to a fine not exceeding
25 twenty-four currency points or imprisonment not exceeding one year or both."*

Article 29(1) (a) of the Constitution provides as follows: -

"Protection of freedom of conscience, expression, movement, religion, assembly and association.

(1) Every person shall have the right to—

5 (a) freedom of speech and expression which shall include freedom of the press and other media.”

The right and freedom in Article 29(1)(a) is among the freedoms guaranteed under Article 20 of the Constitution it provides as follows: -

“Fundamental and other human rights and freedoms.

10 (1) Fundamental rights and freedoms of the individual are inherent and not granted by the State.

(2) The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.”

15 The fundamental rights and freedoms in Chapter Four, are however not absolute, they can be restricted in accordance with the provisions of Article 43 of the Constitution which provides: -

20 “(1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.

(2) Public interest under this article shall not permit—

(a) political persecution;

(b) detention without trial;

25 (c) any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.”

Any act or provision of law which restricts the fundamental rights and freedoms can only be allowed to stand if it passes the test set up by Article 43 of the Constitution.

5 The impugned Section of the Computer Misuse Act No. 2 of 2011 prohibits the willful and repeated use of electronic communication to disturb the peace, quiet or privacy of any person with no purpose of legitimate communication.

It's the petitioners' contention that the impugned provision of the Computer Misuse Act is vague; overly broad and constitutes an unjustifiable limitation to the freedom of expression as provided for under Article 29(1)(a) of the Constitution. The impugned Section creates an offence and punishment without precisely defining key terms and phrases like "*disturbing the peace, quiet and privacy of anyone*" and "*with no purpose of legitimate communication*" and as such the terms are overly broad and vague as there are no attempts to define them and cannot be defined.

15 The "doctrine of vagueness" is founded on the rule of law, particularly on the principles of fair notice to citizens and limitation of enforcement discretion. Fair notice to the citizen comprises a formal aspect, an acquaintance with the actual text of a statute and a substantive aspect, an understanding that certain conduct is the subject of legal restrictions. The crux of the concern for limitation of enforcement is that, the law must not be so devoid of precision in its content that a conviction will automatically flow from the decision to prosecute. The threshold for finding a law vague is relatively high. The factors to be considered include (a) the need for flexibility and the interpretative role of the courts; (b) the impossibility of achieving absolute certainty, a standard of intelligibility being more appropriate, and (c) the possibility that many varying judicial interpretations of a given disposition may exist and perhaps coexist. See: *R v Nova Scotia Pharmaceutical [1992] 2 S.C.R.*

The doctrine of vagueness can be summed up in one proposition: a law will be found unconstitutionally vague if it so lacks in precision as not to give sufficient guidance for legal debate, that is, for reaching a conclusion as to its meaning by reasoned analysis applying legal criteria. The term "legal debate" is not used to express a new

5 standard or one departing from that previously outlined by this Court. It is rather
intended to reflect and encompass the same standard and criteria of fair notice and
limitation of enforcement discretion viewed in the fuller context of an analysis of the
quality and limits of human knowledge and understanding in the operation of the law.
The criterion of absence of legal debate relates well to the rule of law principles that
10 form the backbone of our polity. Legal provisions by stating certain propositions
outline permissible and impermissible areas, and they also provide some guidance to
ascertain the boundaries of these areas. They provide a framework, a guide as how
one may behave, but certainty is only reached in instant cases. See: *R v Nova Scotia
Pharmaceutical [1992] 2 S.C.R.(supra)*

15 The question to be resolved here is; does Section 25 of the Computer Misuse Act No.
2 of 2011 give sufficient guidance for legal debate? The purpose of Computer Misuse
Act as contained in the preamble is an Act to make provision for the safety and
security of electronic transactions and information systems; to prevent unlawful
access, abuse or misuse of information systems including computers and to make
20 provision for securing the conduct of electronic transactions in a trustworthy
electronic environment and to provide for other related matters. To understand the
conduct prohibited by the Act, it is necessary to understand the terms and phrases
like "*disturbing the peace, quiet and privacy of anyone*" and "*with no purpose of
legitimate communication*" embedded under Section 25 of the Computer Misuse Act
25 No. 2 of 2011.

Section 2 which is the Interpretation section does not help much since all the terms
used under the impugned section are not defined or given any meaning. The
ingredients of the offence cannot be properly determined because the act of
"*disturbing the peace, quiet and privacy of anyone*" and "*with no purpose of legitimate
30 communication*" are not clear and without knowing the ingredients of an offence, one

5 cannot meaningfully prepare his/her defence. Laws which do not state explicitly and definitely what conduct is punishable are void for vagueness.

A statute is also void for vagueness if a legislature's delegation of authority to judges and/or administrators is so extensive that it would lead to arbitrary prosecutions. Vague laws involve three basic dangers: First, they may harm the innocent by failing
10 to warn of the offense. Second, they encourage arbitrary and discriminatory enforcement because vague laws delegate enforcement and statutory interpretation to individual government officials. Laws are usually found void for vagueness if, after setting some requirement or punishment, the law does not specify what is required or what conduct is punishable also an enactment is void for vagueness if its
15 prohibitions are not clearly defined. Vague laws offend several important values and freedoms. See: *Skilling vs United States*, 130 S. Ct. 2896(2010). I find that the words used under Section 25 are vague, overly broad and ambiguous. What constitutes an offence is "unpredictable" and gives the law enforcer the discretion to pick and choose what qualifies as offensive. It gives the law enforcement unfettered discretion to
20 punish unpopular or critical protected expression.

The punishment prescribed therein is "*commits a misdemeanor and is liable on conviction to a fine not exceeding twenty-four currency points or imprisonment not exceeding one year or both.*"

Article 28 (12) is very clear. It requires that an offence must be defined. That
25 definition in my view must be clear enough to enable a citizen to distinguish between the prohibited conduct and the permissible one. Any vague interpretation will not satisfy the requirement of article 28 (12). See: *Charles Onyango Obbo and Another vs Attorney General Constitutional Petition No. 15 of 1997* and *Olara Otunnu vs Attorney General, Constitutional Petition No. 12 of 2010*.



5 Provisions of the law must be lawful in a sense that they are not arbitrary, they should
make adequate safeguards against arbitrary decisions and provide effective controls
against abuse by those in authority. Secondly the limitation imposed by such a law
must not be more than is reasonably necessary to achieve the legitimate objective.
This is what is also known as the principle of proportionality. The principle requires
10 that such a law must not be drafted too widely so as to net everyone including even
the untargeted members of society. If a law which infringes a basic right does not
meet both requirements, such a law is not saved by Article 43 (2) (c) of the
Constitution, it is null and void. See: *Pumbun vs The Attorney General [1993] 2 LRC 317*
at p.323, the Court of Appeal 25 approved the holding in DPP Vs Pete [1991] LRC (Const)
15 *553.*

It was also argued that, the impugned section serves no legitimate purpose and the
restriction is unnecessary and unjustifiable in a free and democratic society. The
meaning of the phrase "what is acceptable and demonstrably justifiable in a free and
democratic society" as used in Article 43 (2) (c) of the Constitution was discussed in
20 depth in *Charles Onyango Obbo and Another vs Attorney (Supra)*, I will not reproduce
the excerpts.

The yardstick is that, the limitation under the impugned Section must be acceptable
and demonstrably justifiable in a free and democratic society. This is what I have
referred to as "a limitation upon the limitation". The limitation on the enjoyment of a
25 protected right in defence of public interest is in turn limited to the measure of that
yardstick. In other words, such limitation, however otherwise rationalised, is not
valid unless its restriction on a protected right is acceptable and demonstrably
justifiable in a free and democratic society.

The protection of the guaranteed rights is a primary objective of the Constitution.
30 Limiting their enjoyment is an exception to their protection, and is therefore a



5 secondary objective. Although the Constitution provides for both, it is obvious that
the primary objective must be dominant. It can be overridden only in the exceptional
circumstances that give rise to that secondary objective. In that eventuality, only
minimal impairment of enjoyment of the right, strictly warranted by the exceptional
circumstance is permissible. The exceptional circumstances set out in clause (1) of
10 Article 43 are the prejudice or violation of protected rights of others and prejudice or
breach of social values categorised as public interest. See: *Charles Onyango Obbo and
Another vs Attorney, Supreme Court Constitutional Appeal No. 2 of 2002.*

In *Charles Onyango Obbo and Another vs Attorney*, the Supreme Court discussed as
follows:

15 *"The framers of our constitution, consciously, opted for the objective test in
determining "what is acceptable and demonstrably justifiable in a free and
democratic society". "Demonstrably" as used in our Art 43 (2) (c) appears to
connote that whoever wants to show that the act or commission complained of is
justifiable, that person must prove it by evidence. In our case the respondent
20 should have adduced evidence to prove that the existence of S.50 in the Penal
Code Act is justifiable in a free and democratic Uganda within the provisions of
the current Constitution.*

*In view of the presence of Art. 29 (1) (a) in our constitution, what would be the
underlying object of section 50 and the mischief or evil which it seeks to achieve.
25 Are Ugandans so gullible that they must be protected against rumors by S.50?*

*By Art.20 (1) fundamental rights and freedoms of the individual are inherent and
not granted by the state. Freedom of expression is a fundamental right protected
under Art. 29. By this Article, every person shall have the right to freedom of
speech and expression, which shall include freedom of the press and other media.
30 By criminalizing what is perceived as publication of false news or rumors under
S.50, the section has the effect of demonstrably restricting or even prohibiting
freedom of expression enshrined in Art.29 (1). I think that the reasoning of the
Supreme Court of Canada in **Zundel's Case** (supra) which considered issues
similar to the one in this appeal and the reasoning in the Nigerian case of the*

5 *State Vs The Ivory Trumpet Publishing Co. Ltd. (which was a case of sedition) the*
 courts' discussions there are of considerable value and I would adopt the same.
 As the custodian and guarantor of the fundamental rights of the citizens a
 Constitutional Court has a duty cast upon it of striking down any law which
10 *restricts the freedom of speech as guaranteed to the citizens under the*
 constitution."

I associate myself with the above reasoning and finding. In a democratic and free society, prosecuting people for the content of their communication is a violation of what falls within guarantees of freedom of expression in a democratic society. In the European Court of Human Rights case of *Handyside v UK References: 5493/72, (1976)*
15 *1 EHRR 737, [1976] ECHR 5*, it was observed that freedom of expression includes the right to say things that '*offend, shock or disturb the state or any sector of the population*'. The Court concluded that instituting prosecution in such cases would not be appropriate.

The United Human Right Committee in it general comment 34, stated that any
20 limitation on freedom of expression must be absolutely necessary. "According to the United Nations special rapporteur on freedom of expression, States are only permitted to prohibit it through criminal section only for four types of expression under the International law. They are: child pornography, direct public incitement to genocide, advocacy of national, racial, religious hatred that constitutes incitement to
25 discrimination, hostility or violence and incitement to terrorism,"

I find that the impugned Section is unjustifiable as it curtails the freedom of speech in a free and democratic society. Secondly Section 25 of the Computer Misuse Act No. 2 of 2011 does not specify what conduct constitutes offensive communication. To that extent it does not afford sufficient guidance for legal debate. Thirdly it is vague, overly
30 broad and ambiguous. Therefore, I find that the impugned section is inconsistent with and/or in contravention of Article 29 (1) of the Constitution, Article 19(2) of the

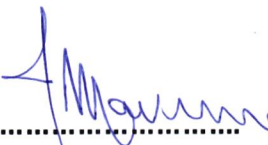


5 International Covenant on Civil and Political Rights and Article 9(2) of the African Charter on Human and Peoples' Rights.

In conclusion, I would allow the Petition with costs to the petitioners and make the following declarations and orders:

- 10 1. Section 25 of the Computer Misuse Act No. 2 of 2011 is null and void as it is inconsistent and/or in contravention with Article 29 (1) of the Constitution.
2. The enforcement of Section 25 of the Computer Misuse Act No. 2 of 2011 is hereby stayed.
3. Costs to the petitioners

15 Dated at Kampala this 10th day of January 2022.



Kenneth Kakuru

20 **JUSTICE OF APPEAL/JUSTICE CONSTITUTIONAL COURT**

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2. ROBERT SHAKA

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VERSUS

ATTORNEY GENERAL

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RESPONDENT

CORAM: HON. MR. JUSTICE RICHARD BUTEERA, DCJ

HON. MR. JUSTICE KENNETH KAKURU, JA/JCC

HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA/JCC

HON. LADY. JUSTICE ELIZABETH MUSOKE, JA/JCC

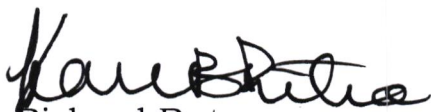
HON. LADY. JUSTICE MONICA MUGENYI, JA/JCC

JUDGMENT OF HON. JUSTICE RICHARD BUTEERA, DCJ

I have had the advantage of reading in draft the Judgment of Kakuru JA/JCC and I agree with it and the orders he has proposed.

As all the other members of the Court also agree, the Petition is allowed. The Court declarations and orders shall be as proposed by Kakuru, JA/JCC.

10.01.2023



Richard Buteera

DEPUTY CHIEF JUSTICE

**THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 005 OF 2016**

**1. ANDREW KARAMAGI
2. ROBERT SHAKA:.....PETITIONERS**

VERSUS

ATTORNEY GENERAL:.....RESPONDENT

**CORAM: HON. MR. JUSTICE RICHARD BUTEERA, DCJ
HON. MR. JUSTICE KENNETH KAKURU, JCC
HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JCC
HON. LADY JUSTICE ELIZABETH MUSOKE, JCC
HON. LADY JUSTICE MONICA MUGENYI, JCC**

JUDGMENT OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA/JCC

I have had the opportunity of reading the draft Judgment of the Hon. Mr. Justice Kenneth kakuru, JA/JCC.

I agree with his Judgment and I have nothing more useful to add.

Dated at Kampala this.....^{10th}.....day of ^{January}.....2022.

.....
HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA/JCC

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HON. LADY JUSTICE ELIZABETH MUSOKE, JCC

HON. LADY JUSTICE MONICA K. MUGENYI, JCC

JUDGMENT OF ELIZABETH MUSOKE, JCC

I have had the advantage of reading in draft the judgment prepared by my learned brother Kakuru, JCC. For the reasons he gives, with which I agree, I would allow the Petition and make the declaration and orders he proposes.

Dated at Kampala this^{10th} day of ^{January}.....2022.



Elizabeth Musoke

Justice of the Constitutional Court



THE REPUBLIC OF UGANDA

**THE CONSTITUTIONAL COURT OF UGANDA
AT KAMPALA**

CORAM: BUTEERA, DCJ; KAKURU, KIRYABWIRE, MUSOKE & MUGENYI, JJCC

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2. ROBERT SHAKA PETITIONERS

VERSUS

ATTORNEY GENERAL RESPONDENT

JUDGMENT OF MONICA K. MUGENYI, JA

I have had the benefit of reading in draft the lead Judgment of my brother, Hon. Justice Kenneth Kakuru, JCC. I agree with the findings made and the conclusions in respect thereof, and have nothing more useful to add.

Dated and delivered at Kampala this 19th day of January, 2022.



Monica K. Mugenyi

Justice of the Constitutional Court