***Case Title: Human Rights Network Uganda & 4 Ors. v. Attorney General***

**Case Analysis**

***Meta-Data*:**

* **Case Number**: Constitutional Petition No. 56 of 2013
* **Corresponding Law Reference**: Human Rights Network Uganda & 4 Ors. v. Attorney General, [2020] UGCC 6.
* **Date of decision**: March 26, 2020
* **Featured case**: N/A
* **Region**: Africa
* **Country**: Uganda
* **Type of expression**: Public Assembly
* **Judicial Body**: Constitutional Court of Uganda
* **Type of law**: Constitutional Law/ Criminal Law
* **Main Themes**: Freedom of Association and Assembly / Protests/ Political Expression/ Public Order
* **Outcome**: Law Deemed Unconstitutional
* **Status**: Decided
* **Tags**: Freedom of Association and Assembly / Protests, Political Expression, Public Order

***Analysis:***

* **Summary and Outcome**:

The Constitutional Court of Uganda ruled Section 8 of the Public Order Management Act, 2013 to be unconstitutional on the touchstone of Articles 29 and 43 of the Constitution of Uganda, 1995. Section 8, which empowered police officials to stop, control and force to disperse public meetings and with the power to impose criminal liability on the organizers and participants of public meetings, was struck down as violative of freedom to assemble and to demonstrate together with others peacefully and unarmed – a fundamental right guaranteed by Article 29 of the Constitution. The provision was also held to have a chilling effect on the freedoms and the restrictions on the freedom of association and assembly were held to be unacceptable and demonstrably unjustifiable in a free and democratic society – a manifest violation of Article 43 of the Constitution.

* **Facts**:

On December 10, 2013 the Petitioners in this case filed a Constitutional Petition before the Constitutional Court of Uganda challenging the constitutionality of various provisions of the Public Order Management Act, 2013 [Hereinafter, “POMA”]. However, after the revision of the petition, the petitioners argued only against the constitutionality of Section 8 of POMA against the narrow ground of Article 92 of the Constitution of Uganda, which prevents the Parliament from passing any law, the effect of which is to overturn a decision of a court as between the parties. The Petitioners maintained that since the Constitutional Court of Uganda had declared a similar provision unconstitutional (In *Muwang Kivumbi v. Attorney General*) prior to the enactment of Section 8 of POMA, the latter has the effect of overturning the decision of the court in Muwang Kivumbi, and therefore violates Article 92. The court, however, recognized that it should not be restricted to the narrow, interpretative analysis of Article 92, and recognized its duty to test the violation of Section 8 on the broader aspects of freedom of assembly and the right to demonstrate peacefully and unarmed.

* **Decision Overview**:

The court considered the purpose and effect of the legislation while deciding the constitutional validity of Section 8. It stated that in situations where the purported purpose of provisions such as Section 8 is to ensure the maintenance of peace and public order at a public gathering, a reasonable means to achieve that purpose is through the deployment of security which can supervise public gatherings, instead of prohibiting the gathering altogether. The court observed that supervision of the public is a core police function which could not be discharged by prohibiting sections of the public from exercising their otherwise constitutionally guaranteed freedoms to demonstrate peacefully or to hold public meetings of any nature.

The court placed reliance on the decision in Male Mabirizi & Ors. v. Attorney General, and held that since the provision gave unbridled and discretionary powers to police officials, enabling abuse and arbitrary orders of dispersal of rallies and assemblies by them, it was tantamount to a subversive tool exercised in the guise of preserving public order. For the same reasons the limitations on the freedoms of assembly which were imposed by the enactment of Section 8, were held to be not demonstrably justifiable in a free and fair society, thereby violating Article 43 of the Ugandan Constitution. Since the limits placed by Section 8 cast a chilling effect and were beyond the scope of Article 43, the provision was declared to be unconstitutional and violative of the freedom to assemble and to demonstrate together with others peacefully and unarmed (as guaranteed under Article 29).

While dissenting, Musota J. observed that the rights guaranteed under Article 29 were limited in nature and had to be enjoyed in accordance with the broader requirements of law. Accordingly, legislations such as POMA were essential as they clarified the entire stance and scope of freedoms by setting at stone the limits on the powers of the authorities.

***Direction:***

* **Outcome**: Expands Expression
* **Information**: The court expands the right to assemble and to demonstrate together with others peacefully and unarmed and holds that the right cannot be arbitrarily limited by justifying it under the guise of ‘maintenance of public order’.

***Perspective***:

* **Outcome**: Law Deemed Unconstitutional
* **Related International and/or regional laws**:
* International Covenant on Civil and Political Rights, art. 21.
* African Charter on Human and People's Rights, art. 11.
* **National law or jurisprudence**:
* Uganda, Const. (1995) art. 29.
* Uganda, Const. art. 43.
* Uganda, Const. art. 92.
* Uganda, Kivumbi v. Attorney-General, [2008] 1 EA 174
* Uganda, Public Order Management Act (2013), sec. 8.
* Male Mabirizi & ors v Attorney General (Constitutional Appeal No. 02 of 2018) [2019] UGSC 6.
* Muwang Kivumbi v. Attorney General (Constitutional Petition No. 9 of 2005) [2008] UGCC 4.
* **Other national law or jurisprudence**: N/A

***Significance***:

**Binding or persuasive precedent within jurisdiction:** The decision establishes a binding or persuasive precedent within its jurisdiction.

Judgments of the Constitutional Court of Uganda are binding within the jurisdiction of Uganda.

* **Related Cases**: Self-generated
* **Date updated**: N/A

***Docs***:

* **Official Case Documents**:
* Human Rights Network Uganda & 4 Ors. v. Attorney General, [2020] UGCC 6. (Attached in the email)
* **Reports, Analysis, and News Articles**:
* POMA: Uganda court annuls public order law, at: https://chapterfouruganda.org/articles/2020/03/29/poma-uganda-court-annuls-public-order-law
* Rahul Garg and Paras Ahuja, Special Undergraduate Series–Uganda’s Recent Decision on Public Order Management Act, 2013: When the Constitutional Court Failed Constitutional Interpretation, Int’l J. Const. L. Blog, May 31, 2020, at: http://www.iconnectblog.com/2020/05/special-undergraduate-series–uganda’s-recent-decision-on-public-order-management-act,-2013:-when-the-constitutional-court-failed-constitutional-interpretation