

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA.

(1) CONSTITUTIONAL PETITION NO. 16 OF 2013

5 1. HON. (RTD) SALEH M.W.KAMBA }
2. MS. AGASHA MARY }PETITIONERS

VERSUS

10 (1) ATTORNEY GENERAL }
(2) HON. THEODRE SSEKIKUBO }RESPONDENTS.
(3) HON. WILFRED NIWAGABA }
(4) HON. MOHAMMED NSEREKO }
(5) HON. BARNABAS TINKASIMIRE }

(2) CONSTITUTIONAL PETITION NO. 21 OF 2013

NATIONAL RESISTANCE MOVEMENTPETITIONER

VERSUS

15 (1) ATTORNEY GENERAL }
(2) HON. THEODRE SSEKIKUBO }RESPONDENTS.
(3) HON. WILFRED NIWAGABA }
(4) HON. MOHAMMED NSEREKO }
(5) HON. BARNABAS TINKASIMIRE }

(3) CONSTITUTIONAL PETITION NO. 19 OF 2013

20 JOSEPH KWESIGAPETITIONER

VERSUS

ATTORNEY GENERALRESPONDENT.

(4) CONSTITUTIONAL PETITION NO. 25 OF 2013

25 HON. ABDU KANTUNTU :::::::::::::::::::::PETITIONER

VERSUS

ATTORNEY GENERAL :::::::::::::::::::::RESPONDENT.

CORAM: HON MR. JUSTICE S.B.K KAVUMA AG. DCJ/PCC

HON. MR. JUSTICE A.S NSHIMYE JA/JCC

30 HON. MR. JUSTICE REMMY KASULE JA/JCC

HON. LADY JUSTICE FAITH E.K. MWONDHA JA/JCC

HON.MR.JUSTICE RICHARD BUTEERA JA/JCC

JUDGMENT OF MWONDHA ,JA/CC

35 Although I agree with my learned brother Justices of the Court in the majority
Judgment, declarations and orders made therein, I came to the same conclusion
for different reasons in respect of issues, 1, 4, 5&6.

For clarity I will reproduce the issues 1, 4, 5 & 6.

(1) Whether the expulsion from a political party is a ground for a Member of
40 Parliament to lose his or her seat in Parliament under Article 83(1) (g) of
the 1995 Constitution.

(4) Whether the continued stay in Parliament of the 2nd, 3rd, 4th and 5th respondents after their expulsion from the NRM party on whose ticket they were elected is contrary to and or inconsistent with **Articles 1(1)(2)(4), 2(1), 21(1),(2), 29(1)(e), 38(1), 43(1), 45, 69(1), 71, 72(1), 72(2), 72(4), 78(1), 79(1)(3) and 255(3)** of the Constitution.

(5) Whether the said expelled MPs who left and or ceased being members of the Petitioner vacated their respective seats in Parliament and are no longer Members of Parliament as contemplated by the Constitution.

(6) Whether the said expelled MPs vacated their respective seats in Parliament and are no longer Members of Parliament as contemplated by the Constitution.

I, also agree that the gist of the issues was whether the expelled members of Parliament left the party for which they stood and were elected to Parliament and whether they vacated their seats.

As a Court of first instance in Constitutional matters, I found it important to state the substance of the Petition Nos. 16, 21/2013, CP No. 19/2013 CP No. 21/2013, C.P No.25/2013 Cross Petition in CP No. 16/2013, and the responses. All Petitions were brought under **Article 137** of the Constitution, and the

Constitutional Court (Petitions & Reference) Rules S.1 91 of 2005 and all
60 enabling laws. They were consolidated by Court after having been filed
separately by the individual Petitioners. Petition No. 21/2013 was filed on
20thMay 2013 by the Petitioner's counsel, Mugisha & Co. Advocates & M/s
Bakiza & Co. Advocates & M/S Twinobusingye Severino & Co. Advocates.

It was stated that the Petitioner is a Political party organization established and
65 registered under the Political parties and organizations Act 2005 and is the
Ruling National Political Party and thus having interest in or aggrieved by the
following matters being inconsistent with and/or in contravention of the
Constitution of the Republic of Uganda and contented as follows;-

(1) That the Petitioner has suffered and shall suffer the infringement of its
70 rights and contravention of the Constitution by the act of the Rt. Hon.
Speaker of Parliament of the Republic of Uganda in the Ruling made on
2nd May ,2013 to the effect that the four Members of Parliament to wit
Hon. Theodre Ssekikubo, Member of Parliament for Lwemiyaga County,
Hon. Wilfred Niwagaba, Member of Parliament for Ndorwa East
75 Constituency, Hon. Mohammed Nsereko, Member of Parliament for

Kampala Central Constituency and Hon. Barnabas Tinkasimire, Member of Parliament for Buyaga West Constituency (expelled MPs) who left the National Resistance Movement, a party for which they stood as candidates for election to Parliament, should retain their respective seats in Parliament is inconsistent and in contravention with **Articles 1(1)(2)(4), 2(1)(2), 20(1)(2), 21, 43(1)(2)(c), 45, 69, 70, 71, 72, 73, 74, 77(1)(2), 78(1), 79, 80, 81(2), 83(1)(g)(h) and 83** of the Constitution of the Republic of Uganda.

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(2) That the act of the Rt. Hon. Speaker culminated in the creation of a peculiar category of members of Parliament unknown to the Constitution and was inconsistent with and or in contravention of the above stated articles and ipso fact null and void.

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(3) That the expelled MPs who left and or ceased being members of your Petitioner vacated their seats in parliament as contemplated by the Constitution.

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(4) That the said expelled MPs who left and or ceased being members of the Petitioner are now politically wild people, aliens/anonymous/trespassers with no identity in the Parliament of the Republic of Uganda which is inconsistent with the above stated articles of the Constitution.

(5) That the Rt. Honourable Speaker has no jurisdiction to make a ruling on
95 such matters and her action was inconsistent with and in contravention of
the above stated Articles.

(6) That the act of the Rt. Hon. Speaker was illegal abinitio and ought not be
left to stand once brought to the attention of this Court.

(7) That the Attorney General of Uganda had issued a legal opinion to the
100 effect that the Rt. Hon. Speaker's Ruling is illegal and unconstitutional
which is binding on her.

(8) That the impugned acts of the Rt. Hon. Speaker are inconsistent with and
in contravention of the provisions of the Constitution due to the following
reasons:

105 (a) That the 2nd, 3rd, 4th & 5th respondents who left and or ceased being
members of the Petitioner vacated their seats in Parliament and are no
longer members of Parliament as contemplated under the Constitution.

(b) That the said expelled MPs who left and or ceased to be members of
the Petitioner do not have any identity, are not attached to or affiliated
110 to any political party recognized by the Constitution of the Republic of
Uganda.

- (c) That the parliamentary Seats of the said expelled members of Parliament fell vacant upon their expulsion from the Petitioner.
- 115 (d) That the Rt.Hon. Speaker had no jurisdiction to make the ruling as she purportedly did on such a matter.
- (e) That the continued stay of the said expelled MPs in Parliament is an affront on the multiparty dispensation which was ushered in by Ugandans in 2005, National Referendum and is bound to breed, impunity, anarchy which will in the end whittle down representative
- 120 multiparty democracy.
- (f) That if the Rt. Hon. Speaker's ruling is left to stand, it will set a dangerous precedent as it will leave political parties as mere empty shells instead of being key institutions of representative democracy or as linch pins thereof as provided for in the Constitution.
- 125 (g) That if the Ruling of the Rt. Hon. Speaker is allowed to stand, it will lead to the withering away of political parties and multiparty democracy, the safe guard for peace, order, security and tranquility the hall mark of the rule of Law and Constitutionalism.

130 (h) That the act of the Rt. Hon. Speaker is illegal abinitio and ought not be left to stand once drawn to the Court's attention.

(i) That the peculiar category of members of Parliament purportedly created by the Rt. Hon. Speaker is not envisaged by the Constitution and is bound to bring confusion and encourage indiscipline among other members and shall culminate in anarchy and mayhem.

135 The petitioner prays that this Honourable Court grants the following Declarations and orders:

(1) That the act of the Rt. Hon. Speaker of Parliament in ruling that the 2nd, 3rd, 4th and 5th respondents who left the Petitioner should retain their respective Seats in Parliament is inconsistent with and in contravention of **Articles 1(1)(2)(4), 2(1)(2), 20(1)(2), 21, 43(1)(2)(c), 45, 69, 70, 71, 72, 73, 74, 77(1) and (2), 78(1), 79, 80, 81(2), 83(1)(g) and 83(3)** of the Constitution of the Republic of Uganda.

145 (2) That the act of the Rt. Hon. Speaker of creating a peculiar category of members of Parliament unknown to the Constitution is in contravention or inconsistent with **Articles 1(1)(2)(4), 2(1)(2) 20(1)(2), 21, 43(1)(2)(c), 45, 69, 70, 71, 72, 73, 74, 77(1)**

and(2),78(1),79,80,81(2),83(1)(g)(h) & 83 of the Constitution ipso facto null and void.

150 (3) That the 2nd, 3rd, 4th and 5th respondents vacated their respective seats in Parliament upon expulsion from the Petitioner.

(4) That the respective seats of the 2nd, 3rd, 4th and 5th respondents are presently legally vacant.

(5) That a by-election be conducted by the National Electoral Commission to fill the respective seats.

155 (6) That the respondents pay costs of this petition and a certificate for two counsel be issued.

The Petition is supported by the affidavits of Yoweri Kaguta Museveni, Chairman of the Petitioner and Amama Mbabazi, Secretary General of the Petitioner and supplementary affidavits with documents annexed of the saiddeponents respectively,the
160 Petitioner stated would rely on. The affidavits essentially had the same contents, so I will state them as follows:-

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(1) That they were male adult Ugandan citizens of sound mind and the Chairman and the Secretary General and that they swore the affidavits in those capacities.

(2) That the 2nd, 3rd, 4th & 5th respondents were nominated as candidates for election as members of parliament by the Petitioner who sponsored their respective candidates in the 2011 as party Members of Parliament.

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(3) That the respondents as above stated stood as candidates for the Petitioner as the Political party for which they stood for election to the 9th Parliament and they were elected as such.

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(4) That on or about 14th April 2013 the central Executive Committee (herein referred to as CEC) of the Petitioner received a report and proceedings from the party Disciplinary Committee. The said Disciplinary Committee had found that the 2nd, 3rd, 4th and 5th respondents had acted and or behaved in a manner that contravened various provisions of the party Constitution. The said party Disciplinary Committee had decided to expel them from the

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Petitioner and the decision was confirmed by the Central Executive

Committee of the party. (Copies of the communique of the central
executions committee and the Executive summary) were attached
and marked Annexures "A" & A¹
respectively.

185 (5) That having been expelled the 2nd, 3rd, 4th & 5th respondents left the
petitioner and were no longer its members representing the party
nor are they independents in Parliament.

(6) That the 2nd, 3rd, 4th & 5th Respondents left the Petitioner and they
legally vacated their Seats in Parliament as decided by the Central
190 Executive Committee. The Secretary General was directed to write
to the Rt.Hon. Speaker informing her to direct the clerk to
Parliament to declare the seats of the said members of Parliament
vacant so as to enable the Electoral Commission to organize by –
elections in their respective Constituencies. The copy of the said
195 letter was attached and marked Annexure "B".

(7) That on 2nd May 2013 the Right Hon. Speaker made a ruling to the
effect that there is no specific Constitutional provisions on expulsion
of members of Parliament by their Political parties leading to the

declaration of their seats in Parliament vacant, and that they should
therefore not vacate their seats. The copy of the Ruling & Hansard
was attached and marked Annexure “C” & “C1” respectively.

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(8) That they know that by being expelled from the party, the Petitioner
for which they stood as candidates for election to Parliament, and
which party had sponsored their nomination, candidature and
election, the 2nd, 3rd, 4th and 5th respondents, ipso facto vacated
their seats in Parliament.

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(9) That the said Ruling of the Rt. Hon. Speaker and the refusal or
failure to direct that they vacate their seats in Parliament, infringed
on the rights of the party and its members enshrined in **Articles**
1(1),(2)(4),2(1)(2),20(1)(2),21,42,43(1)(2)(c),45,69,70,71,72,73,74,7
7(1) & (2),78(1),79,80,81(2),83(1)(g)(h)& 83(3) of the Constitution of
the Republic of Uganda.

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(10) That as a party they are deprived of their Parliamentary Seats
and those four Constituencies are not currently represented, yet the
electorate preferred the Petitioner’s hitherto flag bearers to
represent them.

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(11) That they know that there is no way members of parliament who were nominated, sponsored and elected as candidates of the Petitioner on the basis of the Petitioners manifesto and ideology can continue to represent their Constituencies which elected them after they have been expelled from the party on whose ticket they had been elected.

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(12) That they know that the Attorney General has since issued a legal opinion to the effect that the Rt. Hon. Speaker's decision to allow the said expelled MPs to stay in Parliament is illegal and an abuse of the law and is inconsistent with the constitution and other pieces of legislation made there under. That they know that the Attorney General's opinion is binding on Government and all Government institutions and agencies and must be respected and acted on without question (A copy of the Attorney General's letter was annexed and marked "D").

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(13) That they know that the Ruling of the Right Hon. Speaker of Parliament infringed on the Petitioners Party structures in as far as

it cannot enforce strict disciplinary measures of its errant and
disobedient members.

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(14) That they know that one of the factors of our history which led
to Political and Constitutional instability and which was the mischief
the Constitution sought to cure was the action of members of
Parliament crossing the floor of Parliament and leaving a political
party which sponsored them while entering Parliament to another
party without seeking a fresh mandate.

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(15) That in 1962 the 1st Independent Government of Uganda was
an alliance of two political parties the Uganda Peoples Congress
(UPC) and Kabaka Yekka (KY) while the Democratic Party (DP)
formed the opposition.

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(16) That the UPC assumed power, the then Prime Minister Milton
Obote realizing the danger of having a partner who could any time
cross to another party and effectively bring his government to an
end decided to persuade individual MPs of KY and DP to cross to
UPC.

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(17) That after 1964 the KY/UPC alliance collapsed and several KY,MPs and DP, MPs crossed from their respective parties to UPC without submitting themselves to seek fresh mandate such that by 1966 Obote's UPC had absolute majority in Parliament.

255 (18) That the then Prime Minister, Milton Obote had succeeded to build a majority in Parliament and accordingly by 1966 he felt strong enough to abolish the 1962 independence Constitution. This act plunged Uganda into Constitutional crisis and brought political instability from which Uganda has suffered for several decades and is only slowly recovering under the Constitutional dispensation
260 ushered in by the NRM administration.

(19) That they know the people of Uganda promulgated the 1995 Constitution, mindful of the tragic period of our history and inserted clauses notably **Article 83(1)(g)** in the Constitution which ensured
265 that a member of Parliament who leaves the party which had sponsored him and for which he stood for election to Parliament either to join another party or to remain in Parliament as an independent should seek a fresh mandate through a bye election.

270 (20) That the act of the Rt.Hon. Speaker of Parliament to rule that
the MPs remain in Parliament despite having left the party that
sponsored them to Parliament was out of step with the
Constitutional provisions and threaten to drag the Country back to
Constitutional mayhem and political instability.

275 (21) That they know that given the Constitutional mischief of our
political history and the provisions of the Constitution notably
Article 83(1)(g) which were meant to heal that mischief there is no
way the four respondents who became Members of Parliament
through nominations, sponsored and elected as candidates of the
petitioner on the basis of the Petitioners manifesto and ideology can
280 continue to represent their Constituencies after they had left the
NRM.

(22) That they know that proportionality of a party representation
in Parliament is a hall mark of Multi party political dispensation
which the people of Uganda adopted in 2005 Referendum on
285 political Systems. That they know that the proportionality of Political
party representation in Parliament as determined by the People of

Uganda through the 2011 Parliamentary Elections is distorted by the 2nd, 3rd, 4th and 5th respondents leaving the NRM, the party they stood for election and were elected to Parliament.

290 The 2nd, 3rd, 4th and 5th Respondents in their filed reply affidavits to the Petition, opposed the Petition Nos. 21/2013, 16/2013, 19/2013 and the cross petition of the 1st respondent in all petitions. They stated among other things as follows:-

(1) They have never left the party but rather that they were forced out and have challenged that forceful eviction as distinct from the voluntary act of leaving and that they have never vacated their seats.

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(2) That in Uganda proportionality of party representation is not a hall mark of Political party dispensation as it's that principle which is distorted by the presence of the Military in Parliament.

(3) That the rules of procedure as to sitting in Parliament among others is an internal decision by Parliament and not a Constitutional matter.

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(4) That there was a lot of resistance in the House to the bill that sought to amend **Article 83(1) (g)** by inserting the word "expulsion" and as a result the Government withdrew the proposal.

(5) That they verily believe that the framers of the Constitution deliberately
305 left out “expulsion” from the political party as a ground for vacating a seat
in order to directly protect the rights of Ugandans and not political parties
as per **Articles 38(1)** and **78(1)** of the Constitution.

(6) That they deny being with no known identity in the Parliament as alleged
or at all and that they represent the people of their respective
310 Constituencies in accordance with **Article 78(1)** of the Constitution and
hence had not breached any provision of the Constitution.

(7) Hon. Theodre Ssekikubo denied having been nominated by the Petitioner
to stand but by one Wamala Muzzanganda Kuwatana and Nakaala
Prossy. That he had never left the Petitioner as his membership fee is
315 being deducted.

Introduction to Resolution of issues 1,4,5 & 6

(1) It was clear from Petition No. 21/2013 that, the Petitioner is a Political
Party/Organization established and registered under the Political
Parties and Organizations Act 2005. It is a body corporate. This gives
320 the Petitioner the right to allege that any act or omission by any
person or authority is inconsistent with or in contravention of the

provision of the Constitution and may Petition the Constitutional Court for a declaration to that effect and for redress where appropriate as per **Article 137(3)(b)**.

325 **(2) Political Parties/Organizations are creatures of the 1995 Constitution.**

The gist of the genesis of Political parties/organizations is evidenced from the preamble of our Constitution which states the general purpose of the Constitution. It states: **"We the people of Uganda recalling our history which has been characterized by Political and**

330 **Constitutional instability, recognizing the struggles against the forces of tyranny, oppression and exploitation, committed to building a better future by establishing a socio economic and Political order through a popular and durable National**

335 **Constitution on the principles of Unity, Peace, equality democracy, freedom, socio justice and progress...Do hereby in**

and through the Constituent Assembly adopt , enact and give ourselves and our posterity, this Constitution of the Republic of Uganda this 22nd day of September, in the year 1995.

FOR GOD AND MY COUNTRY.

340 The preamble stresses the commitment to building a better future
through the popular and **durable National Constitution rooted in the
principles of Democracy, Social Justice among others which
should be guarded jealously by all Ugandans.**The Courts of law and
the Judiciary in the administration of Justice have a duty to exercise
345 judicial power bearing in mind that judicial power is derived from the
people and exercised by Courts established under this Constitution in
the name of the people and in conformity with the law and with the
values, norms and aspirations of the people. See **Article 126(1)** of the
Constitution.

350 (3) The Constitution provides the National Objectives And Directive
Principles of State Policy Part 1 is on Implementation of Objectives
and provides as follows:

(i) *“The following objectives and principles shall guide all organs
and agencies of the state, all citizens, organizations and other
355 bodies and persons in applying or interpreting the Constitution or
any other law and implementing any policy decisions for*

establishment and promotion of a just, free and democratic society.”

Political Objectives: Part II: Democratic Principles:- It provides among others,

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(ii) “All people of Uganda shall have access to leadership positions at all levels subject to the Constitution.

(V) Provides:- “All Political and Civic Associations aspiring to manage and direct public affairs shall conform to the democratic principles in their internal organizations.”

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The Constitution Article 29(1)(e) provides: “ Every person shall have the right to... (e) freedom of association which shall include the freedom to form and join associations or Unions including trade unions and Political and other Civic Organizations.”

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Article 69 of the Constitution provides for the 3 types of Political Systems as hereunder:

375 **(1)** The people of Uganda shall have the right to choose and adopt a political Systems of their choice, through free and fair elections or refranda.

(2) The political System referred to in clause (1) of this article shall include:-

380 (a) The Movement Political system

(b) The Multi party political system and

(c) Any other democratic and representative Political System.”

Article 71 provides : (1) A Political party in the multi Party Political System shall conform to the following principles (a)...(b) ...(c) **the internal**

385 **Organisation of a Political Party shall conform to the democratic principles enshrined in this Constitution,** (See also ii & v Supra- Political objectives & Democratic principles).

Article 72(1) provides: “Subject to the provisions of this Constitution the right to form Political Parties and any other Organisationis guaranteed.

390 (2) An organisation shall not operate as a Political Party or organisation
unless it conforms to the principles laid down in this Constitution, and it is
registered.

Article 72(4) provides: “Any person is free to stand for an election as a
Candidate, independent of a political organization or political party.

395 **Article 83(3)** ‘The provisions of clauses (1)(g) and (h) and (2) of this
article shall only apply during any period when the multiparty system of
government is in operation.’

Resolution of issues:

From the evidence on record by the Petitioner in Constitutional Petition No.
400 21/2013, and the responses of the 2nd,3rd,4th and 5th respondentsit was clear
that the above MPs joined the Petitioner (Party)after it complied with all the
Constitutional requirements as provided in **Article 71**above stated. They were
flag bearers of the Petitionerin the 2011 elections based on the Democratic
principles and practice as required by the Constitution. Those material facts
405 were not disputed or challenged by the four respondent MPs. They freely
exercised their freedom to join the Petitioner in accordance with **Article 29**

(1)(e) and in line with the democratic principles and political objectives of the Constitution.

410 The submission by counsel for the four respondents that the respondents' conduct that culminated in their expulsion from the party/Petitioner was not a matter for Constitutional interpretation but a matter between the Petitioner and the four respondents internally, was too far fetched as it was not supported by evidence or principles of Constitutional interpretation. But even if I was to agree, which I do not, it was a matter between the petitioner and the four
415 respondents, so the Rt. Hon. Speaker had no right to interfere with the party's internal organization, to rule that the 2nd, 3rd, 4th and 5th respondents remain in Parliament, when the party had expelled them.

Democratic Principle (ii) is clear and for avoidance of doubt I will reproduce it:-

420 "All people of Uganda shall have access to leadership positions at all levels subject to the Constitution. "This objective is made justiciable by **Article 29(1)(e)** and **72** of the Constitution. The 2nd, 3rd, 4th and 5th respondents, under **Article 29(1)(e)** exercised their freedom to join the party in accordance with the internal

organization of the party as provided by law. By the internal organization of the
425 Petitioner's party they accessed their respective leadership positions in the
respective Constituencies as Members of Parliament.

It will be too casual to say that the contravention of the Petitioner's constitution
was not of importance to the National Constitution. The internal Organisation of
the Party is the agreement between the members of a party and the Party itself
430 and it connects both the members and the Party to the National Constitution. It is
the umbilical cord of all parties concerned. Ugandans consented to be governed
in accordance with the Constitution. The petitioner's party constitution was
availed to Court by the 5th respondent. It provides in **article 39(2)** thereof "For
every elective National and Local Government Office, there shall be primaries
435 held within NRM to determine NRM candidates as follows:

***"Parliamentary** - the NRM Parliamentary candidate for a constituency shall be
elected by a college consisting of members of the sub county, Town council,
Municipal Divisions and Parish conferences within the Constituency."*

This is how the 2nd, 3rd, 4th and 5th respondents accessed their candidature in
440 elections and consequently elected to those leadership positions. The word "

Access” according to Websters Universal Dictionary means: broach (open, pierce, enter, approach, avenue, entrance, entry, passage way admission) to mention but a few. While Collins Dictionary 3rd Edition 2009, explains that “If you have access to a building or other place, you are able or allowed to go into it. If you have access to a person you have opportunity or right to see or meet them...”

The Constitutional provisions stated above put in place the three Political Systems i.e **Article 69**, and provides for Political Parties and Organizations Act and how they are regulated i.e **Article 72(2). Article 73** of the Constitution regulates by way of limiting the activities of each political system when one of the political systems has been chosen and adopted by Ugandans. It provides among others “... *during the period when any of the political systems provided for in this Constitution has been adopted, organisations subscribing to other political systems may exist subject to such regulations as Parliament shall by law prescribe.*”

The 2nd, 3rd, 4th and 5th respondents after contravening their party/ petitioner’s constitution, disciplinary proceedings were commenced against them. There is

evidence as contained in Annexure "A" & A1 attached on the Petition, to the effect that they were invited to attend the proceedings but they declined to attend. They denied themselves the right to be heard as per **Article 28(1)** and **44(c)** of the Constitution cannot be invoked in their favour. There were 5 MPs who were invited and only one attended. The 2nd, 3rd, 4th & 5th respondents who did not honour the invitation were found to be in breach of the constitution of the party which resulted in their dismissal and or expulsion as provided by the petitioner's constitution.

The 2nd, 3rd, 4th and 5th respondents in clear terms in their responses to the Petition 21/2013 denied that they do not represent the Petitioner in Parliament but represent their constituencies which constituencies lawfully elected them for representation in Parliament. They also stated that they did not voluntarily leave but forced out of the party. The validity or lawfulness of their election is not in issue at all. What is in issue for this Court to interpret is whether the 2nd, 3rd, 4th & 5th respondents left the party for which they stood as candidates for election to Parliament within the meaning of **Article 83(1)(g)** and whether they vacated their seats.

475 To answer that issue, it was pleaded by the 2nd,3rd,4th& 5th respondents in their
responses, that the reason why expulsion was not provided in the Constitution
was deliberate and was intended to protect the rights of Ugandans and not
political parties as per **Article 38** and **78(1)** of the Constitution. They further
stated in their responses that they filed a case against the party which is
480 pending determination.

According to the documents they attached, the case filed was Application No.
251/2013 in the High Court brought under Article 42 of the Constitution, S.34 of
the Judicature Act .and the Judicature (Judicial Review Rules) S.1.No. 11/2009.
S.34 providesfor habeas corpus!! It was seeking nevertheless for prerogative
485 orders of Court and in particular sought for quashing the decisions of the
respondent (Petitioner)***from initiating and prosecuting the applicants by the
disciplinary committees. It was also seeking for an order of prohibition
prohibiting the Secretary General of the Respondent from taking part in
the disciplinary proceedings against the applicants.*** The application was not
490 challenging their expulsion at all.

Besides, they never challenged the allegations that they contravened the party/petitioner's constitution/internal organisation rules in their responses to the petition. They kept silent about it. It is trite law that; an omission or neglect to challenge the evidence in chief of a material or essential part of cross
495 examination would lead to an inference that the witness' evidence was accepted to its being assailed to inherently or probably credible" (**See James Sawabiri and another V. Uganda SCCR Appeal NO. 5 of 1990**).

Counsel for the 2nd, 3rd, 4th & 5th respondents submitted that the four respondents were not agents of the party (Petitioner). This did not have any merit what
500 soever.

By the 2nd, 3rd, 4th & 5th respondents' denying that they were not representing the Party on whose ticket they stood as candidates to be elected to those leadership positions, they were admitting that, they had actually left party (petitioner). This apparently explains in my view why they never honoured the invitations to the
505 national disciplinary party proceedings and denied themselves the opportunity to be heard. Their conduct before and after expulsion manifestly showed that they left the party /Petitioner which gave them access to the Public office they

held. Their physical leaving of their seats where they were sitting in Parliament as members of the party (Petitioner) whose ticket they stood for election, was an act that confirmed their voluntary leaving which act culminated in the creation of a peculiar membership in Parliament which was inconsistent with and in contravention of the Constitution. Their pleadings in their responses that 'expulsion' as a ground was left out in the Constitution to protect individuals not parties under **Article 38(1)** and **78(1)** of the Constitution was a misconception on their part. **Article 38(1)** of the Constitution provides for Civic Rights and activities. It provides:

“ Every Ugandan Citizen has the right to participate in the affairs of government, individually or through his or her representatives in accordance with the Law” It is a cardinal principle of Constitutional interpretation that “ the entire Constitution has to be read as an intergral whole. No one provision of the Constitution should be segregated from the others and be considered alone, *but all provisions bearing on a particular subject are to be brought into view and be interpreted to effectuate the greater purpose of the instrument.” This is the rule of harmony, the rule of completeness and exhaustiveness and rule of*

525 *paramountancy of the Constitution . See Cases Paul K. Semwogerere and 2
others V. Attorney General Constitutional Appeal NO. 1/2002, Okello
Okello V. Attorney General, Constitutional Petition No. 4/2005, Thomas
Kweyalo alias Latoni, Constitutional Petition , Appeal No. 36/2011.*

Article 78(1) of the Constitution provides for the composition of Parliament and
530 states: Parliament shall consist of:

- (a) Members directly elected to represent Constituencies.
- (b) ...
- (c) ...
- (d) ...

535 It is general in nature, as it provides for all political systems as provided
in Article 69 of the Constitution.

Article 38(1) and 78(1) of the Constitution are fundamentally connected
to other provisions like part II(ii) and (v) of the National objectives and
Directive Principles of State Policy, Article 1 and 2 of the Constitution,
540 Articles 29 (1)(e) & Article 43(1)(c), Article 71 (1)(c), Article 72 ,
Article 73, Article 74. There is no way therefore Articles 38(1) and
78(1) can be segregated from Article 83(1)(g) of the Constitution and the
others above quoted.

545 It is important to note that it's a cardinal principle of constitutional interpretation that the "Constitution is the Supreme law of the land and forms the standard on which all other laws are justified. Any law that is inconsistent with or in contravention of the Constitution is null and void to the extent of its inconsistency (see **Article 2** of the Constitution)

550 It was submitted by counsel for the 2nd, 3rd, 4th & 5th respondents that the word "leave" had the word voluntary embedded in it. That those respondents were forced to leave or were just dismissed by the petitioner in Constitutional Petition No.21/2013.

555 From the evidence on record, as summarised herein and the above foregoing, it is clear that the 4 MPs left the Party/Petitioner at their own volition in other words they left voluntarily as evidenced by their pleadings and they are bound by their pleadings and no amount of words can change them (pleadings).

'Voluntary' according to the Blacks law Dictionary 9th Edition means, free, deliberate, designed, intended discretionary, optional, willing.

The word 'leave' means, according to Webster's Universal English Thesaurus,
560 to abandon, decamp, go quit, vacate, withdraw, desert, forsake, relinquish,
renounce, consign, refer cease, desist from, discontinue, refrain stop.

The 2nd,3rd,4th& 5th respondents exercised their freedom to associate when they
joined the Petitioner (Party) and they exercised their freedom to leave it when
they contravened the party Constitution and refused or neglected to attend the
565 disciplinary proceedings as per their internal organisation rules despite the
invitations. They therefore chose not to associate or belong when the
disciplinary proceedings according to the Party Constitution were commenced,
so they left. Joining a party is an act of association and an act of belonging in
accordance with **Article 29(1) (e)** of the Constitution and it is voluntary. Their
570 expulsion was merely a formality to formalize their having left the party to pave
way for fresh elections to be held in the respective Constituencies.

"Leaving" is the object or focus of **Article 83 (1)(g)**. Expulsion is merely for
effectuating the purpose or intention of the **Article**. Expulsion in my view is a
preserve of the party during multiparty dispensation and it's not exercised by
575 parties arbitrarily or capriciously and was not exercised on the basis of

sentiment. A member of a party is expelled when that member violates the democratic principles and practice within the party Constitution or internal organization, in that allowing such member to remain in the party would affect negatively the promotion of a just, free and democratic society as intended by the Constitution. Counsel for the Petitioner in C.P 21/2012 and counsel for the 2nd, 3rd, 4th & 5th respondents submitted that the word 'leave' was clear and unambiguous and that therefore the literal and natural meaning should be given to it. My view is that the facts of the instant Petition are different from the case of **George Owor V. Attorney General & Another Constitution Petition No.38/2010** relied on by counsel for the petitioner. In that case the members had clearly left their respective parties/organization. They had subjected themselves to elections afresh in other parties and as independents which were different from the parties which provided them access to their then positions in Parliament. Those MPs had not been subjected to disciplinary proceedings and they had not been expelled from their respective parties for having contravened their parties constitution. While the literal and natural principle of constitutional interpretation could be applicable in that Petition of

George Owor Supra, it's the purposive approach of interpretation which is appropriate to be adopted in the instant case.

595 Once the word voluntary is read in the word leave, then it follows naturally that the word involuntary can be read in it as well. This creates the ambiguity and therefore it becomes imperative to adopt the purposive approach to interpretation.

It has been held consistently by the Supreme Court and this Court that, "***In determining the Constitutionality of legislation, its purpose and effect must be taken into consideration. Both purpose and effect are relevant in determining constitutionality of either an unconstitutional purpose or constitutional effect animated by the object the legislation intends to achieve.***" (See the cases already cited (Supra).

605 Counsel for Petitioner in Constitutional Petition No. 25/2013 cited the case of **Attorney General V. Major General Tinyefuza Constitutional Appeal No.1 of 1997** and particularly the Judgment of Oder JSC. It was emphasized that, *'the purposive rule entails the looking and understanding of the history of the enactment to know the intention of the Legislature which led to the*

610 *legislation.* Counsel for the 2nd, 3rd, 4th & 5th respondents relied heavily on the
Constitutional Commission Report Analysis and Recommendations. The
affidavit of Hon. Ssekikubo was annexed and the relevant part Annexure 'D',
the debate of the 7th Parliament in 2005 on the Constitutional (Amendment) Bill
NO.3 of the 28th July, 2005. All those were reproduced in the majority judgment,
615 I will not reproduce them. It had been proposed by the Attorney General that
expulsion be included as a ground for leaving a political organization or political
party for which one stood as candidate for election to Parliament. After the
debates the amendment was withdrawn. It was stated that it was opposed on
the basis that (1) it would lead to dismissals and counter dismissals from
620 Political parties and (2) that it would be used for internal strict discipline of
Political parties. Others opposed it on the basis that it was redundant. It's
important to note that the history to the enactment of the Constitution and in
particular **Article 83(1)(g)** started much earlier than 1995 and 2005. This is clear
from the preamble to the Constitution Supra. It should also be noted that as part
625 of the history of the enactment the Uganda Constitutional Commission was
established by Statute No. 5 of 1988 and the terms of reference of the
commission were provided in S. 4 and 5 of that Statute. The functions were,

among others, to establish a free and democratic system of Government that will **guarantee the fundamental rights and freedoms of the people of Uganda.**

630 (a) (i) *To study and review the Constitution (old Constitution) with the view to making proposals for enactment of the National Constitution that will create viable political institutions that will ensure maximum consensus and orderly succession.*

(b) Formulate and structure a draft Constitution that will form the basis for the Country's new Constitution.

635 (v) *Develop a system of Government that ensures people's participation in the governance of the country.*

(vi) Endeavour to develop a democratic free and fair election system that will ensure the peoples representation in the legislature and at other levels.

640 **(vii) Establish and uphold the principles of public accountability by the holders of public officers and political posts.**

The Constituent Assembly Statute 1993 (is part and parcel of the history to the enactment of the legislation) established and provided the

645 composition of the Constituent Assembly. It also provided the functions of
the Constituent Assembly in S.8 therein as follows;-

(a) To scrutinise, debate and prepare a final draft of the

Constitutional text prepared and submitted to the minister by the

Uganda Constitutional Commission under the provisions of

650 **section 6 of the Uganda Constitutional Commission Statute 1988.**

(b) To enact and promulgate a new Constitution of the Republic of
Uganda.

The Report And Analysis of Recommendations was just one of the working
documents and was not final, neither did it contain a draft Constitution. The
655 Constituent Assembly was tasked, under S.8 of the Constituent
Assembly Statute 1993 to scrutinize, debate and prepare a final draft of the
Constitutional text prepared and submitted to the Minister among others. It
was also tasked to enact and promulgate a new Constitution. Again as part of
the history of the enactment, **the Constituent Assembly during the**
660 **consideration stage of the draft Constitution of the Republic of Uganda,**
chapter 8 –the Legislature, Article 135 Tenure of office of Members of

Parliament, on Thursday 23rd March, 1995 starting from page 3519 of the Constituent Assembly proceedings particularly page 3533, **Article 135** of the draft Constitution was scrutinized, debated and was passed as it was in the
665 Draft Constitution This became the present **Article 83(1)(g)** of the Constitution which is in issue in this Petition. On page 3534 Mr. Lumala Deogratius (Kalungu West) had this to say, and I quote:

*“Madam Chairman, I am seeking clarification with regard to changing of parties from one to the other. In practice, someone may decide not to formerly resign
670 from one party to another for fearing that he will not be elected if he did so. So he sits on benches of the opposition but will always vote with the other party.”*

This clarification is spot on of the purpose and intention of the enactment of **Article 83(1)(g)** of the Constitution.

Deputy Chairman: Hon. Lumala, I think we had finished on that one. You are
675 taking us back. Does it relate to No.(2) which we are going to. I have been very alert if you had put up your hand I would have seen you. “Hon. Mulenga.

Mr. Mulenga: *Perhaps to put the minds of Hon. Lumala and others at ease, the word used is leaves. He can either leave voluntarily or by expulsion. If that*

party notices that he is no longer supporting them, they might expel him from the
680 party and therefore he leaves the party.”

This answer shows that expulsion was not the object of Article 83(1) (g) as
it would, stifle the establishment and promotion of a just, free and democratic
society as contemplated by the Constitution. The parties are independent, that is
why there is the requirement of compliance with the democratic principle as
685 provided in the Constitution. That is why expulsion is a preserve of the party. The
significance of Mr. Mulenga’s clarification is that when the party notices that a
member is no longer with it, the party expels them and it was not left out to
protect individual members as the four respondents replied in their pleadings. I
hasten to add, that, that is why the word “leave” in **Article 83(1)(g)** is neutral to
690 cause in my view. Since they had left the party by their conduct, to be
democratic they would have just vacated their seats so that fresh elections were
conducted. Since they did not do so, it is only the party which had the mandate
to reject them by expelling them. The deliberations at the consideration stage of
the Constituent Assembly shows the mischief the enactment intended to cure.
695 So the amendment which was withdrawn was actually redundant.

The 1995 Constitution was framed in that way to provide safeguards which were lacking in the independence, the Pigeon hole Constitution of 1966 and the so called Republic Constitution of 1967.

Counsel for the four MPs submitted that he was buttressed by Mr. Yoweri

700 K. Museveni evidence in the affidavit to the effect that, he recognized that the crossing was voluntary. That “Dr. **Milton Obote merely persuaded the MPs in opposition**” this submission cannot stand in light of what has been stated in this Judgment and the history of the enactment.

705 The act of Dr. Milton Obote of persuading the members of Parliament from the opposition, to cross on the floor without them seeking fresh mandate from the electorate was the actual mischief that, **Article 83(1)(g)** was intended to cure. He was obviously depriving the people of Uganda of their freedom to choose leaders of their choice. . He took away their sovereignty. His acts of persuasion
710 were out of step with the establishment and promotion of a just free and democratic society to say the least. It is therefore no wonder that the alliance he

formed of UPC & Kabaka Yekka (KY) collapsed and eventually we got into Constitutional instability as per the Petitioner's evidence.

715 Uganda became a one party state, which, the new order as embodied in the 1995 Constitution out laws.

The 2nd, 3rd, 4th and 5th respondents want to superficially appear to belong to the Petitioner when they made themselves defacto independents by passing off as members of the Petitioner, whereas not. The petitioner had not used unconstitutional means to throw them out of the party. On the contrary it is the 720 2nd, 3rd, 4th and 5th respondents who are suffering from the Movement Political System which has individual merit as a basis for election to political offices as per **Article 70** of the Constitution. This is inconsistent and in contravention of the Constitution. See **Article 73(1)** of the Constitution. The Cross petitioner and first respondent in all petitions pleaded that a referendum on political 725 systems was conducted in accordance with **Article 74** of the Constitution and the people of Uganda chose and adopted the multi-party political system.

During the multi-party political dispensation/period, it is the party which one subscribes to which has the key of access to the people in constituencies.

It was submitted by counsel for the cross petitioner and 1st respondent in all
730 petitionsthat electing a candidate of a political party is an act of association
which I agree with I would add that much as the voters can vote in any way, they
want a party flag bearer has no option but to follow the party's line in the
manifesto and ideologyduring multiparty dispensation. Counsel further
submitted that, **Article 29(1)(e)**, of the Constitution cited supra guarantees the
735 right to associate. This means that if the right to associate is guaranteed along
with it, flows the right not to associate. That because the four MPs had the
freedom to join the NRM party, by their joining the party they associated with the
party and its supporters in accordance with constitutional provisions Article
29(1) (e),38(1), 43(1)(c)&71(1) (c). That the people under **Article 1** exercising
740 theirsovereignty, expressed their will and consent on who shall govern
them...through free and fair elections of their representatives...See (**Article**
1(4)).

It was further submitted that by choosing a party flag bearer or candidate, the
party they support the people think that it will form a government and that
745 candidate who is the flag bearer will influence the affairs and policies of

Government by advancing the party ideology and manifesto. By electing, the people exercise their sovereignty in accordance with **Article 38(1)** of the Constitution in a multi-party political system dispensation.

750 By electing the 2nd,3rd,4th and 5th respondents as their flag bearers they were exercising their right to participate in the affairs of government through their representatives in accordance with the **Article 38(1)** of the Constitution.

I accept the above submission as it's in line with the evidence and the law. The party Constitution was the agreement between the four MPs which provided access or opening for them to the people in the Constituencies concerned.

755 The moment they contravened their party internal organisation, they legally closed the access to & from their constituencies and **Article 38** cannot not be applied in their favour. They are prejudicing the rights and freedoms of the people in their Constituencies who elected them and the party after joining the Petitioner and having access to the Public offices they held through the Party.

760 Apparently they infringe and or contravene **Article 43(1) (c)** of the Constitution and their continuous stay in Parliament becomes inconsistent with that provision and the others cited Supra.

The submission of counsel for the 2nd,3rd,4th and 5th respondents that you cannot be compelled to be an independent, cannot be sustained. He based his
765 submissions on *Constitutional Appeal No. 2/2006 Brigadier Henry Tumukunde V. Attorney General*. He relied on the Judgment of Hon. Justice Kanyeihamba JSC as he then was, and quoted as follows: “A Member of Parliament the Supreme legislative organ of the land should never have to resign under the threat or directions of any one but in accordance with provisions of the Country’s
770 Constitution and laws made by Parliament and do so voluntarily.”

The Brigadier Tumukunde case supra is distinguishable from the facts of this case. I accept the submissions of counsel for the petitioner in constitutional petition No. 19/2013, that, in that case the petitioner was a representative of an interest group (UPDF) which is not a body corporate and not a party or
775 political Organisation. Article **83(1) (f)** is not applicable at all to the facts of this case.

The evidence embodied in the responses of the 2nd,3rd,4th and 5th respondents and the evidence of the Petitioner in C.P 21/2013 show that, they voluntarily

made themselves defacto independents and left the party as earlier discussed
780 in this judgment.

The submissions are neither supported by evidence nor by law. To accept such
submissions would be perpetuating impunity and indiscipline. This Court
adhering to the judicial oath and **Article 126(1)**, is under an obligation to deter
any kind of precedent which would plunge this Country into turmoil again.

785 The Rt. Hon. Speaker in the impugned ruling applied a precedent in the pre-
Commonwealth period. She cited the incident of King Charles 1 of England in
1642 which was a time of absolute monarchy when he wanted to arrest five
members of the House of Commons. My view is that it was very unfortunate as
we are in the 21st Century during which the Commonwealth came into being in
790 1949. A precedent in an absolute monarchy cannot be a precedent to be
followed in this era since there is nothing democratic in an absolute monarchy, to
be compared with the people's popular Constitution of 1995. The ruling to retain
the expelled MPs who had left the Petitioner was inconsistent with and was
in contravention of the provisions of the Constitution (supra).

795 Hon. Mohammed Nsereko stated in his affidavit in reply to CP 21/2013 that,
there was infringement of their rights as individual MPs, but as counsel for the
Cross Petitioner and for the 1st Respondent argued, the electorate in those
respective Constituencies were not enjoying their right to representation in
Parliament and that in interpreting **Article 83(1) (g)** there is need to balance the
800 competing rights and interests i.e. the MPs, the voters and the party.

Some other comparable case law I found informative and persuasive was the
**Malawi Presidential Referral No, 2/2005. On the question of Crossing the
floor by Members of Parliament, an authority provided by counsel for
Petitioner and Cross Petitioner in Constitutional Petitions 19/2013&
805 16/2013 -[http://www.malawillii.org/mw/judgment/high court-
general/Division/2006/22](http://www.malawillii.org/mw/judgment/high%20court-general/Division/2006/22).Cite visited on 09/08/2013.** The provision the Court
was interpreting was about voluntary leaving of the party, and this is my line of
argument. The Supreme Court of Appeal of Malawi (in the Judgment of Twea J)
held that,“**the freedoms of Association, conscious and expression are
810 largely all embodied in the political rights under S. 40 in respect of MPs. (**
S. 40 of the Malawi Constitution is equivalent to Article 29 (1)(e) of our Uganda

Constitution).is born out of the fact that when one decides to join a political party one exercises his right to associate. The consequence of joining an association is that, one becomes subject to the rules and regulations of the association. One will exercise one's freedom of conscious and expression in respect of matters pertaining to the objectives of the said associations within the scope of the rules and regulations of that Association, if one is not happy with the rules thereof is free to exercise his or her own right not to belong to that association any more. It cannot be heard to be said that members of the National Assembly who are members of the Political parties are denied their freedoms of associations' conscious and expression. The fact of the matter is that as members of political parties, which is a right exercised under S.40, they have acquiesced to have the freedoms and rights limited. This notwithstanding, as submitted the rights and freedoms have not been removed. The rules and regulations of their political parties provide and limit the legitimate avenues that, the restriction of the right of Members of Parliament in this respect has been held to be reasonable and recognized by the

international human rights standards and necessary in an open and
830 democratic society: (Experte chairperson of Constituent Assembly.

In Re certification of Constitutions of the Republic of South Africa – 1996
(4) SA, 744(1) (2)...)”

The provision which was being interpreted was S.65 of the Malawi Constitution.
It provides;“ **The speaker shall declare vacant the seat of a member of the**
835 **national Assembly who was, at that time of his own, or her election, a**
member of one political party, represented in the National Assembly, other
than by that member alone, but who has voluntarily ceased to be a
member of that party or has joined another political *party represented in*
the national Assembly, or has joined any other political party, or
840 ***association or organization whose objectives or activities are political in***
***nature.*”**

By the four MPs’ pleadings and conduct they voluntarily ceased to be members
of the Petition (NRM party) and they made themselves defacto
independents which compelled the party to exercise its prerogative to expel
845 them.

The purpose of **Article 83(1) (g)** was to prohibit floor crossing in whatever form as long as the democratic principles and practice as per the Constitution were violated as shown in this Judgment. They had indirectly and voluntarily left the party and therefore they voluntarily ceased to be Members of Parliament and
850 vacated their seats upon expulsion.

To promote multiparty democracy and to discourage disappearance of party politics the framers of the Constitution put all those various provisions above,including **Article 83(3)** of the Constitution which provides ***“The provisions of clauses (1)(g) and (h) and (2) of the article shall only apply***
855 ***during any period when the multiparty system of government is in operation.”***This further explains the intention of the enactment.

Finally I conclude that the 2nd, 3rd,4th and5th respondents voluntarily (freely, deliberately, intentionally, optionally, willingly) left the Petitioner in Constitutional Petition 21/2013,and consequently contravened the Constitution. The issues
860 therefore,1,4,5 and 6, are answered in the affirmative that the 2nd,3rd,4th and 5th respondents had actually left the party/Petitioner and they therefore vacated their seats upon expulsion.

I agree with the conclusion, declarations and orders reached by my learned
brother Justices for the above reasons in resolution of issue 1,4,5,6 and agree
865 with all the resolutions on the rest of the issues.

Dated thisday of2014.

HON.LADY JUSTICE FAITH E.K.MWONDHA, JA/CC

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