

PARLIAMENT LIVING LARGE AT THE EXPENSE OF THE TAXPAYERS: A CRITICAL LOOK AT CONSTITUTIONAL COURT RULING IN THE MWESIGE CASE

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I. Introduction.

In the recent years, Ugandan Members of Parliament have on several occasions approved and passed resolutions for increment of their own emoluments. This has largely been criticized both by the public and fellow MPs. The move has always triggered sharp criticism from human rights activists, Civil Society Organisations and the general public at large. During the last increment session, Hon. John Ken Lukyamuzi, an opposition MP argued that [MPs] already earn about 15 million shillings (about \$6000) per month. How can someone propose an increment? He further noted that the increments were draining the economy and depriving the people of the services they need. He argued that that was- outrageous and unwarranted.¹ Similarly, Hon. Gerald Karuhanga voiced his concern that MPs had become “like suckers and this trend surely [was] not politically healthy for [them] and more critically for the nation.”² He further asked the Executive to deliver services so that MPs cease performing government roles in their constituencies.

This vice is not only eating up the Ugandan Parliament but it’s cross cutting throughout the whole of the East Africa and the reactions are not any different. This issue presents a more critical question as pertains reconciling the salary scale across all sectors and not leaving one sector with powers to decide as and when they please, how much to earn.

II. Background to Constitutional Petition No. 31 of 2011

It has become common for Members of Parliament to table proposals at the beginning of their terms intended to revise and increase their own salaries. In the last period, some of the justifications given by the clerk of parliament was that “this increment is partially funded by the amount of subsistence allowance formally paid to members from the non-wage budget.”³ However, majority of the public view these increments as greedy undertakings that are devoid of consideration of the general salary scales for other public servants.

Across the board in Uganda, most public servants—notably teachers, doctors and nurses, earn as low as \$100 (one hundred dollars) a month, and have on various occasions laid down their tools due to poor pay and poor working conditions. In fact Bufumbira East MP Eddie Kwizera arguing against the increment noted that “I can’t support the request for UGX 43

¹ Ugandan MPs Demand Higher Salaries, News Africa April 03, 2014, accessed at <http://sbeta.iol.co.za/news/africa/ugandan-mps-demand-higher-salaries-1670520>.

² Yasin Mugerwa, ‘Parliament Plans to raise MPs Pay’, The Daily Monitor, April 02, 2014, accessed at <http://www.monitor.co.ug/News/National/Parliament-plans-to-raise-MPs-pay/-/688334/2266100/-/yb73yd/-/index.html>.

³ Ibid.

billion to increase our pay. Those salary increases are for those earning below Shs500, 000 like teachers and nurses.”⁴

In neighbouring Kenya, after a teacher’s strike that paralyzed the education sector, leading to the Supreme Court of Kenya awarding a pay increment of 50-60%, “Budalangi MP Ababu Namwamba filed a motion with the speaker seeking to slash by 50% salaries of the Deputy President, Members of Parliament, Governors, Senators, Members of County Assembly (MCAs), Commissioners and Judges,” a move geared to make available some money to raise the salaries of teachers.

In Uganda, when the Parliament was questioned about increase of teachers and health workers salaries, Parliament’s spokesperson Helen Kawesa argued that “Parliament is not selfish, as a matter of fact, over the years they had been at the forefront of advocating increased salaries for teachers and health workers but government always said there was no money.”⁵

This notwithstanding, there seems to always be enough money to effect the MPs demands for increments. This critical realisation informs the argument that it’s not only MPs who require and deserve an increment in their emoluments, but also other public servants that toil under more difficult and harsh working conditions, and if there was a political will within the government, then clear mechanisms would be undertaken to ensure that all sectors get a revision of their pay to align with the conditions within the country.

Nevertheless, Government’s excuse has always been; any pay increase that is not properly planned could actually fuel inflation and aggravate an already hard economic situation. . It has become rhetoric from government that other sectors’ grievances shall be addressed in the next financial year a promise that always passes begging. According to Cissy Kagaba, an anti-corruption activist; “[MPs] are a selfish lot that has failed to connect to the needs of their people.” She further argues that “with the poor service delivery, how can they justify their increase? We don’t see any value addition from their being MPs.”⁶ It is from such troubling realities, that the 2011 Constitutional petition was triggered.

a. Brief Facts of the case.

Mwesige Wilson in 2011 petitioned the Constitutional Court seeking declarations as to whether it is proper and constitutional for Members of Parliament to pass resolutions for the increase of their emoluments whenever they so wish yet their counterparts in public service are earning less and their complaints are never handled which seemed to be discriminative in nature.

The Attorney General and the Parliamentary Commission in response to the petition argued that the Constitution must be read as a whole without one provision destroying the other. As such, raising emoluments for MPs was authorised by Article 85 and in that regard cannot be unconstitutional. They further argued that Members of Parliament are not public servants thus

⁴ Ibid.

⁵ Yasin Mugerwa, ‘Parliament Plans to raise MPs Pay’, supra note 2.

⁶ Ibid.

no discrimination as between MPs and other public servants. This discussion rotates around three provisions of the law which I shall reproduce below for better analysis.

- i. Article 85 (1) of the Constitution is to the effect that “A Member of Parliament shall be paid such emoluments, such gratuity and pension, and shall be provided with such facilities, as may be determined by Parliament.”
- ii. Article 93 provides that Parliament shall not, unless the bill or the motion is introduced on behalf of the government:-
 - a) Proceed upon a bill, that makes provision for –
 - b) the imposition of a charge on the consolidated fund or other public fund of Uganda or the alteration of any such charge otherwise than by reduction.

Section 4(1) (a) provides that The Minister may by statutory instrument make regulations for allowances and amenities of members of parliament.

b.Arguments and the Decision of court.

1. Whether sections 3(5), 4 and 5 of the Parliament (Remuneration of Members) Act are inconsistent with Article 93 of the Constitution?

It was the argument of court that; *Much as the Parliament can amend by resolution under Section 5 of the Act, the schedule to the Act which contains the emoluments of members, such resolution must be on a motion brought on behalf of the Government to Parliament. This is the only way to read Section 5 to bring it into compliance with the Constitution. Since Section 5 has in the past been read without bringing it in conformity with Article 93 of the Constitution, the Court was satisfied that it is null and void to the to the extent of its inconsistency with Article 93 of the Constitution.* No emoluments of members of parliament shall be determined by parliament in disregard of Article 93 of the Constitution.

2. Whether the current emoluments earned by members of parliament are unconstitutional?

The Court’s argument was that no evidence was adduced of the current emoluments of members of parliament. The Court therefore had no details of what they earn currently. Neither was the current resolution laid before the court. Therefore, the court was not in position to resolve this issue.

3. Whether the disparity in the scale of compensation of members of parliament and public servants is discriminatory?

Court argued that Article 21 is called into play where a person or group of persons are discriminated against or treated differently on account of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social and economic standing, political opinion or disability.

Court held that none of the said categories set out in Article 21 (3) are implicated in the facts before the court.

III. Analysis of Court's Arguments and Decision

I agree with court when it said that Article 85 must be read together with Article 93 to achieve a harmonious reading of the Constitution. Article 85 (a) shouldn't be read in total disregard of Article 93 because as a rule for constitutional interpretation, the constitution must be interpreted as a whole "*no single provision of the constitution is to be segregated from the others and to be considered alone but all provisions bearing upon a particular subject are to be brought into view and to be interpreted as to effect the greater purpose of the instrument*",⁷ which i believe was properly resolved by court.

On the issue of "*Whether the current emoluments earned by Members of Parliament are unconstitutional,*" I am persuaded to say with all due respect that the learned Judges dodged giving a conclusive decision on this issue. Court's argument on this issue was that "*No evidence has been adduced of the current emoluments of members of parliament. We have no details of what they earn currently.....*"

This could have been an oversight by the petitioner but still this being a court of competent jurisdiction; it had the power to make an order as to discovery of the parliamentary *Hansards* showing the parliamentary proceedings and the current emoluments of MPs.

In my humble opinion, this issue was left hanging. It would be more fulfilling and rewarding if court made an order directing that all monies received by Members of Parliament contrary to Article 93 of the constitution⁸ should be refunded back to the consolidated fund failure of which a certain percentage would be deducted off from each member's monthly emoluments until when all monies are fully refunded back.

On the issue of the disparity in the scale of compensation of Members of Parliament and members of the public service not being discriminatory nor in contravention of Article 21 of the Constitution as held by the Constitutional Court in my opinion was wrong because proposals of members of parliament for increment in their emoluments are immediately considered whereas for public servants they never come through and the scales are totally different which is an obvious violation of the right to equality as per Article 21 of the Constitution.

IV. Recommendations.

In Kenya for instance, they have an independent salaries and remuneration commission that determines remunerations of civil servants inclusive members of Parliament and the President which I recommend should be adopted to have a levelled ground. This is more tenable and applicable across the board. Hon. Eddie Kwizera, a Member of Parliament's Public Accounts Committee, had argued that the request for pay rise "disguised" as consolidation of MPs pay

⁷ South Dakota Vs North Carolina 192 US 268 (1940) 448.

⁸ Article 2(2) of the Constitution; If any other law or custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall be void.

is a testimony that the country needs a Salaries Commission to harmonise issues of remuneration.

All in all this discussion brings the question whether the performance of MPs is commensurate to the salaries that they get or even yearn to get. My answer is a NO! Implying there is need for reform in our laws and strict adherence to the principles of rule of law to avoid scenarios of inequality, conflict of interest and favouritism in different sectors and numerous litigation seeking the interpretation of court.