THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA (CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 85 OF 2024

IN THE MATTER OF JUDICATURE (JUDICIAL REVIEW) RULES 2009 AS AMENDED

AND IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN

BWETTE DANIEL::APPLICANT

AND

THE PARLIAMENTARY COMMISSION:::::::::::::::::::::::::::::::::::::RESPONDENT

Before: *Hon. Justice Dr Douglas Karekona Singiza*

RULING

1 Introduction

The motion before me[1] challenges the decision by the Parliamentary Commission (the respondent) to recognise some of her members with monetary awards. In many countries of the world, whether consolidated democracies or fragile ones, it is not uncommon to reward persons whose contributions to a nation's political development, social institutions, or scientific endeavours has been extraordinary. A proper reward system for exceptional performance is usually intended to promote innovation and creativity. Caution is however required to ensure that any reward system in place is not unlawful and arbitrary, and therefore counter-productive. It is thus probably not easy to challenge a decision to recognise a political leader in any country whose history has always been fractured and polarised. In fact, there are very good reasons for rewarding such a leader when he or she has vacated political office without blemish. What may be open to challenge is when such a recognition takes the nature of a monetary benefit, and one that directly flows from our nation's coffers without following the requisite laws.

1.1 Background

The motion before me rests on a number of suppositions, which have been heavily redacted as below. The four Commissioners of Parliament, who are also Members of Parliament (MPs) for different constituencies, sat and approved a payment described as a service award on 6 May 2022 at 10:00 hours in the Rt. Hon. Speaker's Boardroom, Parliament Building.[2]

[1] This motion was brought under the provisions of Articles 50, 28, 40, 42 and 44(c) of the Constitution; sections 37 and 40 of the Judicature Act, Cap 16; and Rules 3, 6 and 7 of the Judicature (Judicial Review) Rules S.I. No. 11 of 2009 as amended.

[2] At the meeting, it was decided as follows: 'one time Pay-off "Service Award" of UGX 500,000,000= for the Leader of Opposition – one time Pay-off "Service Award" of UGX 400,000,000= for Backbench Parliamentary Commissioners – the Service Award Payment shall be one off payment and shall not change regardless of length of or tenure of office … The above mentioned … service award shall be held by the current sitting Leader of Opposition Hon. Mathias Mpuga and Backbench Commissioners on person to holder basis.' In the minutes, it is indicated that five members were present, namely [the Rt. Hon.] Speaker/chairperson, the [Hon.] Leader of Opposition, and three other [Hon.] Commissioners. Three other members of the Parliamentary Commission were absent with apology. These were the [Rt. Hon.] Deputy Speaker, [the Rt. Hon.] Prime Minister and leader of Government Business in Parliament, and [the Hon.] Minister of Finance Planning and Economic Development. Also in attendance were the Clerk to Parliament, the Deputy Clerk (Corporate Affairs), the Deputy Clerk (Parliamentary Affairs), Ag Director (General Counsel to Parliament), Executive Secretary, Director of Finance, and Ag Director (Commissioner Secretary/ Minute Secretary). Under Min. P.C 021/20122, in para (II) p 4, it was decided that (i) '[t]he Leader of Opposition Parliament shall be provided with 1 bodyguard when *he* leaves office. (ii) [t]he above-mentioned benefits and service award shall be held by the current sitting Leader of Opposition Hon. Mathias Mpuga and Back Bench Commissioners on person to holder basis'. (Emphasis on the word 'he' added.) The phrase 'above-mentioned' is used in reference to the respondent's decision taken on, inter alia, the

These funds were then included in the respondent's recurrent and development budget for the financial years 2023/2024 under Item 2-1-1-05, entitled 'Ex-gratia for Political Leaders', in paras VII and VIII as follows: 'Service Award to the Leader of Opposition totalling to UGX 500,000,000… Service Award to Backbench Parl. Commissioners: 400,000/= x3 [*sic*]'. The four Commissioners who sat and approved this decision included the Leader of Opposition in Parliament and the respondent's chairperson (who is also the Rt. Hon. Speaker of Parliament). The applicant's view is that the above payment was allegedly given an unknown name, that of 'service award', which is outside the known lawful benefits of serving MPs.

The contention is that none of the parliamentary committees, nor the full House, were involved in the challenged decision. The applicant thus construes these payments not only as unlawful and unreasonable but unfair. In resolute terms, the motion takes the view that the impugned actions manifest 'an abuse of statutory powers and discretion, mal-management [*sic*] of a statutory body and an abuse of a constitutionally guaranteed rights of Ugandans …' for the following reasons:

1) the absence of any justifiable reasons to make decisions that are against the Constitution;

2) the administrative function of Parliament is created by an Act of Parliament and is subject to the same constitutional and other legal constraints applicable to any other arm of government;

3) 'the decision [on the service award] has made the Uganda service sector rights such as decent health, infrastructure [*sic*] and good education to become violated [*sic*]'; and, finally

4) on account of constitutionalism and the rule of law, the application should succeed.

In view of the above alleged transgressions, the following prerogative reliefs are then sought, as summarised below:

challenged service award. Furthermore, on page 53 of the national budget, reference is made to Item 2-1-1-1-05 'Ex-Gratia for Political Leaders', with special paras (VII) 'Service Award to the Leader of Opposition' and (VIII) 'Service Award to Back Bench Parl. Commissioner 400,000 X 3'. Later in this ruling, I shall comment on the implications of the choice of words captured in the minutes of the respondent's meeting when compared to what is then captured in the national budget.

1) A declaration that the decision, dated 6 May 2022, to award the Leader of Opposition in Parliament (Hon. Matthias Mpuga) UGX 500,000,000, and three other Commissioners UGX 400,000,000 each, under the guise of this being a so-called service award, was *ultra vires*, illegal, oppressive, arbitrary, biased, high-handed, irrational, unfair, and therefore null and void.

2) A declaration that the decision in creating and awarding payment under the name of a service award is 'an abuse of power and in contravention of [the principle] that a [political] leader should not make a decision when he or she has a pecuniary interest'.

3) An order of *certiorari* quashing the decision of the respondent dated 6 May 2022.

4) An order of prohibition restraining the respondent or its agents from continuing to misuse or misapply its discretionary power in awarding itself money not authorised by law.

5) Costs of the application.

2 Submissions made to the court

2.1 The Application

The motion is supported by the affidavit evidence of Mr Bwette Daniel, who states that he is an ardent believer in constitutionalism and the rule of law whose motion, submitted in the public interest, seeks to justify the grant of these reliefs. The respondent challenged the averments in the motion and supporting affidavits by relying on the deposition of Mr Benedict Arinaitwe of the Office of the General Counsel to Parliament, Department of Litigation and Compliance.

2.2 Applicant's deposition

In Mr Bwette's deposition, the evidence was that on 30 March 2024 he came to learn of the impugned decision, his understanding of events being that on 6 May 2022, members of the respondent had allocated themselves approximately UGX 1,700,000,000.[3] He lists the specific beneficiaries as follows:

[3] As of 23 June 2024, the exchange rate was UGX 3,745 to $1.

1) Hon. Akampurira Prosy, MP, District Woman Representative, Rubanda County Constituency;

2) Hon. Solomony [*sic*] Silwany, MP, Bukooli County, Central Bugiri District Constituency;

3) Hon. Prosy Afoyochan, MP, District Woman Representative, Zombo District Constituency; and

4) Hon. Mathias Mpuga, former Leader of Opposition in Parliament, MP, Nyendo-Mukungwe, Masaka City Constituency.

A copy of the minutes of the meeting is pleaded and marked as Annexure A.

It is Mr Bwette's evidence that the impugned payment was described as a service award, a term which is unknown in the parliamentary system as it does not form part of the official benefits of members of the Parliamentary Commission. He also dwells on the fact neither the full House nor any of its committees participated in the process that led to the decision whose legal and rational basis he is challenging. This decision, he insists, was not only unfair but also arbitrary. To drive his point home, Mr Bwette advances a number of other suppositions:

1) the respondent's actions are an abuse of its statutory powers and manifestly a wrongful exercise of discretion;

2) the decision cannot be legally justified because it is a violation of the Constitution;

3) the power to administer vests in the Rt. Hon. Speaker by an Act of Parliament that in turn imposes an inescapable duty to operate within the confines of the constitutional and statutory framework;

4) the flawed nature of the decision has a direct impact on the service-delivery system that actualises Ugandans' rights to decent health care, education and infrastructure;

5) aside from potentially causing financial loss to the *fiscus*, the decision casts a poor light on Uganda's image and suggests that it is a country tolerant of corruption and oblivious to all the efforts being made to improve citizens' livelihoods;

6) a proper remedy is required as a deterrent to public officials in other organs of the state who may wish to make similar unconstitutional and illegal capital-mobilisation efforts;

7) the decision complained of is in any case unconstitutional insofar as it is discriminatory, high-handed and arbitrary; and

8) this Court is able to check the excesses of the respondents.

2.3 Respondent's affidavit in reply

In reply, Mr Arinaitwe's deposition highlights a number of facts about the constitutional and legal status of the Parliamentary Commission, including those concerning its composition and the regulation of its functions by Article 87A of the Constitution. Specifically, he avers that the Rt. Hon. Speaker, the Rt. Hon. Deputy Speaker, the Leader of Government Business (in the House), the Minister of FPED, and four other, back-bench MPs are indeed members of the Commission. Also highlighted is the fact that, in terms of the Constitution, Parliament can determine the 'emoluments, gratuity and pensions and any other facilities' of its MPs.

With the above framework in mind, Mr Arinaitwe then lays bare the respondent's fiscal power, which includes the discretion to determine MPs' allowances. According to him, the respondent's exercise of its fiscal power commences with a preparation of the annual revenue and expenditure estimates, after which a recommendation is made to the House in order to determine the allowances payable. With strong emphasis on the self-accounting power of the respondent, Mr Arinaitwe explains that it is legally required that the respondent's budget then be submitted to the President. Once that has been done, the respondent's budget is 'codified in an appropriation Bill charged on the consolidated fund'.

Mr Arinaitwe does not, however, indicate at this stage what entails the role of the President here, but seems to take the view all the same that the challenged service award had been captured 'under the ex-gratia head for political leaders'. Against this background, he maintains that the payment complained of was 'lawfully charged on the Consolidated Fund' just like any other expense of Parliament. This, he further asserts, was processed in the same way as other payments, such as the salaries and operational expenses that are legally required and payable from the Consolidated Fund. That being so, he avers, it was not necessary to again seek the approval of the entire House though another Appropriation Bill. On that basis alone, Mr Arinaitwe takes the view that there can never be any evidence of unfairness or arbitrariness on the part of the respondent.

It is Mr Arinaitwe's contention that the complaint about the service award is grounded merely in what he describes as a 'scuttlebutt … legal excursion' with no credible source of information

to support it. He maintains, on the contrary, that the payment was both legally sound and procedurally proper in view of the following six suppositions:

1) The approved payment followed a proper act of the exercise of the respondent's legal administrative mandate.

2) Prior to the payment, the Rt. Hon Speaker sought presidential approval in terms of Article 155 of the Constitution.

3) The President expressed an opinion on the payment which was, in any event, embedded in the respondent's budget.

4) In exercise of the delegated power of the President, the Minister of FPED laid the challenged service award before the full House for approval.

5) The entire budget, which included a service award payment, was examined by the Legal and Parliamentary Affairs Committee and subsequently tabled (before the full House) together with the budgets of other self-accounting bodies.

6) The service award was then approved by the entire House under 'the ex-gratia head of vote 104' of the respondent's allocated budget. (See Annexure B of the national budget at page 53.)

Considering that the respondent usually holds the rule of law and constitutionalism dear, it is Mr Arinaitwe's contention that the motion in its present form is without any merits, never mind that it is fact moot and time-barred.

2.4 Affidavit in rejoinder

In rejoinder, the applicant disputes the respondent's evidence that the service award was ever included in the national budget for the financial year 2021/2022 before it was paid out, and claims that that very payment was never reflected in the respondent's administrative and development budgets of following year. It was the applicant's rejoinder evidence that the respondent's version of evidence on the service award payment does not state that the budget estimates for 2021/2022 were different from those of the financial year that followed. It was therefore factually wrong to state that the respondent had included the service award under the ex-gratia head for political leaders, and was thus illegally charged on the Consolidated Fund.

The applicant reiterates his evidence that neither any of the parliamentary committees, nor the entire House ever approved the challenged service award. He maintains the view that the illegality of the service award is apparent in the evidence that it was, among other things, charged on the Consolidated Fund without the permission of the House. The applicant questions how a service award that was purportedly decided on in the 2021/2022 budget could be approved and become payable in the budget estimates of 2023/2024.

2.5 Issues for determination

The motion before me and the reply to it were prosecuted largely by way of written submissions in which both sides raised similar issues for determination. They are as follows:

1) Whether the application is amenable to judicial review.

2) Whether the impugned decision dated 6 May 2022 authorising the payment to the Leader of Opposition and three back-bench parliamentary commissioners UGX 1,700,000,0000 was illegal, procedurally improper, and irrational.

3) The remedies available to the parties.

3 The Court's power of oversight of public bodies

This section deliberates on Issue 1: *Whether the application is amenable to judicial review.* In so doing, it also engages with the third issue regarding remedies.

Here, it is pertinent to consider the meaning of the term 'judicial review'. This refers to the oversight role that Courts play in regard to the processes by which public bodies and public officials exercising statutory functions make decisions.[4] Courts of law have been warned time and again to be cautious and recognise that their mandate to exercise such oversight is narrow.[5]

As regards the nature of the remedies that are available in judicial review, many Courts in Uganda have discussed this in detail. There is no doubt by now that those remedies are discretionary and in fact may not be considered at all, even when an affront to certain procedural requirements is apparent.[6] Be that as it may, whenever decisions against public bodies are challenged on account of illegality, irrationality, or procedural impropriety, three

[4] See *Oyaro John Owiny v Kitgum Municipal Council* MC No. 0007 of 2018.
[5] See *Minister for Aboriginal Affairs v Peko-Wallsend Ltd*: (1986) 162 CLR 24, 40–41, which cites *Wednesbury Corporation* [1948] 1 KB, 228.
[6] See *Credit Suisse v Allerdale Borough Council* [1997] QB 306 at 355D.

remedies are triggered. These are (1) *certiorari;* (2) *mandamus;* and (3) prohibition. Each of the writs available in judicial review operates differently, depending on the act complained of.

It is the applicant's counsel's argument that the application in its present form properly yields the oversight power of this Court in terms of Rules 7A of the Judicature (Judicial Review) Rules as amended. The undeniable fact that the respondent is a statutory public body, as established by article 87A of the Constitution, and regulated in the main by a specific Act of Parliament, is presented as all but clear.

3.1 Decision

It is noted that although the respondent indicated in its reply to the motion that the motion was potentially filed out of time and probably moot, these two objections seem to have been abandoned during the submissions, and hence require no determination by this Court.

As understood by this Court, the applicant's main complaint is, first, that neither the House nor any of its committees took part in the process leading to the impugned decision; secondly, that there are no lawful justifications for the impugned decision; and, thirdly, that the respondent, as the administrative wing of Parliament, is duty-bound to follow the necessary constitutional and statutory safeguards around the Consolidated Fund. In the light of the alleged illegal and procedural breaches that have been presented, there are sufficient grounds to trigger the usual oversight power of this Court in judicial review. The Court is in no doubt that there is clear evidence on which to hold that this application is amenable to judicial review.

Indeed, both parties make the point using three-head argument: illegality, procedural impropriety, and irrationality, as discussed in the sections below.

4 Illegality as a ground for judicial review

This section now deliberates on Issue 2: *Whether the impugned decision dated 6 May 2022 authorising the payment to the Leader of Opposition and three back-bench parliamentary commissioners UGX 1,700,000,0000 was illegal, procedurally improper, and irrational.*

The applicant's counsel commenced his submissions by focussing on the Court's oversight parameters using the limb of illegality in judicial review. According to the applicant's counsel, all that the Court does is to double-check if a public body's decision was undertaken within the proper confines of its regulatory framework. The argument here is that while the respondent's

administrative and self-accounting power in sections 2[7] and 29[8] of the Administration of Parliament Act Cap.272 (AOPA) is not questioned, the absence of any endorsement by both the President and the full House before the final approval is what is legally problematic in terms of section 29(2) of the AOPA. At any rate (so the argument went), the legal precaution in section 42 of the AOPA[9] was ignored due to the absence of any evidence of the approval of the entire House. In its head arguments, the respondent's counsel maintains that the impugned decision was lawful and procedurally proper.

The respondent began by re-stating the principles of illegality as a ground for the Court to exercise oversight power over public bodies' decisions, thereby making the point that the respondent had the legal power to take the decision on the payment of the service award. According to counsel for the respondent, in terms of article 87A of the Constitution read together with sections 2, 29 and 42 of the AOPA, a clear power to take the decision complained of is revealed. Disputing the contention in the applicant's submission that the legal process embedded in section 42 of the AOPA was never complied with, counsel for the respondent highlighted the following propositions:

1) The respondent's financial and accountability regulatory power is, in terms of section 6 of AOPA,[10] wide because of its obligation to make recommendations to the House in regard to provisions for the welfare and privileges of MPs as well as the Rt. Hon. Speaker and Rt. Hon. Deputy Speaker.

[7] Section 2 of the AOPA establishes the Parliamentary Commission as a legal person composed of the Speaker, the Deputy Speaker, the Leader of Government Business or his or her nominee, the Leader of the Opposition or his or her nominee, the Minister responsible for finance, and four other MPs, one of whom shall represent the O opposition side in the House. It is also required that one of the four other MPs referred to shall be a woman. The four commissioners hold office for two and a half years.

[8] Section 29 of the AOPA provides as follows: '(1) In each financial year, the Commission shall prepare and submit to the President estimates for the following year of the expenses of the departments of Parliament *and any other expenses incurred for the service of the Parliament*. (2) The President shall cause the estimates to be laid before Parliament without revision but with any recommendations that Government may have on the estimates.' (Emphasis added.)

[9] Section 42 of the AOPA provides that 'members of the commission shall be paid such allowances as may be determined by the commission with the approval of Parliament'.

[10] The most relevant provisions here are found in section 6(b), (h) and (i), which states thus: '[the functions of the commission are - … (b) to review the terms and conditions of service … of persons holding office in Parliament; (h) to make recommendations to Parliament on or, with the approval of Parliament, determine the allowances payable and privileges available to the Speaker, Deputy Speaker and members of Parliament; (i) to do such other things as may be necessary for the well-being of the staff and members of Parliament'.

2) In terms of article 155(2) of the Constitution,[11] the Rt. Hon Speaker of Parliament, as the head of the respondent, is, like any other self-accounting department, only duty-bound to present the budget estimates to the President two months before the end of the financial year.

3) These estimates are then captured in the overall Appropriation Bill (AB) and presented to Parliament for payment from the Consolidated Fund.

4) Accordingly, the only injunction thereafter is the requirement to conform with the provisions in Article 156(1) of the Constitution[12] (which speak mainly to the requirement for a formal authority before any monies from consolidated funds can be accessed) and section 12(11)(e) of the Public Finance and Management Act (PFMA),[13] which generally refers to the need to consider gender parity and responsiveness.

It was also argued that, at any event, no withdraw of funds can ever take place unless the regulatory framework listed in Article 154 of the Constitution has been complied with, as was the case with the service award payment.[14]

4.1 Examination

In resolving the first limb, it is important to attach the most accurate meaning possible to the phrase 'service award', a term that clearly falls outside the usual framework for honouring

[11] Article 155(2) of the Constitution provides that '[t]he head of any self-accounting department, commission or organisation set up under this Constitution shall cause to be submitted to the President at least two months before the end of each financial year estimates of administrative and development expenditure and estimates of revenues of the respective department, commission or organisation for the following year'.

[12] Article 156(1) of the Constitution provides that '[t]he heads of expenditure contained in the estimates, other than expenditure charged on the Consolidated Fund by this Constitution or any Act of Parliament, shall be included in a bill to be known as an Appropriation Bill which shall be introduced into Parliament to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the bill'.

[13] Section 12(11)(e) of the PFMA provides that 'the Minister shall present with the annual budget— … a certificate issued by the Minister responsible for Finance in consultation with the Equal Opportunities Commission – (i) certifying that the budget is gender and equity responsive; and (ii) specifying the measures taken to equalise opportunities for men, women, persons with disabilities and other marginalised groups …'

[14] Article 154(1) and (2) provides as follows: '(1) No monies shall be withdrawn from the Consolidated Fund except—(a) to meet expenditure charged on the fund by this Constitution or by an Act of Parliament; or (b) where the issue of those monies has been authorised by an Appropriation Act, a Supplementary Appropriation Act or as provided under clause (4) of this article. (2) No monies shall be withdrawn from any public fund of Uganda other than the Consolidated Fund, unless the issue of those monies has been authorised by law. (3) No monies shall be withdrawn from the Consolidated Fund unless the withdrawal has been approved by the Auditor General and in the manner prescribed by Parliament.'

persons for exemplary performance in this country, a phenomenon that presents the first red flag.[15]

As understood by this Court, the term is commonly used in corporate law and refers to an award bestowed on a person who has been an employee of a company for a specified period of time; usually on the basis of a set milestone, typically of not less than five years. It is a prize given to full-time employees whose service output is rare and exemplary. In essence, a prize-money reward is a for-profit-business reward mechanism rather than a public service motivational tool.[16] It is in fact required that such prize should be an act of a 'detached and disinterested generosity' in order to pass a policy and legal test in the realm of corporate and tax law.[17]

To the extent that such awards, even in their restricted sense, are founded in private business enterprises that are generally profit-driven rather than in the public political sphere, this presents a second red flag. Besides, whereas the corporate reward system is generally intended for full-time workers in private businesses that are for-profit, the impugned decision to reward the Commissioners of Parliament is questionable on the basis that these Commissioners serve only a duration of two and a half years.

4.2 Constitutional parameters

I note that neither party raised the broader argument relating to the constitutional injunctions on the emoluments of the MPs, which may very well have been an oversight. Be that as it may, Article 85(1) of the Constitution vests in MPs the right to determine their own emoluments, gratuity and pension, as well as any other such facilities relevant to the performance of their office – a unique but entirely valid position under the Constitution.[18] Indeed, in terms of article 106 of the same Constitution, it is Parliament – not the President – which determines the salary

[15] The National Honours and Awards Act Cap. 173 (NHAA) establishes such a framework and its long title is '[an] Act to provide for the creation of the Presidential Awards Committee; to provide for the recognition and conferment of titles of honour, decorations, medals, awards and orders; to provide for the establishment of the Chancery and for the custody of awards and for related matters.'

[16] See Kahn D & Kahn J '"Gifts, gafs and gfti": The income tax definition and treatment of private and charitable "gifts" and a principled policy justification for the exclusion of gifts from income tax' *Notre Dame Law Review* 78(2003) 441. The impugned service award could probably have been considered a special form of recognition akin to the Nobel Peace Prize usually considered for world peace-makers. Alternatively, the Commission could have been advised to consider recommending to the President that, in terms of the NHAA, an honour be conferred for their outstanding contribution to our nation's peace-building efforts. Thus, in terms of section 3(2) and the Second Schedule of the NHAA, a recommendation for a Civilian Decoration and Medal award would still have been appropriate in the circumstances.

[17] See *Commissioner v Duberstein* 363 US 278 284 n 6 1960.

[18] Article 85(1) provides that '[a] member of Parliament shall be paid such emoluments and such gratuity and shall be provided with such facilities as may be determined by Parliament'.

and allowances of the highest office in the land, namely the Presidency. The expectation of the framers of the Constitution was that the salaries and allowances of MPs, once determined by Parliament itself, would be sufficient to permit those persons to discharge their duties faithfully in the service of the people of Uganda. Those salaries and allowances are far above what is earned by most Ugandans, including those who perform sensitive duties, such as doctors, nurses, teachers, police officers, and members of the armed forces.

Certainly, it is impossible to conceive the expectation that, in terms of Article 85 of the Constitution, MPs would award themselves "prizes" over and above what is ordinarily due to them; the expectation is that the allowances determined under Article 85(1) are sufficient. In my humble view, this is indeed the spirit of Article 85(2) which prohibits MPs from holding any other offices of profit or emoluments that are likely to cloud their legislative oversight and appropriation judgements.

With this constitutional framework in mind, I shall now examine the manner in which Parliament is regulated by the AOPA within the broader context of Article 87A of the Constitution.

4.3 Legislative parameters

The provisions of Article 87A of the Constitution, which are given effect in the AOPA,[19] demand that I first examine the manner in which Parliament gave it effect, beginning with the import of section 6 of the AOPA. The provision in this section seems to vest the respondent with wide discretionary power as a self-accounting public body. It is noted that in terms of section 6 of the AOPA, read together with section 29(2) of the AOPA, that very discretionary power appears to flow directly from Articles 85 and 155(2) of the Constitution. To that end, the Public Finance Management Act Cap. 171 (PFMA) provides for the appointment of the accounting officer to be responsible for a vote.[20]

4.4 The role of an accounting officer as vote head

The key role of the accounting officer is to ensure that proper use and proper controls are in place for use of public funds under a given vote,[21] an obligation which entails that proper risk

[19] The long title of the AOPA provides that it is '[a]n Act to provide for the administration of Parliament and for the employment and remuneration of officers and staff of Parliament and for related matters'.
[20] See section 2 of the PFMA.
[21] See section 43(1) of the PFMA.

management systems are in place,[22] as well as that such officer take personal responsibility for activities under a given vote.[23]

4.5 The liability of the Clerk to Parliament as a vote head

On the basis of the framework above, the AOPA establishes the office of the Clerk to Parliament, a role that includes the power to account for all funds that are appropriated under the parliamentary service vote.[24] The office of the Clerk to Parliament evinces the legislative autonomy of the country's legislature, and suggests that the administration of Parliament is to a degree 'shared' between the executive and legislative arms of government. To this extent, the Parliament enjoys 'administrative autonomy' in the discharge of its function.

'Administrative autonomy' here refers to a power or discretion of the respondent to appoint parliamentary staff, and to the capacity to harness her financial resources for the purposes of improved parliamentary service delivery. Parliamentary administrative autonomy is important, but given the risk of elite capture, it is particularly vital to separate politics from Parliament's roles in regard to financial administration. It ought to be presumed that the Clerk to Parliament is highly skilled in financial management and public administration, and able to give credible guidance to the respondent. The term 'guidance' denotes the supervision of an activity or duty for proper results.[25]

In legal terms, this means that a person or an officer merely seeks advice from another highly skilled person or authority, advice which the officer is not obliged to take.[26] Under the law of tort, expert advice from especially skilled persons may give rise to a duty of care on the basis of which a civil action could result in case of harm. The test is that a skilful person should give reasonable advice that persons with similar skills would ordinarily have given.[27] This may mean that a Clerk to Parliament, as a person especially skilled in public administration or accounting, should only give advice which is reasonably acceptable by other people in the same profession. Should the Clerk to Parliament give advice that is fundamentally erroneous, he or she may be sued for negligence. This view finds favour in Regulation 10 of the LGFAR, which

[22] See section 43(2) of the PFMA.
[23] See section 43(5) of the PFMA.
[24] Section 20 of the AOPA provides that '[t]he clerk shall be the head of the parliamentary service and shall be responsible to the Speaker for the general working and efficient conduct of the business of the Parliamentary Service'.
[25] Simon W 'The market for bad legal advice: Academic professional responsibility consulting as an example' (2008) 60 *Stanford Law Review* 1555 at p 1561.
[26] See *Roland Kakooza Mutale v Attorney General* Application No 665/2003 arising out of HCCA No. 40/2003.
[27] Simon 2008: 1561.

calls on all public officers to adopt prudent financial and accounting measures when handling district council finances.[28]

In the motion before me, there is indeed evidence that the meeting which resulted in the impugned decision was attended by the Clerk to Parliament, the Deputy Clerk (Corporate Affairs), the Deputy Clerk (Parliamentary Affairs), Ag Director (General Counsel to Parliament), Executive Secretary, Director of Finance, and Ag Director (Commissioner Secretary/Minute Secretary).[29]

4.6 Determination

Section 6(h) of AOPA gives the respondent the role of making recommendations to Parliament, or with the approval of Parliament, determining the allowances and privileges of the Speaker, Deputy Speaker and MPs. The Leader of Opposition's benefits are determined under section 12(2) of AOPA as those of a cabinet minister. For the Commissioners, section 42 AOPA provides that commissioners shall be paid such allowances as the commission may determine with the approval of Parliament. On leaving service, MPs already benefit from a generous pension, established under the Parliamentary Pensions Act (PPA) Cap 273, with contributions made by central government[30] and whose solvency is buffered by a sovereign guarantee.[31] The service award does not fall in any of the above categories of emoluments.

As a rule, whenever a constitutional provision, or indeed any statute, vests a public body with a discretionary power to perform an act, it is not a blank cheque to fill in as one pleases. In fact, an obligation is then imposed on the public body to act with the utmost care – always. Therefore, even when a public body is allowed leeway to be as creative as possible, and considering the complaint before this Court, no room is created to grant an additional financial benefit hidden under the guise of prize money in the name of exercising this discretion.

It is hence improper, especially in view of our country's elaborate governance framework, to rationalise such a payment. It would be an unnecessary act of splitting hairs then to even suggest that a reference to the phrase 'any other expenses as incurred for the service of the

[28] See section 43 of the PFAA and Rule 26 of the Public Finance and Accountability Regulation SI No. 72 of 2003. See also generally Singiza D *Constitutional Law, Democracy and Development: Decentralisation and Governance in Uganda* London: Routledge 2019 pp 161–177, where the author discusses the similar role of accounting officers in the contexts of district councils in Uganda.
[29] See (n 2 above).
[30] Section 12(2) of the PPA.
[31] Section 44 of the PPA.

Parliament', as used in Section 29(2) of the AOPA, may be interpreted to include prize money as well. In my view, the kind of services envisaged in Section 29 of the AOPA are those connected with the actual services rendered in terms of Sections 19 and 6(a) of the AOPA.[32]

The impugned payment was approved by Parliament in the Appropriation Bill under the title 'Ex-gratia for Political Leaders'.[33] An ex-gratia payment is one made gratuitously or as a favour or indulgence, as opposed to one made as a matter of right. The fact that this vote formed part of the Appropriations Act is proof that the Minister of Finance had opportunity to scrutinise the payment and that Parliament approved the ex-gratia vote.

On scrutinising the Parliamentary Commission Recurrent and Development Budget,[34] one sees that, under 'ITEM 2-1-1-1-05: Ex-Gratia Payment for Political Leaders', there is a sub-heading, 'Retirement Benefits for Former Speakers and Deputy Speakers', and under this, a list of eight beneficiaries. The first six beneficiaries are named former speakers and deputy speakers of Parliament. The seventh beneficiary is entitled 'Service Award to Leader of the Opposition', and the eighth is the 'Service Award to Back bench Parl. Commissioners'.

Retirement benefits are entitlements and not ex-gratia. It is puzzling why the accounting officer placed them under ex-gratia payments. And if this item was for retirement benefits, then why are the beneficiaries of gratuitous awards mixed up in this item?

It was a dereliction of duty for the Clerk to Parliament to have failed or neglected to detect such an obviously flawed process. Even if an accounting officer does not participate in a decision-making process, as the paying officer he or she has all the legal powers to decline to make payment which is procedurally improper. In this case, the Clerk both participated in the decision and proceeded to make payment.

I will now inquire into the rationality or otherwise of the decision is undertaken in the ensuing paragraphs.

4.7 The test of irrationality

Many courts offer guidance as to when it is best for a court of law to consider a public body's decision irrational. Indeed, a decision of a public body may be irrational if it is so 'out-of-this-

[32] Section 9 of the AOPA provides, first, that '[t]here shall be a Parliamentary Service which shall be composed of persons appointed under section 6(a) and shall be subject to the direction and control of the commission'; and, secondly, that '[t]he Parliamentary Service shall form part of the public service of Uganda'.
[33] Annexure B to the affidavit of Benedict Arinaitwe.
[34] Annexure B to the affidavit of Benedict Arinaitwe.

world' that no sensible person would have made a similar decision on the facts available at the time. It is important to avoid falling into the usual traps here: simply because a decision is wrong does not make it irrational, unless of course it is 'unreasonably' wrong.[35]

4.8 The Consolidated Fund as a national granary

In the Ugandan context, the Consolidated Fund is comparable to a national granary, one which is especially protected and whose sentry is none other than the President. The Constitution establishes the Consolidated Fund as a central government state pool for all the funds received from either tax revenue or government loans. The importance attached to this centrally managed common pool stems from the fiduciary relationship between the citizens and the central government – a relationship which entails that any payment out of the common pool is subject to very strict considerations.[36]

As a rule, any payment from the common pool must be preceded by an Appropriation or Supplementary Act of Parliament. In the alternative, the payment from the common pool can occur only through the exercise of the presidential executive power pending the coming into force of an Appropriation Act. The latter condition in fact has four other subsets of even more stringent restrictions. The first is that it must be exercised within four months of the enactment of the Appropriation Act; the second is that the funds sought for must be for the payment of services for the government under a vote; thirdly, the funds sought for cannot go beyond what has been appropriated in a vote account of a particular service; and, lastly, the funds sought for must be offset by the amount in the vote account of the specified service when the Appropriation Act later comes into effect.[37]

4.9 Legislative framework

A further buffer to the nation's granary is found in the delegated presidential power of the Treasury, which is headed by the Minister of FPED.[38] Besides the Treasury, there is an especially skilled and technical office known as the Permanent Secretary/Secretary to the

[35] See *Council of Civil Service Union v Minister for Civil Service* [1984]3 ALL ER 935 at 950 per Diplock J.
[36] Article 153(1) of the Constitution.
[37] Article 154(1), (2), (3), (4) and (5) of the Constitution.
[38] Section 9 of the PFMA provides as follows: '(1) There is established the Treasury consisting of (a) the Minister, (b) the Secretary to the Treasury, (c) the Accountant General, and (d) the other directorates responsible for economic and finance matters in the Ministry. (2) For avoidance of doubt, the Minister shall be the head of the Treasury.'

Treasury PS/ST.[39] The credible presumption here is that the PS/ST office is populated with sufficient expertise and skills to insulate it from political interference.

Although Parliament is constitutionally empowered to oversee the budgetary process by literally perusing each and every page of the proposed national budget, the penultimate power to turn the key to our nation's granary lies in the hands of the PS/ST. In the case of *Parliamentary Commission v Mwesige Wilson*,[40] the Supreme Court Constitutional Appeal decision turned around the constitutionality of section 5[41] of the repealed Parliamentary (Remuneration of Members) Act (PRMA). The Constitutional Court had been invited to consider whether such a provision was not in conflict with the provisions of Articles 93 and 25 of the Constitution. The Constitutional Court held that the remuneration of Parliament under Section 5 of the PRMA needed to be construed together with the provisions of Article 93 of the Constitution, a provision which commands that any remuneration to MPs has to originate in a bill or motion on behalf of the central government. The Constitutional Court made six key pronouncements which are most relevant for the determination of the motion before this court. It held as follows:

1) The national granary is managed by the executive arm of the government, whose power to spend is limited by the requirement of legislative consent.

2) Whereas Parliament under the power of Article 85 of the Constitution may determine the MPs' emoluments, the motion to determine those emoluments must be presented by the executive arm of government in terms of Articles 93 and 98(1) of the Constitution.

[39] Section 10(1) and (2)(a) –(f) of the PFMA then provides that '[t]here is a Secretary to the Treasury appointed by the President on the recommendation of the Public Service Commission. (2) The Secretary to the Treasury shall—(a) advise the Minister on economic, budgetary, and financial matters; (b) coordinate the preparation of the Charter for Fiscal Responsibility, the annual budgeting process including the preparation of the Budget Framework Paper, the budget estimates and the Appropriation Bill; (c) promote and enforce transparent, efficient, and effective management of the revenue and expenditure and the assets and liabilities of votes; (d) set standards for the financial management systems and monitor the performance of those systems; (e) ensure that the internal audit function of each vote and public corporation is appropriate to the needs of the vote or public corporation concerned and conforms to internationally recognized standards, in respect of its status and procedures; (f) manage the Consolidated Fund and any other fund as may be assigned by the Minister …'

[40] Cited as Constitutional Appeal No 8 of 2026 per Katureebe CJ; Arachi-Amoko, Opio- Aweri; Mondha; Mugamba; Nshimye and Tumwesigye JSCs.

[41] Section 5 of the repealed PRMA vested in the Parliament the discretionary power to regularly amend the schedule dealing with salaries and gratuities of MPs using a mere resolution of the House.

3) Given the injunctions in place in considering bills of motions that impose a charge on our national granary, Parliament cannot on its own create any charge on the national granary before the executive arm of government has acquiesced to such a charge.

4) Parliament is authorised to determine the emoluments of the MPs under a motion originated by the executive.

5) The power of Parliament to make any statutory changes to the MPs' emoluments must be proposed first by the executive arm of government.

6) Notwithstanding the appropriation power of Parliament, no charge can be created on the national granary without seeking the authority of the executive arm of the government under Article 93 of the Constitution.

Aggrieved by the decision of the Constitutional Court, the Parliamentary Commission appealed to the Supreme Court. It was argued on appeal that that in terms of Article 85 of the Constitution, the executive arm of the government could not veto any decision on the emoluments of the MPs, once adopted by the Parliamentary Commission, because doing so would undermine the doctrine of separation of powers. Furthermore, it was argued that Article 93 of the Constitutional could not be read in isolation of Articles 154, 155 and 156 of the Constitution because of their supportive roles in the appropriation process.

This argument was opposed by Learned Counsel for Mr. Mwesige Wilson who took the view that the emoluments of MPs could not be determined without considering the guidance given in Article 93 of the Constitution, and emphasised that the discretionary power that vests in the Parliamentary Commission in terms of Article 85 of the Constitution is in fact limited by the power of the executive authority in Article 93 of the Constitution. The Supreme Court, while generally agreeing with the Constitutional Court, held as follows:

1) Since the emoluments of the MPs are a charge on our national granary, in order to foster good accountability, the provisions of Articles 85 and 93 of the Constitution must be read together in order to ensure constitutional harmony.

2) The executive head of the central government is the President, in terms of Articles 98(1) of the Constitution, and his authority in terms of Article 93 of Constitution cannot be exercised by the Parliamentary Commission even if some of the members of the Parliamentary Commission are in fact members of the executive arm government.

3) Only the executive arm of the government could move a motion on emoluments of MPs in terms of section 5 of the PRRM.

The principle seems to be that nothing gets into the final budget unless it forms part of the executive arm of government's set of priorities and is authorised by the law – an important feature of transparent political accountability in our country's hybrid constitutional framework. This is also true of government agencies that are self-accounting given the requirement of a presidential nod to their budgets.

In theory, this framework is in itself a good disincentive to those who may wish to dip their fingers into the proverbial national pie. It is reiterated that the respondent's budget item that captured the service award money under the *Ex-gratia* head was thus improper as it was mixed with retirement benefits of retired speakers and deputy speakers.

4.10 Procedural impropriety

Given the pertinence of the complaint before this Court, it is wise also to explore the procedure that was followed in making the final decision which is now the subject of challenge. A decision is open to challenge on the limb of procedural impropriety whenever there has been a failure to observe the basic rules of fairness contrary to the established rules of procedure.[42]

4.11 Legal framework

The Constitution commands every public official to ensure that that they remain fair and just in their interaction with the public.[43] Accordingly, it puts numerous institutional checks in place to ensure that, among other things, the principles of natural justice are upheld and fostered.[44]

4.12 Examination

As noted in section 1.1 of this ruling, among the declarations sought is that, where the Commissioners had a pecuniary interest in the decision of the respondent which is at issue, the decision should be set aside. Reliance is placed on Annexure A, which I have discussed exhaustively. I have also considered the applicant's argument that neither any of the parliamentary committees, nor the full House ever participated in the process to approve the

[42] See *Council of Civil Service Union op cit* at 950 per Diplock J.
[43] Article 42 of the Constitution.
[44] See article 225(1)(a) of the Constitution.

service award, a view contested by the respondent as untrue and inaccurate. To make its point, the respondent relies on Annexure B of the national budget at page 53.

4.13 Determination

The vote for Ex-Gratia payments was presented in the Appropriations Bill by the Executive and passed by Parliament. In my view, it is probably not right for this Court to inquire into the procedure which the Executive and Parliament adopted while exercising their respective functions. One would expect that both bodies scrutinised the specific payments to be made, but that is beyond the ambit of this application. The oversight power of this Court in this matter remains focused on the procedure that the respondent followed in arriving at the decision on the service award, notwithstanding that the money used to pay for the impugned award was part of the national budget. The argument of conflict of interest is therefore not sustainable given that in terms of section 42 AOPA, the allowances of members of the Parliamentary Commission are determined by the Commission with the approval of Parliament.

5 Remedies available

The last section of this ruling will finally deliberate on Issue 3: *the remedies available to the parties.* The Applicant prayed for the following remedies:

1) A declaration that the decision, dated 6 May 2022, to award the Leader of Opposition in Parliament (Hon. Matthias Mpuga) UGX 500,000,000, and three other Commissioners UGX 400,000,000 each, under the guise of this being a so-called service award, was *ultra vires*, illegal, oppressive, arbitrary, biased, high-handed, irrational, unfair, and therefore null and void.

2) A declaration that the decision in creating and awarding payment under the name of a service award is 'an abuse of power and in contravention of [the principle] that a [political] leader should not make a decision when he or she has a pecuniary interest'.

3) An order of *certiorari* quashing the decision of the respondent dated 6 May 2022.

4) An order of prohibition restraining the respondent or its agents from continuing to misuse or misapply its discretionary power in awarding itself money not authorised by law.

5) Costs of the application.

In the light of the above findings of this Court; and particularly relating to the determination that the impugned payments were part of the Appropriation Bill as presented by the Executive and approved by Parliament, I decline to award all the reliefs as prayed. In lieu, the Court hereby issues the following writs on the basis of the law and precedents:

1) A declaration that the decision, dated 6 May 2022, to award the Leader of Opposition in Parliament (Hon. Matthias Mpuga) UGX 500,000,000, and three other Commissioners UGX 400,000,000 each, as a service award was approved by Parliament and formed part of the budget presented by the executive.

2) Given the evident dereliction of duty by the Clerk of Parliament during the decision-making and implementation process on the impugned service awards, he is personally responsible under sections 43(8), 76 and 77 of the PFMA.

3) The Permanent Secretary/Secretary to the Treasury is directed to institute disciplinary proceedings against the Clerk to Parliament within 12 months from the date of this ruling.

4) Each party shall bear its costs.

5.1 Obiter

Newspaper articles and social media posts in this country are awash with reports of allegations of government agencies and politicians awarding themselves prizes in the form of money. This is common in government agencies and entities whose staff are already highly paid. If this practice continues unchecked, there is a likelihood that our nation's coffers may be depleted.

It is in this regard that a proposal is made to the Hon. Attorney General to urgently consider a Salary and Emoluments Review Board Bill, whose object would be to review and harmonize emoluments and allowances of government and political leaders. Such a board would reduce the temptation of leaders adopting rather *ad hoc* ways of enhancing their emoluments under the cover of prize money, these being matters which the board should in fact report directly to the President.

Douglas Karekona Singiza

Judge

12 August 2024