

**THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA,
AT KAMPALA**

**CORAM: HON. JUSTICE L.E.M. MUKASA-KIKONYOGO, DCJ.
HON. JUSTICE G.M. OKELLO, JA.
HON. JUSTICE A.E.N. MPAGI-BAHIGEINE, JA
HON. JUSTICE C.N.B. KITUMBA, JA.
HON. C.K. BYAMUGISHA, JA.**

CONSTITUTIONAL PETITION NO. 9 OF 2005

MUW ANGA KIVUMBI.....PETITIONER

VERSUS

ATTORNEY GENERALRESPONDENT

JUDGMENT OF HON. LADY JUSTICE L.E.M. MUKASA-KIKONYOGO, DCJ.

I had the advantage of reading in draft the judgment prepared by Byamugisha, JA. I agree with the reasons she gave for allowing the petition.

She ably summarized the facts of the matter and there is no need to reproduce them. Besides, I do not have much to add except to comment on those issues which I feel deserve mention.

As rightly pointed out this petition was filed way back in 2005 by an organization against the life Presidency which was headed by Muwanga Kivumbi, the petitioner.

The issue for this court to determine is the constitutionality of section 32 of the Police Act. The petition filed in public interest is seeking a declaration that the said section 32 of The Police Act does not confer upon the police of Uganda powers prohibit political activities or that in the alternative the said section 32 of the police Act is unconstitutional. It reads as follows:-

32. Power to regulate assemblies and processions.

(1) Any officer in charge of police may issue orders for the purpose of -

(a) regulating the extent to which music, drumming or a public address system may be used on public roads or streets or at occasion of festivals or ceremonies;

(b) directing the conduct of assemblies and processions on public roads or streets or at places of public resort and the route by which and the times at which any procession may pass.

(2) If it comes to the knowledge of the inspector general that it is intended to convene any assembly or form any procession on any public road or street or at any place of public resort, and the inspector general has reasonable grounds for believing that, the assembly or procession is likely to cause a breach 'of the peace, the inspector general

may, by notice in writing to the person responsible for convening the assembly or forming the procession, prohibit the convening of the assembly or forming of the procession.

- (3) The inspector general may delegate in writing to an officer in charge of police all or any of the powers conferred upon him ,or her' by subsection (2) subject to such limitations, exceptions or qualifications as the inspector general may specify.**

It was, inter alia, argued for the petitioner and his colleagues that by calling rallies or convening assemblies across the country, people were exercising their fundamental rights of association guaranteed by the Constitution and not given to them by the state.

The rights are inherent and as such have to be respected, promoted and upheld by the three organs of the state. As far as this school of thought is concerned section 32 of the Police Act must not interfere in the enjoyment of their fundamental rights and freedoms by prohibiting their rallies or by imposing conditions that were not seeking to respect, uphold and promote the enjoyment of their rights, in contravention of Article 20 (1) (2) and Article 29 (b) (c) of the Constitution.

Mr. R wakafuzi, who represented the petitioner contended that it is unconstitutional to read section 32 (2) of the Police Act as giving the Police powers to restrict political activities. He submitted that the Constitution permits peaceful and unarmed demonstration. It is, therefore, the duty of the Police to see that there is no breach of peace committed. As far as he was concerned the right to demonstration, was only restricted by Article, 43 of the Constitution, which was not contravened.

The petition was vehemently opposed by Ms Rwakojo. R., who represented the respondent. She pointed out that; the enjoyment of the rights allegedly violated is not absolute but subject to the law. Section 32 of Police Act does not contravene any provision of the Constitution. Ms Rwakojo submitted that there was need to control and safeguard the rights of others as provided by Article 43 of the Constitution. If the Police receive information that there will be violence at a political assembly or rally, they would be entitled to take appropriate action. The powers given to the Police under s. 32 of the Police Act are intended to protect everybody and not only groups or individuals.

On perusal of the evidence before court and upon listening to the submissions of the counsel for both sides and the relevant provisions of the law, it is not disputed that the fundamental rights allegedly violated are not absolute. They must be enjoyed within the confines of the law as provided by Article 43 of the Constitution which reads as follows:-

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

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

(a) Political persecution;

(b) Detention without trial;

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

It is for the aforesaid reason that counsel for the petitioner was only concerned with sub (2) of Section 32 which reads as follows:-

(4) If it comes to the knowledge of the inspector general that it is intended to convene any assembly or form any procession on any public road or street or at any place of public resort, and the inspector general has reasonable grounds for believing that the assembly or procession is likely to cause a breach of the peace; the inspector general may, by notice in writing to the person responsible for convening the assembly or forming the procession, prohibit the convening of the assembly or forming of the procession.

I accept the submissions of Mr. Rwakafuzi that the right to freedom of assembly and demonstrate together with others in a peaceful manner is a fundamental right guaranteed under Article 29 (I) (d) which reads as follows: -

29. (1) every person shall have the right to -

(a) freedom of speech and expression, which shall include freedom of the press and other media;

(b) freedom of thought, conscience and belief which shall include academic freedom in institutions of learning;

(c) freedom to practice any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organization in a manner consistent with this Constitution.

(d) freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition; and

(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.

As long as there is no contravention of Article 43 of the Constitution and the rights are exercised within the confines of the law, there would be no justification for invoking the powers under S. 32 (2) of the Police Act. There is no convincing reason for restricting or stopping convening rallies or assembly or demonstrations.

As already pointed out the Police have powers under other provisions of the law to maintain law and order or deal with any situation for instance the one envisaged under S. 32 (2) of the Police Act. The police will not be powerless without the powers under subsection 2; they can deploy more security men. Further, they have powers to stop the breach of peace where it has occurred by taking appropriate action including arresting suspects

I am, therefore, in agreement with my sisters and brother on this Coram that to interpret and uphold S. 32 (2) of the Police Act as authorizing the Police to prohibit assemblies including public rallies or demonstrations would be unconstitutional. Clearly, it would be giving the Police powers to impose conditions which are inconsistent with the provisions of Article 29 (1) (d) of The Constitution which guarantee the enjoyment of the freedom to assemble and demonstrate.

As it was rightly pointed out by Byamugisha, JA, in her judgment, the powers given under s. 32 (2) of the Police Act are prohibitive and not regulatory. They cannot, therefore, be justifiable, in the circumstances of this petition.

In the premises, section 32 (2) of The Police Act would be null and void.

Decision of the Court

By a unanimous decision of the Court this petition is allowed with the declaration below.

Declaration

It is hereby declared that section 32 (2) of The Police Act is 10 inconsistent and contravenes Articles 20 (1) (2) and 29 (1) (d) of the Constitution and hence, is null and void.

There is no order as to costs since the petition was filed in public interest.

Dated at Kampala this 27th day of may 2008

LEM Muksa-Kikonyogo

Hon Deputy Justice

JUDGMENT OF G.M OKELLO, JA

I have had the opportunity to read in draft the judgment of Byamugisha JA. I fully agree with her reasoning and conclusion that the powers given to the Inspector General of Police, under section 32(2) of the Police Act (Cap 303 Laws of Uganda), to prohibit the convening of an assembly or the formation of a procession in any public place is an unjustified limitation on the enjoyment of a fundamental right. I have one or two comments to make for emphasis only.

The background facts that led to this Petition have been ably set out in the judgment of Byamugisha, JA. I shall, therefore, not repeat them here. I should point out however, that in his submission before us, Mr Rwakafuzi, learned counsel for the petitioner, confined his challenge to section 32(2) only. He made it clear that he had no complaint against the other parts of the said section 32 of the Police Act.

The impugned subsection 2 of section 32 reads as follows.

“If it comes to the knowledge of the inspector general that it is intended to convene any assembly or form any procession on any public road, or street or at any place of public resort and the inspector general has reasonable grounds for believing that the assembly or procession is likely to cause a breach of peace, the inspector general may, by notice in writing to the person responsible for convening the assembly or forming the procession, prohibit the convening of the assembly or forming of the procession.”

The above subsection clearly empowers the inspector general of police to prohibit the convening of an assembly or forming of a procession in any public place, on subjective reason. The right to freedom of assembly and to demonstrate together with others peacefully is a fundamental right guaranteed under Article 29(1) (d) of the Constitution of this country. The above subsection therefore places a limitation on the enjoyment of that fundamental right. While I agree that such a right is not absolute, any limitation placed on the enjoyment of such a fundamental right like this one, must fall within the limit of Article 43 (2) (c) of the Constitution of this Country which provides:-

“Any limitation of the enjoyment of the rights and freedoms prescribed by this chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society or what is provided in this Constitution.”

The imposing question is, does the power to prohibit the convening of an assembly or forming of a procession, in a public place, for whatever reason, fall within the limit prescribed in the above Article 43(2) (c)? My humble answer is that it does not. It goes beyond what is acceptable and demonstrably justifiable in

a free and democratic society or what is provided in this Constitution. The reason is that the exercise of that power has the effect of denying the citizens enjoyment of the fundamental right guaranteed under Article 29(1)(d). Application of **purpose and effect principle** of constitutional interpretation enunciated in the **Queen VS Big Drugmark Ltd (others intervening) 1996 LRC (Constitution) 332** and adopted in **Attorney General VS Salvatori Abuki and Richard Obuga, Constitutional Appeal NO. 1 of 1998**, in interpreting the impugned subsection 2 of section 32 produces that result.

It was argued for the respondent that if that subsection was nullified, the police would be powerless to maintain law and order. I do not, with respect, accept that argument because the police still have the power to arrest any person who conducts himself/herself in the assembly or procession in a manner contrary to the law or who threatens violence.

That is what is required to maintain law and order. To prohibit the convening of a lawful assembly or forming a lawful procession in any public place on subjective reasons is not regulating the assembly or procession but a denial of the enjoyment of the fundamental right in contravention of Article 29(1)(d) of the Constitution.

It is for these reasons that I support the conclusion of Byamugisha, J A that section 32(2) of the Police Act is inconsistent with Article 29(1) (d) and therefore unconstitutional and hence null and void.

I would allow the petition on the terms proposed by Byamugisha, JA

Dated at Kampala this 27th day of May 2008.

G.M OKELLO

JUSTICE OF APPEAL

JUDGEMENT OF HON. A.E.N.MPAGI-BAHIGEINE, JA

I have read the draft judgment of Byamugisha JA. I entirely agree that the powers given to the Inspector General of Police under **section 32** of the **Police Act (Cap 303)**, to prohibit the convening of an assembly allegedly "on reasonable grounds" are unwarranted. I would, however, only make a very brief comment since the learned judge has exhaustively treated the subject.

This court has on many occasions stated that the right of assembly is the aggregate of the individual liberty of the person and individual liberty of speech. The liberty to have personal opinions and the liberty to express them is one of the purposes of the right to assemble, which right or freedom constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and therefore each individual's self-fulfillment.

Consequently, where individuals assemble, if the police entertain a "*reasonable belief*" that some disturbances might occur during the assembly, all that can be done is *to provide security* and *supervision* in anticipation of disturbances. It is the paramount duty of the police to maintain law and order but not to curtail people's enshrined freedoms and liberties on mere anticipatory grounds which might turn out to be false. Lawful assemblies should not be dispersed under any circumstances. Most importantly in such cases the conveners of the assemblies can be required to give an undertaking for good behavior and in default face the law.

I would thus hold Section 32 of the Police Act to be null and void

Dated at Kampala this 27th day of May 2008

Hon A.E.N Mpagi-Bahigeine

Justice of Appeal

JUDGMENT OF C.N.B KITUMBA J.A

I have had the benefit of reading the draft judgment of Byamugisha J.A I entirely agree with
The powers given to the Inspector General of police by section 32(2) of the police act are in clear contravention of the constitution. Article 20(1) and (2) of the Constitution guarantees the fundamental rights and freedoms of the individual. In particular Article 20(2) states

“The rights and freedoms of the individual and groups enshrined in this chapter shall be respected, upheld and promoted by all organs and agencies of government and by all persons”.

Article 29 of the constitution provided, inter alia, protection of people’s freedom of conscience, association and assembly.

In the instant petition the petitioner complains about section 32(2) of the police Act, which gives the police powers in the following terms:

“(2) if it comes to the knowledge of the inspector general that it is intended to convene any assembly or form any procession on any public road or street or at any place or public resort, and the inspector general had reasonable grounds for believing that the assembly or procession is likely to cause a breach of the peace, the Inspector General may, by notice in writing to the person responsible for convening the assembly or forming the procession, prohibit the convening of the assembly or forming of the procession”.

The constitution while providing for fundamental human rights and freedoms also set standard, which can be used in limiting the same

According to Article 43 of the constitution in the enjoyment of those rights and freedoms one must not prejudice the fundamental or other rights and freedoms of others or public interest.

Article 43(2) states:-

Public interest under this article shall not permit-

Political persecution

Detention without trial

“Any limitation of the enjoyment of the rights and freedoms prescribed by this chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this constitution.”

It is my considered view that section 32(2) of the Police Act gives the inspector general of police excessive and powers which he may use as he wishes to curtail people’s rights and freedoms of

conscience, speech, association and assembly. Those rights are very necessary especially in a multiple political system.

In a free and democratic society the police is supposed to keep law and order. In case the inspector general of police sees any possibility of a breach of peace at any assembly, the police should provide protection. The citizens should be allowed to exercise their fundamental rights and freedoms.

I would declare section 32(2) of the police act a being inconsistent with the constitution and therefore, declare It null and void.

Dated at Kampala this 27th day of May 2008

C.N.B Kitumba

Justice of Appeal

JUDGMENT OF BYAMUGISHA J.A

This petition was filed in the year 2005 under Article 137(3) of the Constitution challenging the constitutionality of section 32 of the police Act (Cap 303 Laws of Uganda). The petitioner's case is that the said section contravenes Articles 20(1) (2), 21(1) (2), 29(1) (a) (b) (e), 38(2), 42, 43(3)(a)(c) of the constitution. He was seeking declaration and orders to that effect.

The petition is supported by the affidavit of the petitioner himself. There are a number of annexures attached to it.

The respondent opposed the petition on the ground that the impugned section is lawful and does not contravene any of the provisions of the constitution.

The answer to the petition was accompanied by two affidavits deposed by Mr. Henry Oluka, a senior state Attorney in the respondent's chambers and Alfred Bitwire, the District Police Commander of Mukono District.

Background

At the time of filing the petition, the petitioner was a member and coordinator of an organization calling itself Popular Resistance against Life Presidency (PRALP). On 11th March 2005 the organization wrote a letter the Ministry of Internal Affairs seeking permission to hold a political rally in Masaka District.

The Permanent Secretary in the same Ministry in his reply dated 15th March 2005 declared the planned rally illegal as the organization that was planning the rally was not registered.

On 14th April 2005 the Masaka branch of the organization wrote to the District Police informing him of the organization's intention to hold a rally and demonstration in Masaka town. The DPC in his letter dated 18th April 2005 advised the organization to hold a seminar or consultative meeting in an enclosed place. He warned them that if they went ahead to hold any rally or demonstration, the police would disperse it. The rally was held and the police dispersed it. The petitioner and some other people were arrested.

On 18th May 2005 the organization wrote to the District Police Commander Mukono informing him of the organization's intention to hold a public dialogue in Lugazi, Nkokonjeru and Seeta towns. They intended to distribute leaflets. The DPC replied to the letter and advised them to hold consultation meetings in an enclosed place as the organization was unregistered.

In all these letters the police officers were quoting sections 32, 34 and 35 of the Police Act and also the now repealed Article 73 of the Constitution.

The petitioner felt aggrieved by the above acts of the police and he filed the petition to have the section declared unconstitutional.

The following issues were framed for court's determination namely:

1. **Whether section 32 of the police Act contravenes Article 20(1) and (2), 21(1) and (2), 29(1) (a) (b) (d) and (e), 38(2), 42, 43(3) (a) and (c) of the constitution**
2. **Whether the police under section 32 have power to disperse lawful assemblies**

3. Whether the petitioner is entitled to the relief sought.

Mr Rwakafuzi represented the petitioner. In his submission he stated that the petition was filed in 2005 when there was concern that the police had become highly political by censoring the political activities of the opposition including the petitioner. He stated that the police were citing section 32 of the police Act when they dispersed and broke up the rallies. He further stated that the rallies were for influencing the political process that was going on at the time which led to the amendment of the constitution.

Learned counsel pointed out that section 32(2) of the Police Act is still on the statute books and the Police is still using it. He complained that the unfettered discretion on the part of the police contravenes article 20(1) (2) of the Constitution. He claimed that the section is unconstitutional as it gives powers to the police whether to allow or disallow political rallies or assemblies.

The freedom to assemble, demonstrate peacefully unarmed and to petition counsel pointed out, is guaranteed in article 29(1) (d).

Mr Rwakafuzi pointed out that the right is not absolute it should not prejudice public interest. He pointed out that the police can put restrictions as is provided under section 32(1) (b), the police is there to direct rallies but not to disperse them.

He invited us to find that section 32(2) is unconstitutional and in the alternative the section should not be used to stop rallies.

Ms Rwakoojo, learned Principal Attorney who appeared for the respondent, did not agree that the impugned section contravenes the mentioned provisions of the Constitution. She submitted that the provisions of the section blend in well with the functions of the police which are spelt in Article 212 of the Constitution. She pointed out that Article 43 restricts the enjoyment of fundamental rights and freedoms in public interest. The learned Principal State Attorney pointed out that the impugned section prohibits certain assemblies and this is rooted in community well being and public security.

She reminded us about the general rules of Constitutional interpretation as enunciated in the case of *Paul Ssemogerere & another v Attorney General Constitutional Petition No.3/2000*. This decision quoted with approval the decisions of the Supreme Court, the Constitutional Court and from other jurisdictions.

She further submitted that the section is within the limits of article 43 and the limitation is demonstrably justifiable in a free and democratic society. She relied on the judgment of Mulenga JSC which laid down the test in the case of *Onyango Obbo & another v Attorney-Constitutional Appeal No. 2/02 at page 25-26.*

She further submitted that **section 65** of the Penal Code Act defines unlawful assemblies and riots and it does not contravene the Constitution.

On the second issue, 'Ms Rwakojo submitted that the section is clear and precise. It empowers the police to regulate assemblies and to disperse lawful assemblies which conduct themselves in a manner which is not in accordance with the law.

She invited court to dismiss the petition with costs as the petitioner is not entitled to any relief.

The facts that led to the institution of the petition occurred at the height of the political debate to amend the 1995 Constitution. The petitioner was a member of an organization calling itself the Popular Resistance against Life, Presidency. As the name suggests, it was opposed to the lifting of term limits that had been enshrined in the Constitution under **Article 105(2)**. At the time political parties and organization were officially not allowed to operate as legal entities. The situation was changed by the amendment of the Constitution which ushered in a multiparty dispensation and freed political parties and organizations to operate freely.

That means that the allegations which the petitioner made in the petition have been overtaken by events. This Court cannot pronounce itself on the constitutionality of the section since there is no live dispute between the parties at this point in time.

However, Mr Rwakafuzi submitted that the police are still using the section to disperse rallies of opposition political parties. That may as well be true.

However no evidence was adduced before us to prove that this is so. It remains a statement from the bar. Learned counsel also submitted that the petitioner has no quarrel with the whole of section 32. Their complaint according to counsel is against subsection (2).

For purposes of clarity I shall reproduce the section in question. It is titled "powers to regulate assemblies and processions":

(1) Any officer in charge of police may issue orders for the purpose of-

(a) regulating the extent to which music, drumming or public address system may be used on public roads or streets or at any festivals or ceremonies;

(b) directing the conduct of assemblies and processions on public roads or streets or at places of public resort and the route by which and the times at which any procession may pass.

(2) if it comes to the knowledge of the Inspector General that it is intended to convene any assembly or form any procession on any public road or street or at any place or public resort, and the inspector general has reasonable grounds for believing that the assembly or procession is likely to cause a breach of the peace, the inspector general may, by notice to the person responsible for convening the assembly or forming the procession, prohibit the convening of the assembly or forming the procession.

The provision of the subsection empowers the inspector general of police to prohibit the convening of any assembly or procession on any public road, street or any place of public resort, if he has reasonable grounds to believe the assembly or procession is likely to cause a breach of the peace.

The operative word in the section is “prohibit”. The ordinary meaning of the word is to forbid someone from doing something.

In order for the petitioner to succeed under the subsection he has to show that the powers given to the inspector general of police by the above subsection prima facie contravene the provisions of Articles 20(1) (2), 21(1) (2), 29(1) (a) (b) (e), 38(2), 43(3)(a)(c) of the constitution.

The burden will then shift to the respondent to justify the prohibition as being a justifiable limitation of the rights as envisaged by **Article 43**.

For purpose of clarity, I shall reproduce each article in question. **Article" 20** states as follows:

- (1) Fundamental rights and freedoms of the individual are inherent and not granted by the State.***
- (2) The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.***

Article 21 provides as follows:

- "(1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.***
- (2) Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth creed or religion, social or economic standing, political opinion or disability. "***

Article 29(1) provides as follows:

- "(1) Every person shall have the right to-***
- (a) freedom of speech and expression which shall include freedom of the press and other media;***
- (b) freedom of thought , conscience and belief which shall include academic freedom in institutions of higher learning;***
- (c).....***
- (d) freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition; and***
- (e) freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civil organizations.***

The rights and freedoms which are enshrined in these articles are not absolute. . There are subject to restrictions enshrined in article 43 of the Constitution which provides as follows:

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

(3) Public interest under this article shall not permit-

(a) political persecution; (b) detention without trial;

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

The standard against which every limitation on the enjoyment of fundamental rights and freedoms as set out in article 43(2) (c) is an objective one. This legal principle was enunciated in the case of **Onyango-Obbo & another v Attorney General** (supra). Mulenga JSC who wrote the lead judgment with which other members of the court concurred.

The brief facts of the case were that the appellants were journalists working with one of the local newspapers in this Country. They were jointly charged with publication of false news contrary to section 50 of the Penal Code Act. They filed a joint petition in the Constitution Court challenging the constitutionality of the section under which they were being prosecuted. They claimed that their prosecution violated their rights guaranteed by the Constitution.

The petition was dismissed by the Constitutional Court by a majority of three to two and they appealed to the Supreme Court.

MulengaJSC said:

"The provision in clause 2(c) clearly presupposes the existence of universal democratic values and principles, to which every democratic society adheres. It also underscores the fact that by her Constitution, Uganda is a democratic state committed to adhere to those principles and values, and therefore, to that standard. While there may be variations in applications, the democratic values remain the same. "

The learned justice further stated:

"Under Article 43(2) democratic values and principles are the criteria on which any limitation on the enjoyment of rights and freedoms guaranteed by the Constitution has to be justified. The court must be guided by the values and principles essential to a free and democratic society. In Mark Gova &Another v Minister-of Home Affairs &Another; [S.C.36/200:Civil Application No.156/99] the Supreme Court of Zimbabwe formulated the following summary criteria, with which I agree for justification of law imposing limitation on guaranteed rights-

- o the legislative objective which the limitation is designed to promote must be sufficiently important to warrant over riding a fundamental right;***
- o the measures designed to meet the objective must be rationally connected to it and not arbitrary, unfair or based on irrational considerations.***

- o ***The means used to impair the right of freedom must be more than necessary to accomplish the objective”***

The Supreme Court was dealing with the fundamental right of freedom of expression.

This fundamental right is closely related to freedom of religion, belief and opinion, the right to dignity, the right to freedom of association and the right to peaceful assembly etc. These rights are inherent and not granted by the State. It the duty of all Government agencies who include the police to respect, promote and uphold these rights~

These rights and many others taken together protect the rights of individuals not only to individually to form and express opinions of whatever nature, but to' establish associations of groups of like-minded people to foster and disseminate such opinions even when those opinions are controversial.

In every society there is always tension between those who desire to be free from annoyance and disorder on one hand to those who believe to have the freedom to bring to the attention of their fellow citizens matters which they consider important.

Peaceful assemblies and protests are a vital part of every domestic society. They can be a very powerful tool and some of the rights and freedoms that some countries enjoy today were gained because some people were to go out on the street and protest.

The way therefore, any legal system strikes a balance between the above mentioned competing interests is an indication of the attitude of that society towards the value it attaches to different sorts of freedom. A society especially a democratic one should be able to tolerate a good deal of annoyance or disorder so as to encourage the greatest possible freedom of expression, particularly political expression.

The right to peaceful protest is not absolute. The police have a wide range of powers to control and restrict the actions of protestors. These powers should not be exercised by the police in an unaccountable and discriminatory manner.

In an attempt to justify the powers given to inspector general of police to prohibit the convening of a procession or assembly, Mrs. Rwakojo availed us a copy of the United Kingdom public order Act 1986. Section 13 of the Act gave to the chief officer of police to prohibit a procession if had reasonable ground to believe that the holding of a public procession would result in public disorder.

The prohibition was limited to a period not exceeding three months.

It should be remembered that the United Kingdom had no written constitution. This position had changed with the enactment of the human rights Act in 1998 which domesticated the European convention on human rights.

With regard to political protest the convention emphasized four key areas namely:

- o The right to peaceful assembly in article 11
- o The right to freedom of expression in article 10
- o The right to freedom of thought, conscience and religion in article 9 and
- o The right to respect for private and family life in article 8.

Article 29 of our constitution is modeled along the lines of the European Convention on Human Rights. Mrs. Rwakojo also provided the First Amendment Assemblies' Act from the District of Columbia in the United States of America with regard to police powers in dealing with lawful assemblies. The right of peaceful assemblies is entrenched in the United States constitution. The act gives powers to the police to arrest persons who engage in disorderly conduct, or who threaten violence etc.

It does not give powers of prohibition to the police. The reason for this is obvious. Freedom of assembly is an entrenched right in the United States constitution to restrict or prohibit it would be a violation of the rights of protestors.

In the matter now before us, there is no doubt that the power given to the Inspector General of police is prohibitive rather than regulatory. It is open ended since it has no duration. This means that rights available to those who wish to assemble and therefore protest would be violated.

The justification for freedom of assembly in countries which are considered free and democratically governed in my view is to enable citizens together and express their views without government restrictions. The government has a duty of maintaining proper channels and structures to ensure that legitimate protest whether political or otherwise can find voice. Maintaining the freedom to assemble and express dissent remains a powerful indicator of the democratic and political health of a country. I, therefore, find that powers given to the Inspector General of Police to prohibit the convening of an assembly or procession an unjustified limitation on the enjoyment of fundamental right. Such limitation is not demonstrably justified in free and democratic country like ours.

The subsection is null and void. The petitioner is entitled to a declaration to that effect

The petition is allowed with costs

Dated at Kampala this 27th day of May 2008

C.K Byamugisha
Justice of Appeal