

# THE LAWLESS RULE AND THE DEMONS SURROUNDING THE PARLIAMENTARY COVID MONEY SAGA.

*By Turigye Harold and George Musisi.*



**George Musisi**

Luke 18:9(MSG) “He told his next story to some who were complacently pleased with themselves over their moral performance and looked down their noses at the common people:...”

To say little and save a lot for those in authority, the scenario was a perfect check for the nation’s limping constitutionalism, wounded rule of law and the often raped doctrine of the separation of powers. While those entrusted with power are busy in pen and book battles seeking justification and approval, it is always the common man and our history that takes the punches and gets scarred with no hope of salvation.

To emphasise this point, its worth noting that the principle of separation of powers is undoubtedly the cornerstone of any constitutional order. The Uganda constitution has clearly defined the roles of the three arms of government.

Often times while discussing Constitutional Law and the doctrine of separation of Powers, the Parliament is always dressed as a victim of the state (Executive) influence. The story of allocation of 10B to MPs and the subsequent conduct of the Speaker has however changed the narrative and portrayed the Parliament as a bully-pig musician forcing everyone to dance to

its music. In one or the ether, everyone, and every institution runs to the temple of Justice when it becomes a victim of a lawless or heartless member of this national body.

It is actually ironical that the speaker who rejected the order of court and sent it for shredding in the same Parliamentary seating threatened to take banks to Court for exploiting Ugandans. She was seeking to ride the same chariot she had sucked blood out minutes ago.

The nation runs on the bare minimum standards and everyone trusted with power ought to make sure that such principles are honoured. The sober nationals see the Judiciary as the institutional watchdog whose holding on national issues ought to be honoured seeing that the other two arms of government always act for political reasons. The least expectation of sobriety from anyone is to therefore respect court Orders and Decrees in their supreme nature and the framers of our dear constitution were alive to this principle when the included a clause barring the Parliament to ‘debate away’ previous court decisions. Such principles are undoubtedly the cornerstone of the rule of law and all those trusted with power ought to dispense it subject to these vital principles. The Speaker and the MPs undoubtedly failed the test and let their wisdom be clouded by the times.

The Background to this discussion is that the legislature allocates itself Ten Billion Uganda Shillings with the intention to give each Member of Parliament Twenty Million Uganda

Shillings to fight COVID-19. On the 20<sup>th</sup> of April 2020, Ntungamo MP, Gerald Karuhanga and Erute South Legislator Jonathan Odur filed the case against the Attorney General and the Parliamentary Commission in the High Court Civil Division seeking to halt the Parliamentary Commission from paying 10b to MPs to fight COVID-19 arguing that the Parliament had breached the Parliamentary rules of Procedure in passing the 10b. It is alleged that the money in question was just smuggled into the report by the budget committee chairperson without the consent and discussion by the Budget Committee.

In honour of the *sub judice* rule, we shall exercise self restraint and not discuss the fact the appropriation of the said money was not passed by the cabinet, and was granted on the Parliament's own deliberation.

On Tuesday the 21<sup>st</sup> of April 2020, the High Court issued an Interim Order halting the Parliamentary commission from dispensing the 10B to the Members of Parliament, and in the event that the same has been sent to the MPs, the order further directed the MPS not to spend or use that money until the ruling in the main matter that was scheduled for the 29th of this Month.

When the matter came on the floor of Parliament a day after the ruling of the Speaker of Parliament (a lawyer by qualification) without any colour of shame elusively sought the opinion of the Attorney General (as if the Attorney General could opine to ridicule an Order of Court). It is no wonder that the speaker, who seemingly had left her decorum at home that day harshly interrupted the Attorney General who was on the flow of Parliament advising that any MP who spends the money

would be doing so in contempt of Court. The head of the Legislature at the end countered the Judicial Order, rejected the Interpretation of the AG and took on the place of the God-mother to advise the MPs to spend the money in their constituencies through the respective District COVID Task Forces.



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The speaker appeared to even question the legality of courts in determining anything to do with Parliamentary process. This from a lawyer of long standing, is today the least shocking. What is even more shocking is the apparent trend of abuse of courts emanating from the speaker's office at every judgement or ruling that does not meet her taste.

It seems the executive felt left out of this chase game between the Judiciary and the Legislature and thus decided to toss the game-table. The President in his 12<sup>th</sup> National Address on COVID 19 took time to address the issue and it is as though the Court Order dated 29th pertaining the case at hand had been extracted from the Presidential address with the Court ordering what the president had loosely ordered the previous night.

One of the myopic arguments before the preliminary issues were out to rest was the fact that the MPs were not a party to that suit and could not be charged with contempt of Court.

Note that The Parliamentary Commission according to the Constitution and the

Administration of Parliament Act Cap 257 is a body corporate and can thus be sued in its own name, and in simple terms is an entity representing the Members of a Parliament, Even before we look into the details of constitution and the relevant Act, the MPs are agents of the commission, who directly received the monies from a parry to the suit as an agent.

It is trite that court orders take effect upon pronouncement by Court and the speaker in questioning the right of MPs in seeking a remedy was rewriting the basic laws as we know them. It is important to note that there is no legal requirement that for one to be charged with contempt of Court, he or she ought to be party to that very suit. Courts using different diction have generally set out the ingredients of this illegality directing that in contempt of Court, the accuser must prove the existence of a lawful order, the knowledge of the order by the potential contemnor, and the potential contemnor's disobedience of the court Order. It is clear that one need not to be a party to the case to be guilty, and so our dear MPs have a stain to deal with.

Most importantly, in relation to Court Orders Court have on several occasions emphasised the supremacy of Court Orders holding that Court Orders are not mere suggestions or an opinion or a point of view, it is a directive that is issued after much thought and with circumspection. The Court of Appeal in the decision of *Housing Finance Bank Ltd & Anor Versus Edward Musisi CAMA No. 158/2010* that a court Order is a court Order regardless of whether in the affected Party's view it is null and void or irregular. We could however have a discussion countering this holding if a court Order was issued in violation of the non-derogable rights

under the constitution, which was not the case in the circumstances.

In the spirit of rule of law which principle was born and bred in Parliament itself, if Parliament thought was irregular, the only remedy was to officially instruct their lawyer to make an Application seeking to set aside the Court Order. It is not in the place of lawyers, litigants, Public servants to determine the legality of court orders, and to watch the speaker to do so with no question or reply is to set a bad precedent. In this case, silence is conspiracy.

The speaker in seeking the advice of the AG in interpreting a one page court order written in plain English language was apparently to seek a favourable opinion, the reason she did not hesitate to heckle him off the floor when he gave an unfavourable Opinion.

I think it would be important to echo the legal fact that neither speaker nor the president has the power to 'speak away' a court order. Whether it seemed that ordering that MPs send the money to the District COVID Task force was the humane thing or the most politically viable option to do, It was still a statement encouraging contempt and ridicule of Court and the same should be rebuked without compromise.

Be that as it may, the scenario brought into play the vital nature of the Attorney General's opinions that have previously been subject to heated debates and court battles. Courts have in the past pronounced themselves on the binding nature of the Attorney General's opinion. Justice Kanyeihamba while adjudicating over the matter of *Bank of Uganda Versus Banco Arabe Espanol (Civil Appeal No. 1 of 2001)* observed that the opinion of the

Attorney General should be accorded the highest respect by government and public institutions and their agents.

He (Justice Kanyeihamba) further stated that unless there other agreed conditions, third parties are entitled to believe and act on that opinion without further inquired or verification. I am persuaded the first female lawyer to setup a law firm in Kampala who was sitting in that seat as the speaker that day was well aware of this principle and her conduct was absurd, and a bad precedent to set for any government official. In the popular TV series Game of Thrones, it is a result if such acts that the abuser of the grand law was to walk from the temple with the society shouting in her ears “Shame Shame”.

As we take leave of this demonstration, it would important for that in power to look beyond their personal interests and remember that power belongs to the people. The hunger to serve personal interests which are mostly political and financial do not only harm the national treasure but also destroy the clean slate of rule of law some patriotic leaders and academicians have struggled to instil in the spirit of every Ugandan.

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