

# CONSTITUTIONAL PETITION NO. 0026 of 2022; LUMU RICHARD & 5ORS VERSES MAO NORBERT & 3ORS

## CASE BRIEF:

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### **I. Introduction.**

This petition arose from the Cooperation Agreement signed on 20 July 2022 by the President of the Democratic Party (DP), Hon. Nobert Mao (supposedly for and on behalf of the DP) with the National Resistance Movement (NRM). Briefly, the agreement formally committed DP to cooperate with and support the NRM government on specified legislative and governance matters, including backing motions of confidence and supply, and positioned DP leaders — including Hon. Mao himself— within the Government of Uganda. Specifically, Hon. Mao was appointed to the Cabinet as Minister of Justice and Constitutional Affairs.

Following leaking of the agreement, six DP Members of Parliament filed Constitutional Petition No. 0026 of 2022, challenging the legality and constitutionality of the agreement and the process that led to its endorsement.

### **The Judgement.**

On Monday 2 March 2026, the Constitutional Court dismissed the petition, holding that the cooperation agreement and appointment of a leader of another party into Government does not contravene the 1995 Constitution. The court further held that failure to follow internal party mechanisms and disagreement with specific provisions of the cooperation agreement did not raise a matter of constitutional interpretation and the aggrieved parties can seek redress elsewhere.

### **Positive Takeaways.**

- ✓ The Constitutional Court emphasised that the Court (Judiciary) has Jurisdiction to inquire into the Constitutionality of acts of the ruling Government, if they contravene the Constitution. This was a departure from previous court rulings that regarded over reach by the Executive as a “Political Question” in which courts could not intervene. The Justices actually intimated that NRM Party would have been equally sued since it signed the cooperation agreement.
- ✓ The court agreed that the agreement has an effect on multi party democracy and democratic governance. It is therefore not an ordinary document/contract and should be treated as such.
- ✓ The court agreed that appointment of a leader of another party into government has constitutional implications.
- ✓ The court discussed political legitimacy and legality. Court held that a government can be legal and yet politically illegitimate. Court construed Political legitimacy to refer to the widespread belief that a government has the rightful authority to rule. The Court noted that Coalitions (Like the DP-NRM) render legitimacy to otherwise illegitimate Governments. The implications is that the NRM Government is clamouring for

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<sup>1</sup> The Case Brief does not represent the political position of partners or employees of the law firm. It is an analysis of the decision of court based on the author’s knowledge & interpretation of the law. The firm disclaims liability arising from application of the contents of this brief.

legitimacy by making alliances and the DP is a formidable party that can render that legitimacy.

- ✓ The court defined Democratic governance is a system where political power derives from the people, and is exercised through free and fair elections. There are accountable institutions; the rule of law prevails and protection of civil liberties is emphasized. It involves citizen participation in governance with institutional checks to ensure government responsiveness and accountability. This definition can be used to demand democratic governance.
- ✓ Court held that Democratic governance requires that coalition agreements be transparent. Secretive deals or opportunistic alliances can undermine trust, but open coalition-building strengthens legitimacy. This yardstick can be applied on the cooperation agreement in the appropriate court.
- ✓ The Court analysed the KY-UPC 1962 alliance and its ramifications. The court recognised the historical fact that DP was the most popular party that required a KY-UPC alliance to be brought down. The effects of the historical alliance exonerated DP.

### **The Negatives;**

- ✓ The Justices wrongly applied the legal principles relating the alliances and coalitions to the cooperation agreement which is neither an alliance nor a coalition.
- ✓ The Justices were wrong to treat political parties and their leaders as any other persons who had the right to join any “Union” \*including political union. Can the same test be applied to an NRM party leader committing NRM party to ideas of the DP?
- ✓ The Justices were wrong in holding that internal party processes cannot give rise to Constitutional interpretations. A political party enters an agreement that, among others, commits its Members of Parliament to support an otherwise rival governing party, alters its parliamentary alignment, and affects executive composition, the consequences are not confined within party offices.
- ✓ The Constitutional court wrongly held the court’s role was to interpret the Constitution but not to level political ground. The court failed to apply the effects of an unlevelled political ground on multipartyism and democratic governance as provided for under the Constitution.
- ✓ The Justices wrongly held that not all political parties that are not in power are opposing the Government. The Court held that minority parties (like DP) can have similar policies with the government and the same agenda. The Judge would have made reference to the Constitution of DP to show this similarity in her objectives with the NRM.
- ✓ The Justices were wrong in holding that being driven by personal gain does not stop one from being accountable to the president and being collectively responsible for any decision made by cabinet.
- ✓ The Justices were wrong in concluding that the DP President general was accountable to the President of Uganda under collective responsibility than the interests of the party he leads.
- ✓ The Justices were wrong in applying coalitions in other jurisdictions like South Africa, Kenya, Netherlands, France without noting the differences between the Ugandan Constitution and that of other countries. For instance, Kenyan courts have held that have insisted that when coalition arrangements alter political alignments in ways that affect voters’ choices or statutory compliance, they fall within the orbit of constitutional review. For the case of South Africa, **South Africa** , in *Ramakatsa v Magashule*

(2012) ZACC 31, the Constitutional Court held that political parties, while private associations, perform a public constitutional function. As such, their internal processes must comply with constitutional standards. Likewise, South African jurisprudence concerning coalition governance at municipal level affirms that coalition arrangements cannot override constitutional procedures or democratic safeguards. Had the Judge been alive to the cooperative jurisprudence, he would have held otherwise.

### **The implications of the decision to DP.**

- ✓ The DP is not in opposition with the ruling the Government of Uganda.
- ✓ The Policies of the DP in subsistence of the agreement do not include providing alternatives or taking power.
- ✓ The policies of the DP currently align with those of the ruling Government.
- ✓ The president General of DP is more accountable to the President by virtue of being Minister than the DP Constitution.
- ✓ The DP should work towards fulfilment of the NRM Manifesto; being the primary duty of cabinet.

### **What the court did not say;**

- ✓ The court did not go through the specific provisions of the cooperation agreement
- ✓ The court did not determine whether internal procedures were followed before entering the cooperation agreement.

These can be determined in the appropriate court (High court)

### **Next Steps;-**

- ✓ Institute an Appeal to the Court of Appeal;- (Any one amongst the petitioners)
- ✓ Utilise the internal DP structures for possible withdraw from the cooperation after the Constitutional Interpretation
- ✓ Publicise the Ruling through getting out short cut-outs, short videos;for understanding of the ordinary DP members.
- ✓ Engagement with other political parties for collective action against the implications of the Judgement.
- ✓ Consider instituting an action in Regional Courts.

### **V. Conclusion.**

The conclusion from the above observations is that the Constitutional Court of Uganda adopted a restrained approach when determining the matter before it, thereby limiting its role to disputes explicitly framed as textual constitutional violations. As has been noted, comparative jurisprudence from Kenya and South Africa suggests a more expansive but principled alternative, in which internal party decisions that materially affect public representation and political rights are capable of constitutional scrutiny.

Thus, whereas the DP case presented an opportunity for the Court to articulate the constitutional boundaries of party autonomy, the standards governing cooperation or coalition agreements, and the relationship between internal party democracy and voter sovereignty, that opportunity was not fully seized.

*End!*