

The role of the judiciary in the promotion of democracy in Uganda

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Summary

The article examines the role of the judiciary in the promotion of democracy in Uganda. The article recognises the fact that the democratisation process requires the involvement of many stakeholders, including the judiciary, the legislature and the executive. However, it is argued that the judiciary has a stronger constitutional responsibility for securing the integrity of democracy through the protection of fundamental human rights and the resolution of electoral disputes. It is argued that courts can be utilised as arenas in the struggle for democratisation and the rule of law. Judges must feel compelled to select those values and principles from the Constitution which best promote democracy. Through their boldness, judges can push the government so that it may move forward on the journey of democracy. Judges must accept an aggressive law-making function regarding all categories of human rights.

1 Introduction

It is now recognised that democracy and the observance of human rights lay the foundation for political stability and socio-economic progress.¹ In terms of democracy and the exercise of judicial power,

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¹ See eg D Lake & M Baum 'The invisible hand of democracy: Political control and the provision of public services' (2001) 34 *Comparative Political Studies* 587; A Sen *Poverty and famines* (1981); D Stasavage 'The role of democracy in Uganda's move to universal primary education' (2005) 43 *Journal of Modern African Studies* 153.

Uganda has had a chequered history.² During British colonialism (1894-1962), the judiciary did not exercise powers independent of the colonial regime.³ For most of Uganda's post-colonial history, military or quasi-military regimes have dominated the political space. Although the independence Constitution⁴ clearly spelt out the division between the executive, legislative and administrative functions of government, it was replaced by the 1966 interim Constitution and subsequently the 1967 Constitution, which curtailed judicial power. During this period, personal liberty was violated since in a majority of cases, valid detention orders could not be questioned in any court of law.⁵

During the period between 1971 and 1980, Uganda was under direct military rule and witnessed horrendous human rights violations at the hands of President Idi Amin and other state agents. The first Ugandan chief justice was murdered and executive and judicial powers were militarised. President Amin was the supreme law and all legislative, executive and judicial powers vested in him and his military council. No action could be instituted against government for injuries sustained as a consequence of the maintenance of public order and security.

In 1980, multi-party elections were held. The period from 1980 to 1985 witnessed an increased number of human rights violations. Though some judges attempted to uphold the rule of law, their judgments and orders were frequently disobeyed.⁶

In January 1986, following a five year-long protracted bush war, YK Museveni was sworn in as President of Uganda. He promised that his National Resistance Movement (NRM) was not a mere change of the guard but a fundamental change. He promised that the new focus

² This is captured by the Preamble to the Constitution, which recalls Uganda's 'history which has been characterised by political and constitutional instability' and the 'struggles against the forces of tyranny, oppression and exploitation'.

³ J Oloka-Onyango 'Judicial power and constitutionalism in Uganda: A historical perspective' in M Mamadani & J Oloka-Onyango (eds) *Uganda: Studies in living conditions, popular movements and constitutionalism* (1994).

⁴ As Paul observes, independence constitutions in Anglophone Africa 'were like negotiated treaties. They were often more the product of *ad hoc* bargaining in London than the reflection of popular demands and manifestations of indigenous political culture ... Once independent, the regime could change the Constitution to suit local needs, and not surprisingly, to tighten its control over the political system.' See JCN Paul 'Some observations on constitutionalism, judicial review and the rule of law in Africa' (2001) 35 *Ohio State Law Journal*.

⁵ Eg, in *Re Ibrahim* (1970) EA 162, Jones Ag J stated that 'one cannot look behind a valid detention order, as it must be assumed that a minister ought to be, and is deeply concerned about the liberty of the subject, and only issues a detention order after considering all the information before him. In coming to a conclusion he weighs all the evidence and acts (not merely on the advice of a police officer only). In particular he has the interests of the state in mind and he is assumed to have acted judicially in arriving at the conclusion.'

⁶ See eg *F Kityo v Attorney-General* (1983) HCB 56 and *Re: Buregyeya* (1985) HCB 99 where the High Court decided that the detention orders issued against the applicants were defective. For a detailed discussion of most of the cases during the 1960s and 1970s, see Oloka-Onyango (n 3 above).

would include the restoration of democracy and the rule of law.⁷ Compared to the systematic abuses of the past under the NRM government, there has been relative progress in the field of democratisation and the observance of human rights. There is now a functioning judiciary whose independence is guaranteed by the Constitution of the Republic of Uganda, which was promulgated in 1995. There are instances where the judiciary challenged executive, administrative and legislative action. However, from 1986 up to mid-2005, political parties and organisations were banned and, as Barya has observed, this served to stifle political debate and violate the rights of those in the political opposition.⁸ Following donor pressure and internal agitation, the NRM government, through a referendum opened up political space to opposing political parties and organisations. Indeed, there has since been competition for power through parliamentary and presidential elections.

Against this background, the article examines the role of the judiciary in the promotion of democracy in Uganda. It recognises that the democratisation process requires the involvement of many stakeholders, including the judiciary, the legislature and the executive. However, it is argued that the judiciary has a stronger constitutional responsibility to secure the integrity of democracy, especially through the protection of fundamental human rights and the resolution of disputes over electoral rules and ensuring that the parties abide by these rules. The courts may be utilised as arenas in the struggle for democratisation and the rule of law.

The article is divided into four sections. The first is this introduction. Secondly, the article revisits the nexus between democracy, human rights and the exercise of judicial power. The third section examines attempts by the courts to promote democracy and human rights, especially after the promulgation of the 1995 Constitution. The fourth section analyses some of the limitations to the exercise of judicial power in Uganda. The final section contains concluding remarks.

2 Democracy, human rights and judicial power: Revisiting the nexus

2.1 Democracy and human rights

In spite of the wide use of the concept democracy, there is no widely-accepted comprehensive and universal definition for it. There are

⁷ On the initial policies of the NRM after the bush war, see NRM *The ten point programme* (1990).

⁸ Jj Barya 'International support to no-party democracy in Uganda' in J de Zeeuw & K Kumar (eds) *Promoting democracy in post-conflict societies* (2006).

various interpretations of democracy.⁹ Some commentators consider democracy within the broader social, economic, political, gendered and cultural context.¹⁰ For the purposes of this article, democracy may be taken to mean the form of government in which the supreme power is vested in the people and for the people. Democracy demands that the government should be open, accountable and participatory. The state is administered according to the will of the people who have delegated their sovereign political power to leaders elected by them. The people take part directly or indirectly in the formulation of policies by means of secret, free and fair elections of representatives who remain in office for a specific length of time. The Constitution of Uganda exalts the role of the people in the democratisation process. It provides that all power belongs to the people who shall exercise their sovereignty in accordance with the Constitution.¹¹ The Constitution further provides that the people shall be governed through their will and consent, which shall be expressed 'through regular, free and fair elections of their representatives or through referenda'.¹²

Elections are therefore an indispensable pre-requisite for democracy.¹³ On the importance of elections for democracy, Geist observes as follows:¹⁴

An election addresses the issue of periodic reaffirmation of or alteration in the presentation of the public in the institutions of policy making and governance. Elections confer legitimacy on governance by providing a chance for the citizenry to alter the composition of the government. They can also provide channels for citizen input on policy issues directly, through referenda, or in the extreme case to alter the nature of the government itself, through constitutional exercises.

⁹ On the discourses on democracy, see eg AH Birch *The concepts and theories of modern democracy* (1993); BO Nwabueze *Democratisation* (1993); S Issacharoff *et al The law of democracy: Legal structures of the political process* (2001); T Sono 'Comments on democracy and its relevance to Africa' (1992) 3 *African Perspectives: Selected Works* 29; D Ronen 'The challenges of democracy in Africa: Some introductory observations' in D Ronen (ed) *Democracy and pluralism in Africa* (1986).

¹⁰ See eg U Baxi 'Universal rights and cultural pluralism: Consumerism as a site of state formative practices' (2000) 21 *Cardozo Law Review* 29. On poverty eradication as a democracy issue, see B Twinomugisha 'A critique of Uganda's poverty eradication action plan' in K Matlosa *et al The state, democracy and poverty eradication in Africa* (2008) 298.

¹¹ Art 1(1) of the Constitution. See also the Preamble to the Constitution.

¹² Arts 1(2) & (4) of the Constitution.

¹³ The first post-independence elections were held in 1980 after the fall of Idi Amin. In the period 1993 to 1994, the Constituency Assembly elections were held to elect delegates to debate the Report of the Constitutional Commission and promulgate the Constitution. In 1996 presidential and parliamentary elections were held. These were followed by the 1997-1998 local council elections and the 2000 referendum on political systems. In 2001 and 2006, presidential and parliamentary elections were conducted. The 2006 elections were held under a multi-party dispensation.

¹⁴ G Judith 'Political significance of the Constituency Assembly elections' in HB Hansen & M Twaddle (eds) *From chaos to order: The politics of constitution making in Uganda* (1994).

In determining whether an election is free and fair, it is crucial to look at the entire electoral process, not the polling exercise on polling day alone. The electoral process commences with the enacting of the relevant laws and ends with the declaration of the results. Government employees and officials involved in the electoral process must be competent, honest, open, transparent and impartial in the implementation of the electoral laws and the conduct of the electoral process. The Chairperson and other commissioners of the Electoral Commission must be non-partisan and competent to deal with the situation.¹⁵ The entire election process must be free of bribery, violence, coercion or anything intended to subvert the will of the people. Fairness and transparency must be adhered to in all stages of the electoral process. Elections should be conducted regularly in a free and fair manner.

It should be noted that democracy is not merely the right to vote and seize power. It also entails respecting, promoting and protecting fundamental human rights and freedoms. The nexus between democracy and human rights has been emphasised at various fora. For example, the United Nations High Commissioner for Human Rights (UNHCHR) recognises that ‘democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing’,¹⁶ and that ‘democracy fosters the full realisation of all human rights and *vice versa*’.¹⁷ The UNHCHR also stresses that democracy includes ‘the rule of law, including legal protection of citizens’ rights, interests and personal security, and fairness in the administration of justice and the independence of the judiciary’.¹⁸ The UNHCHR also calls upon states¹⁹

to consolidate democracy through the promotion of pluralism, the protection of human rights and fundamental freedoms, maximising the

¹⁵ Presently, the President with the approval of parliament appoints the Chairperson and members of the Electoral Commission (art 60(1) of the Constitution). Given that the ruling party has a majority in parliament, all the nominees by the President are usually approved. The Constitution accords the Commission independence, which shall ‘in the performance of its functions, not be subject to the direction or control of any person or authority’ (art 62 of the Constitution). However, because of the partisan nature of the Commission as exhibited in past elections, there have been calls for the amendment of the Constitution to ensure that the Chairperson is a retired judge with members appointed in consultation with the major and credible political parties in the country.

¹⁶ UNHCR ‘Promotion of the right to democracy’ Commission on Human Rights Resolution 1999/57 [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.1999.57.En?Opend](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.1999.57.En?Opend) (accessed 13 February 2009).

¹⁷ n 16 above, para 1.

¹⁸ n 16 above, para 2(c).

¹⁹ UNHCHR ‘Promoting and consolidating democracy’ Commission on Human Rights Resolution 2000/47 [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.2000.47.En?Opend](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.2000.47.En?Opend) (accessed 13 February 2009). This has been stated by the United Nations General Assembly in ‘Promoting and consolidating democracy’ A/RES/55/96 [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.55.96.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.55.96.En?Opendocument) (accessed 13 February 2009).

participation of individuals in decision making and the development of competent and public institutions, including an independent judiciary, effective and accountable legislature and public service and an electoral system that ensures periodic, free and fair elections.

Among the fundamental human rights and freedoms relevant for the promotion and consolidation of democracy, the UNHCHR emphasises 'freedom of thought, religion, belief, peaceful assembly and association, as well as freedom of expression, freedom of opinion, and free, independent and pluralistic media'.²⁰ The New Partnership for Africa's Development (NEPAD)²¹ also reaffirms Africa's commitment to the promotion of democracy and its core values, which include the enforcement of the rule of law, individual and collective freedoms, the inalienable right of individuals to participate by means of free, credible and democratic political processes in periodically electing their leaders for a fixed term of office, and 'adherence to the separation of powers, including the protection of the independence of the judiciary'.²² The Heads of State and Government noted that one of the tests by which the quality of democracy is judged is the respect and protection of human rights, especially for the vulnerable and disadvantaged such as women and children.²³ The principles of the African Union (AU) also include respect for democratic principles, human rights, the rule of law and good governance.²⁴

2.2 Judicial power

A democratic society should have a system of accountability where holders of public office, such as legislators, electoral officials and political leaders, are accountable and answerable to the public for their decisions and actions. Public officials must be kept in check to guard against bad governance and this calls for the separation of powers between the executive, legislature and judiciary. In a constitutional democracy, the doctrine of separation of powers permits dialogue between the three branches of government — the legislature, judiciary and executive — in order to achieve the goals set by the authors of the Constitution.²⁵ The judiciary has the power to determine whether the legislature and the

²⁰ n 19 above, para 1(b). See also Commission Resolutions 2001/41, 2002/46 & 2003/36.

²¹ NEPAD 'Declaration on Democracy, Political, Economic and Corporate Governance' AHG/235 (XXXVIII) Annex I, para 7.

²² As above.

²³ n 21 above, para 10. For an elaborate discussion of NEPAD's goals of democracy and good governance, see AMB Mangu 'Assessing the effectiveness of the African Peer Review Mechanism and its impact on the promotion of democracy and good governance' (2007) 7 *African Human Rights Law Journal* 355 361.

²⁴ Art 4(m) of the AU Constitutive Act.

²⁵ N Barber 'Prelude to the separation of powers' (2001) 60 *Cambridge Law Journal* 59 71; P Kurland 'The rise and fall of the doctrine of separation of powers' (1986) 85 *Michigan Law Review* 592 603.

executive are performing their duties in accordance with the Constitution. Judicial power is the authority given to the courts to declare and interpret the law.²⁶ Judicial power acts as a deterrent to the abuse of people's democratic rights. The judiciary must use its power to sanction excesses committed by the legislature and the executive so as to promote 'a just, free and democratic society'.²⁷

The judiciary can and should play a fundamental role in the promotion of democracy.²⁸ Judges, especially of the higher courts, occupy a special position in a democratic society. The Constitution provides that judicial power is derived from the people and shall be exercised 'in the name of the people and in conformity with the law and with the values, norms and aspirations of the people'.²⁹ The Constitution establishes courts as the bastion in the defence of the people against oppressive and unjust laws and practices. The courts must protect fundamental human rights and freedoms which, as pointed out above, are a cornerstone of democracy. The Constitution permits any person who claims that his or her human right or freedom has been infringed or is threatened, to apply to a competent court for redress.³⁰ The courts must view their role in terms of securing a better society for all people, even if this means overstepping the traditional dividing line between the political branches of government and the judiciary. The courts must keep the government faithful to the goals of democracy.³¹ As Maina observes, the independence of the judiciary calls for innovation on the part of the judges, who 'should not wait for each and everything to be delivered to them in the form of laws and by-laws. They require imagination in the process of dispensing justice'.³² Judges should therefore be able to embrace the concept of judicial activism by moving away from the practice of defining their role narrowly and technically. Judges should interpret the Constitution and other relevant laws so as to promote democracy and human rights.

The independence of the judiciary is paramount in the promotion and sustenance of democracy and is guaranteed by the Constitution. The Constitution created an independent and impartial judiciary with the mandate to interpret, protect and enforce the Constitution. According to the Constitution, the courts shall, in the exercise of judicial power,

²⁶ JR Nolan *et al* (eds) *Black's law dictionary* (1990) 849.

²⁷ Objective I of the Constitution.

²⁸ A Barak *The judge in a democracy* (1989); J Dugard 'Judging the judges: Towards an appropriate role of the judiciary in South Africa's transformation' (2007) *Leiden Journal of International Law* 20.

²⁹ Art 126(1) of the Constitution.

³⁰ Art 50 of the Constitution.

³¹ On the importance of the judiciary, especially the Supreme Court as the guardian of the Constitution and the promoter of good governance and democracy in Nigeria, see eg the judgment of Mustapher JSC in *AG Abia v AG Federation* (2006) 16 NWLR (Pt 1005) 265 454 (Supreme Court).

³² CM Peter *Human rights in Tanzania: Selected cases and materials* (1997) 484.

'be independent and shall not be subjected to the control or direction of any person or authority'.³³ The Constitution further provides that 'no person or authority shall interfere with the courts or judicial officers in the exercise of their judicial functions'³⁴ and all organs and agencies of the state shall accord to the courts necessary assistance to enable them discharge their functions.³⁵ The primary objective of guaranteeing the independence of the judiciary is to ensure the effective maintenance of law and constitutional order so that there is no necessity or justification for a resort to extra-judicial means in the resolution of political disputes.³⁶

3 Promoting democracy and human rights through judicial review

In this article, judicial review refers to the power of a court to review a law or an official act of a government official in order to determine whether such law or act conforms to the Constitution or the basic principles of natural justice. The judiciary has powers of judicial review of executive and legislative acts to ensure that they comply with the Constitution. Through judicial review, the judiciary discharges its function of protecting and enforcing the Constitution. The process of judicial review also provides checks on the executive and the legislature when litigants bring cases to court. In a constitutional democracy such as Uganda, courts are the final protectors and arbiters of constitutional interpretation. Courts are given powers to interpret and enforce the Constitution. Through judicial review, the courts determine the validity of executive and legislative action to ensure that these arms of government operate within the bounds established by the Constitution. The power of judicial review not only fits into a democratic society but also helps protect democracy and human rights.

The Constitution has entrusted the judiciary with the task of construing the provisions of the Constitution in order to promote a 'just, free and democratic society'.³⁷ Thus, where a litigant challenges a law on the basis that it has been passed without authority or unconstitutionally or is in conflict with a relevant constitutional provision, the courts have a duty to determine whether the law passed is valid or not. Through judicial review, the judiciary is able to adjudicate the dispute in question and provide the applicable remedies to the victims.

³³ Art 128(1) of the Constitution.

³⁴ Art 128(2) of the Constitution.

³⁵ Art 128(3) of the Constitution.

³⁶ PT Mukubwa 'Ruling from the grave: Challenging antiquated constitutional doctrines and values in Commonwealth Africa' in J Oloka-Onyango (ed) *Constitutionalism in Africa* (2001) 288.

³⁷ n 27 above.

According to the Constitution, any question as to the interpretation of the Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court.³⁸ Thus, a person who alleges that ‘an Act of parliament or any other law or anything in or done under the authority of any law’ or any act or omission by any person or authority is inconsistent with or in contravention of a provision of the Constitution, may petition the Constitutional Court to that effect.³⁹ In the next section, I consider major post-1995 decisions that concern the promotion of democracy and human rights in Uganda.

3.1 Upholding freedom of assembly and association: The case of *Ssemogerere and Others v The Attorney-General*⁴⁰

From 1986 to 2000, Uganda was under a movement-based system of governance — a single or one-party state of sorts. The argument, espoused by President Museveni, against political parties was that they are divisive and are not suitable for underdeveloped countries like Uganda. Although the 1995 Constitution recognised these parties, they existed only in name. The political parties were prohibited from opening and operating branch offices; holding delegates conferences or public rallies; sponsoring or offering a platform to or in any way campaigning for or against a candidate for any public elections; and carrying out any activities that may interfere with the political system in force.

In a bid to further stifle the operations of political parties in the country, parliament passed the Political Parties and Organisations Act, which provided *inter alia* that no party or organisation could open branches below the national level. Political parties and organisations were barred from holding public meetings except for national conferences, executive committee meetings and seminars at the national level.⁴¹ The Act provided that a political party or organisation should not hold more than one national conference in a year.⁴² While presenting the Bill to parliament, the Minister of Justice and Constitutional Affairs stated that the Bill was ostensibly aimed at bringing back full multi-party activities, but added that ‘the movement system of government which the people of Uganda chose to govern them for the next five years should operate without hindrance from organisations subscribing to other political systems’.⁴³ During the debate, proponents of political pluralism vehemently opposed the Bill, arguing that it was a

³⁸ Art 137(1) of the Constitution.

³⁹ Arts 137(3)(a) & (b) of the Constitution.

⁴⁰ Constitutional Petition 5 of 2002.

⁴¹ Secs 18(1)(a)-(d).

⁴² Sec 18(2).

⁴³ Parliament of Uganda: Parliamentary Debates (Hansard) Official Report, 1st session, second meeting; Issue 6; 3 April 2002 to 16 May 2002 2045-6.

denial of their freedoms to assemble and associate since it would deny them a national outlook and affect their ability to mobilise and recruit members.⁴⁴ They contended that this was tantamount to a complete ban on political parties, and promised court action.⁴⁵

Indeed, they lived up to their promise, and in *Paul K Ssemogerere and 5 Others v Attorney-General*,⁴⁶ they (the political party leaders) challenged the constitutionality of sections 18 and 19 of the Political Parties and Organisations Act on the grounds that they impinge on their political rights and freedoms. The agreed issues were (1) whether or not sections 18 and 19 of the Act imposed unjustifiable restrictions or limitations on activities of political parties and organisations; (2) whether or not the sections rendered political parties and organisations non-functional and inoperative; (3) whether the sections were inconsistent with article 75 of the Constitution, which prohibits the establishment of a one-party state; and (4) whether or not the sections are inconsistent with articles 2, 20, 29, 43, 71 and 73(2) of the Constitution.

The Constitutional Court unanimously declared the sections unconstitutional and therefore null and void. The Court held that the sections in question imposed unjustifiable restrictions or limitations on the activities of political parties and organisations contrary to article 73(2) of the Constitution. In his judgment, Mpagi-Bahigeine JA pointed out that the limitations on fundamental rights and freedoms under article 43 of the Constitution

... shall not exceed what is acceptable and demonstrably justifiable in a free and democratic society or what is provided in the Constitution. What is reasonably justifiable in a free and democratic society is not a concrete or precise concept but the test is objective. Courts have to take into account what obtains elsewhere in societies regarded as democratic. A democratic society is where people have a say in the governance of their affairs and there is observance of fundamental human rights and freedoms.

The Court agreed with the petitioners that sections 18 and 19 rendered the parties and organisations non-functional and inoperative and in effect established a one-party state in favour of the movement-based organisation. The Court was emphatic that fundamental rights and freedoms may not be subject to a vote and they do not depend on an outcome of any election. The Court observed as follows:

The freedoms to assemble and associate in as far as this petition is concerned do not only concern the right to form a political party but also guarantee the right of such a party once formed to carry on its political activities freely. Such an association is a highly effective means of communication. It stimulates public discussion and debate of the issues concerning the country, often offering constructive criticism of government programmes

⁴⁴ As above.

⁴⁵ As above.

⁴⁶ As above.

and alternative views. The right to freedom of association lies at the very foundation of a democratic society and is one of the basic or core conditions for its progress and development.

Uganda's transition from a movement-based system to a multi-party arrangement evolved slowly.⁴⁷ The case discussed above illustrates the point that, through review of legislative and executive action, courts can play an important role in shaping the political developments in a country. The courts may be a feasible arena for the political opposition to challenge unconstitutional measures taken by the ruling regime to restrain their activities. The case has had an impact on the operation of political parties in the country in that, under the multi-party dispensation, the parties may now hold delegates' conferences and political rallies and carry out grassroots recruitment and mobilisation.

3.2 Promoting freedom of expression and access to information: The case of *Charles Onyango Obbo and Another v The Attorney-General*⁴⁸

The Constitution guarantees every person the right to 'freedom of speech and expression which shall include freedom of the press and other media'.⁴⁹ The media draws the public attention to areas where they should demand accountability. It helps to bring to the attention of the public excesses of mismanagement. The media constitutes a vital political space and freedom of expression is crucial in the fight for democracy.⁵⁰ In addition to informing, entertaining and educating, the media plays a fundamental role as watchdog over government. In any case, freedom of expression is one of the core essentials of a functional democracy. As the court observed in the Nigerian case of *State v Ivory Trumpet Publishing*.⁵¹

Freedom of speech is, no doubt, the very foundation of every democratic society, for without free discussion, particularly on political issues, no public education or enlightenment, so essential for the proper functioning and execution of the processes of responsible government, is possible.⁵²

Freedom of the media entails freedom to seek, receive and impart information and ideas. The Constitution also guarantees citizens of Uganda

⁴⁷ On 28 July 2005, Uganda held a referendum to decide whether the country should remain under the movement system or should move to a multi-party system of government. Though the voter turnout was low, 90% voted in favour of a return to multi-party politics.

⁴⁸ Constitutional Appeal 2 of 2002. The Constitutional Court had dismissed the case on technicalities.

⁴⁹ Art 29(1)(a) of the Constitution.

⁵⁰ On the nexus between democracy and media freedom, see B Twinomugisha 'Is there media freedom in Uganda?' (1998) *East African Journal of Peace and Human Rights* 1.

⁵¹ (1984) 5 NCLR 736.

⁵² n 51 above, 747.

the right of access to information in the possession of the state 'except where the release of the information is likely to prejudice the security or sovereignty of the state or interfere with the right to the privacy of any other person'.⁵³

Access to information promotes accountability in the political and other spheres and enhances the realisation of other human rights. However, there have been violations of freedom of expression and access to information generally, and media rights in particular. Some media houses have been closed for allegedly reporting negatively against the government and criminal cases have been brought by the state against journalists. Consequently, as guardians of human rights and freedoms in a democratic society, the courts have been called upon to review laws that impinge on media freedoms. For example, in *Charles Onyango Obbo and Another v The Attorney-General*,⁵⁴ the appellants (practising journalists) were charged before the magistrate's court with the publication of false news contrary to section 50 of the Penal Code. The story in *The Monitor* newspaper quoted the *Indian Ocean Newspaper* that the late President Laurent Kabila had paid Uganda in gold. The magistrate's court acquitted them of the charges. However, they petitioned the Constitutional Court for a declaration that section 50 of the Penal Code was unconstitutional and that it was erroneous to prosecute them.

The Constitutional Court unanimously declared that the Director of Public Prosecution's action in prosecuting the appellants was not inconsistent with the Constitution. By a majority of four to one, the Court declared that section 50 is not inconsistent with the Constitution. There was one issue on appeal: whether section 50 of the Penal Code contravened article 29 of the Constitution, which guarantees protection of freedom of expression, which includes freedom of the press. The appellants argued that the majority justices of the Constitutional Court erred in finding that section 50 is not demonstrably justifiable in a free and democratic society within the meaning of article 43 of the Constitution. In his judgment, Mulenga JSC stressed that the right to freedom of expression 'is not confined to categories, such as correct opinions, sound ideas or truthful information',⁵⁵ and that 'everyone is free to express his or her views [even if these views] are opposed or objected to by society or any part thereof, as "false" or "wrong"'.⁵⁶ The judge stressed the view that a democratic society chooses to tolerate

⁵³ Art 41 of the Constitution. See also *Paul K Ssemogerere & 2 Others v Attorney-General*, Constitutional Appeal 1 of 2002, where sec 121 of the Evidence Act that gave the state unfettered discretion whether to release official information on grounds of national security was declared unconstitutional since it contravened art 41 of the Constitution.

⁵⁴ As above.

⁵⁵ n 48 above, 21.

⁵⁶ As above.

the exercise of the freedom even in respect of the so-called alarming statements. On the role of freedom of expression in a democracy, the judge cited the case of *Edmonton Journal v Alberta* (AG),⁵⁷ where the court stated as follows:⁵⁸

It is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression. Indeed a democracy cannot exist without that freedom to express new ideas and to put forward opinions about the functioning of public institutions. The concept of free and inhibited speech permeates all truly democratic societies and institutions. The vital importance of the concept cannot be over-emphasised.

The Supreme Court held that section 50 was unconstitutional since it infringed upon the freedoms of expression and access to information. In my view, by decriminalising the publication of false news, the Supreme Court established a higher threshold for limiting media freedom, which is critical in the democratisation process.

3.3 Promotion of electoral democracy

3.3.1 The 2001 presidential election

The elections were held under an individual/personal merit arrangement and the real contest was between the incumbent President Museveni and a retired colonel, Kiiza Besigye, who was his personal doctor in the five-year bush war that brought Museveni to power. These elections were arguably controversial. Intimidation, the harassment of candidates' agents, voters and supporters, abusive language, hooliganism, destruction of property, and the involvement of military and high-ranking government officials in the electoral process characterised the campaign.⁵⁹ However, the Electoral Commission (Commission), which is constitutionally empowered to organise, conduct and supervise elections,⁶⁰ declared candidate Museveni the winner of the presidential elections. The loser challenged the results in the Supreme Court pursuant to the Electoral Commission Act⁶¹ and the Presidential Elections Act.⁶²

It should be noted that, according to the Presidential Elections Act, any aggrieved candidate may petition the Supreme Court for an order

⁵⁷ (1989) 2 SCR 1326. He also cited *Lingen's* case 12/1984/84/131, where the European Court of Human Rights observed that 'freedom of expression ... constitutes one of the essential foundations of a democratic society and one of the basic conditions of its progress and for each individual's self-fulfilment'.

⁵⁸ As above.

⁵⁹ Uganda Electoral Commission *Report on the Presidential Election* (2001); S Makara *et al Voting for democracy in Uganda: Issues in recent elections* (2003).

⁶⁰ On the functions of the Electoral Commission, see arts 61(1)(a)-(f) of the Constitution.

⁶¹ Cap 140 Laws of Uganda.

⁶² Cap 142 Laws of Uganda.

that a candidate declared elected as President was not validly elected.⁶³ The petition should be lodged in the Supreme Court registry within ten days after the declaration of the election results.⁶⁴ The Supreme Court 'shall inquire into and determine the petition expeditiously and shall declare its findings not later than 30 days from the date the petition is filed'.⁶⁵ The Supreme Court may, after inquiries, dismiss the petition; declare which candidate was validly elected or annul the election.⁶⁶ According to the Act, the declaration of a candidate shall only be annulled on any of the following grounds:⁶⁷

- (a) non-compliance with the provisions of this Act, if the court is satisfied the election was not conducted in accordance with the principles laid down in those provisions and that the noncompliance affected the results in a substantial manner;
- (b) that the candidate was at the time of his or her election not qualified or was disqualified for election as President;
- (c) that an illegal practice or any other offence under this Act was committed in connection with the election by the candidate personally or with his knowledge and consent or approval.

Thus, in *Col (Rtd) Dr Besigye Kiiza v Museveni Yoweri Kaguta and the Electoral Commission*,⁶⁸ the petitioner alleged that certain principles relating to the registration of voters were not complied with. He argued that the Commission neither displayed the register of voters within 21 days, nor published the list of the polling stations in each constituency at least 14 days before the nomination of candidates.⁶⁹ He alleged that the Commission did not supply him with the register when requested to do so. He also alleged that the Commission did not control the distribution and use of ballot boxes and papers, which resulted in the stuffing of ballot boxes with pre-ticked votes. The petitioner also averred that the Commission allowed people younger than 18 years to vote. It was also alleged that the military and the Presidential Protection Unit (PPU) and para-military personnel interfered with the petitioner's campaigns. He also alleged that candidate Museveni committed various illegal practices 'personally or with his or her knowledge and consent or approval'.⁷⁰ The sum total of his argument was that the entire electoral process was not conducted under conditions of freedom and fairness.

All the judges agreed that there was intimidation by the army and other organs and officials of the government. By a majority of three to

⁶³ Sec 57(1) of the Act.

⁶⁴ Sec 57(2) of the Act.

⁶⁵ Sec 57(3) of the Act.

⁶⁶ Secs 57(5)(a)-(c) of the Act.

⁶⁷ Sec 57(6) of the Act.

⁶⁸ Election Petition 1 of 2001 (Supreme Court Uganda).

⁶⁹ See secs 18-25 of the Electoral Commission Act and sec 27 of the Presidential Elections Act.

⁷⁰ Sec 57(6)(c) of the Act.

two, the Court found that Museveni was liable for the illegal practices and offences committed by the army officials who were his agents. However, Odoki CJ held that there was no evidence adduced to prove that candidate Museveni knew and consented to or approved the illegal acts complained of. Mulenga JSC was also of the view that proof that an elected candidate committed an illegal practice or other practice cannot annul an election. The majority of the Court held that, although there were extensive election malpractices, they did not affect the results of the election in a substantial manner and thus the election could not be annulled. Though the petitioner lost the election petition, it revealed the gross abuse of election management in Uganda. The judges observed that the Commission abdicated its statutory responsibility of organising free and fair elections.

3.3.2 The 2006 presidential election

The 2006 presidential elections were conducted under a multi-party system of governance. The main candidates were (again) the incumbent President Museveni and Kiiza Besigye. There were, however, challenges to Besigye's nomination. It was alleged that he had changed his name and used another person's names to gain entry to university, a claim that the Commission dismissed. Besigye was also detained at the time of his nomination on charges of treason and rape and the question was whether he could be nominated when there were pending charges against him. Curiously, the Attorney-General advised that Besigye should not be nominated because, although not yet proven guilty, he was not at the same level of innocence as other candidates. However, the Commission dismissed the Attorney-General's advice and nominated him. In *Asol Kabagambe and Faraj Abdullah v Electoral Commission*,⁷¹ the petitioners contested the nomination of Besigye. The Attorney-General argued that the Commission could not nominate Besigye since he (the Attorney-General) had advised against it. However, the Constitutional Court held that, as an independent body, the Commission was not obliged to accept the advice of the Attorney-General. The Court upheld the nomination. Museveni won the election with a margin of 69% against Besigye's 37%.⁷² Like in the 2001 presidential election, there was widespread intimidation, lack of freedom and transparency, unfairness and violence. There were other gross malpractices, such as multiple voting. Besigye again went to court for a review of the conduct of the presidential election.

⁷¹ Constitutional Petition 1 of 2006.

⁷² It should be noted that using elections as a test, Museveni's popularity has been dwindling over the years. In 1996, he scored 75%, in 2001 he got 69% while in 2006 it was 59%. There are fears within the ruling establishment that should he stand in 2011, he may score less than 50%, inevitably leading to a re-run of the election.

Thus, in *Rtd Col Kiiza Besigye v The Electoral Commission and Yoweri Kaguta Museveni*,⁷³ he asked the Court to annul the presidential elections and order a re-run or, alternatively, order a re-count of the votes cast. The petitioner argued that the conduct of the election contravened provisions of the Constitution, the Electoral Commission Act and the Presidential Elections Act. It was argued that non-compliance with the requirements of the Presidential Elections Act affected the results in a substantial manner. It was also alleged that candidate Museveni personally committed electoral offences such as the use of abusive, malicious, mudslinging, insulting, derogatory and defamatory statements against the petitioner and linking him to terrorists. As was the case with the 2001 presidential elections, the Court unanimously found that the Commission had not complied with the relevant provisions of the Constitution and the electoral laws by deleting voters' names from the register and wrongly counting and tallying of the results. The Court was of the view that the principle of free and fair elections was compromised. However, by a majority of five to two, the Court dismissed claims of illegal practices against candidate Museveni. The Court condemned the continued involvement of the security forces in the elections where they have committed acts of intimidation and violence. In spite of these malpractices, by a majority of four to three, the Court held that it had not been proved to the satisfaction of the Court that the failure to comply with the relevant provisions and principles of the law affected the results of the presidential election in a substantial manner.

3.3.3 A critique of the ruling of the Court

It should be noted that in both the 2001 and 2006 presidential petitions, the Supreme Court applied two tests to decide whether the alleged malpractices affected the results in a substantial manner. The first test, known as the qualitative test, examined the non-quantifiable malpractices. The Court found that these malpractices were massive and overwhelming. The Court did not examine whether such malpractices affected the outcome of the election in a substantial manner. The Court proceeded with the quantitative test, by looking at the quantitative aspect of the malpractices. In doing this, the Court resorted to arithmetic to obtain the difference in figures between the votes of the respondent and the petitioner. Since the difference was big, the Court decided that, even if there were to be a re-run of the elections, the petitioner would not win. In my view, the Court's reasoning was wrong. The word 'substantial' should not be restricted to arithmetic considerations. The Court should have considered both the quantitative and qualitative aspects of the election in order to arrive at a well-reasoned conclusion. The Court should have looked beyond

⁷³ Presidential Election Petition 1/2006.

mathematical differences in the votes and holistically considered all forms of malpractices. As Tumwine Mukubwa correctly observes:⁷⁴

The qualitative test should be the one employed for purpose of safeguarding the purity of the electoral process. It is only this test which will ensure free and fair elections, clean up the electoral process; rid it of negative images and effects brought about by unacceptable actions by players in the electoral process whose purpose is to gain undue advantage. The judicial approval of the qualitative test will enable lawyers and the courts to crusade for electoral democracy by guaranteeing free and fair elections.

All the justices unanimously concluded that the elections were not free and fair. The judges found that the Commission did not comply with the law and there was intimidation, disfranchisement of voters and multiple voting. The Court decided that the elections were not validly conducted in all respects. It is mind-boggling how, in spite of these findings, the Court could simply hand over the elections to a loser. In my view, to prove that the results of the presidential elections were affected in a substantial manner, all that the petitioner had to show was that both the Constitution and the electoral laws had been substantially violated. The petitioner clearly proved that voters were disfranchised and that their constitutional rights were deliberately violated. The Supreme Court should have nullified the elections and ordered a re-run.

It should be noted that, by virtue of the fact that judges are human, they may fear for their lives and those of their families and thus may restrain themselves from passing decisions that may infuriate the executive which has instruments of coercion such as the army, the police and other security apparatus. For example, before the 2001 presidential elections, President Museveni had on a number of occasions warned in the media that he and other 'freedom fighters' fought the bush war (1980-1985) and would not easily hand over power to the opposition. A few weeks before the presidential election, the President is reported to have said:⁷⁵

I am not ready to hand over power to people or groups of people who have no ability to run a nation ... Why should I sentence Ugandans to suicide by handing over power to people we fought and defeated? It's dangerous despite the fact that the Constitution allows them to run against me ... At times the Constitution may not be the best tool to direct us politically for it allows wrong and doubtful people to contest for power.

It would therefore seem that, in spite of the glaring electoral malpractices in the 2001 and 2006 presidential elections, the majority justices of the Court were reluctant to annul the elections for fear of what would happen. For example, the learned Chief Justice, Benjamin Odoki, observed that the outcome of the 2001 presidential election

⁷⁴ P Tumwine Mukubwa *Free and fair democratic elections* (2004).

⁷⁵ *The East African* 12 February 2001.

petition would have far-reaching consequences on the peace, stability, unity and development of Uganda.⁷⁶

4 Limitations on the exercise of judicial power

4.1 Limitation on the power of the courts

The judiciary lacks direct power to enforce its own judgments. In accordance with the doctrine of separation of powers, the Constitution does not endow the judiciary with legislative powers. Parliament has the power to make laws 'on any matter for the peace, order, development and good governance of Uganda'.⁷⁷ The court may declare certain legislation or some of its provisions unconstitutional, but parliament may not repeal the Act or the invalidated provisions. For example, in *Uganda Association of Women's Lawyers and 5 Others v Attorney-General*,⁷⁸ the petitioners challenged the constitutionality of sections 4, 5, 21, 22 and 26 of the Divorce Act on the grounds that they promote gender discrimination. The Constitutional Court unanimously held that the sections were inconsistent with the equality and non-discrimination provisions of the Constitution and were in effect null and void. In spite of demands by civil society and legal practitioners for parliament to repeal the relevant sections, nothing has been done. However, it may be argued that, since courts in Uganda are guided by the supremacy of the Constitution, the sections are deemed to have been repealed by the Court's judgment.

The court could also be overruled through the process of constitutional amendment by the legislature, especially where the ruling party commands a majority in parliament. For example, after the Constitutional Court had nullified the Referendum and Other Provisions Act because parliament had passed it without a quorum, parliament hurriedly passed the Constitution (Amendment) Act 13 of 2000, validating the earlier nullified Act. This Act was debated, passed and assented to by the President in one day. Following the Constitutional Court judgment there was an uproar from the executive and members of parliament belonging to the NRM. President Museveni alleged that the judiciary was biased and that power belonged to the people and not the judiciary and said:⁷⁹

⁷⁶ As above.

⁷⁷ Art 79 of the Constitution.

⁷⁸ Constitutional Petition 2 of 2002.

⁷⁹ 'Museveni rejects referendum ruling' *The Daily Monitor* 28 June 2004 1. The President has recently called for the auditing of judgments to ensure that they reflect the aspirations of the people. At an annual judges' conference, the President proposed that an agency should be established to audit biased judicial decisions. In my view, there is no need for a judicial audit. Auditing judgments is a deliberate attempt by the executive to usurp the powers of the judiciary and interfere with its independence. Where a litigant is dissatisfied with a judgment, he or she may appeal or seek judicial review.

We restored constitutionalism and the rule of law. That is why judges can rule like this against the government. There were times when, if a judge made such a ruling, he would not live to see tomorrow. The ruling will not work. It is simply unacceptable. Judges say article 74 [on change of political systems] is dead. The movement system is not dead. We are all here.

There were demonstrations by the ruling NRM sympathisers protesting the ruling of the Constitutional Court and some judges stayed away from their chambers for some days.⁸⁰ Such interference with the independence of the judiciary was really uncalled for. If the executive was not satisfied with the decision of the Constitutional Court, the proper procedure was to appeal against such decision, but not to resort to jungle justice.

4.2 Restrictive legislative provisions

A petitioner challenging the results of a presidential election is required to lodge the petition within ten days after the declaration of the results.⁸¹ The ten day requirement is too short, unfair and restrictively unrealistic as it limits the petitioner's capacity to gather and assemble the necessary evidence in support of his or her petition. In the 2006 presidential election petition, the justices of the Supreme Court had to accept more and additional affidavits and evidence as the hearing progressed. This was against the usual restrictive rules of civil procedure which prohibit additional evidence from being adduced after the closure of the proceedings. The Court wasted considerable time perusing some affidavits that were hurriedly but poorly drafted. The law should be amended to enlarge the time in which the petitioner can gather evidence and file the petition.

The Supreme Court must also 'determine the petition expeditiously'⁸² and declare its finding within 30 days from the date of filing the petition. It is true that the public expects a presidential election petition to be disposed of quickly. But this should not be at the expense of a quality judgment, which will be respected by all stakeholders in the election process. In my view, the 30-day limit is too short, given that the judges have to hear the parties, study the voluminous affidavits, research and write their judgment. Perhaps that is why the judges had to reserve the

⁸⁰ As above. Recently, the High Court released accused persons in a treason trial on bail. A section of the security forces called the Black Mamba (with masked faces) invaded the High Court premises in a bid to re-arrest the accused. The judicial officers, including the principal judge, were literally forced to stay in the High Court building with the accused until after the Black Mamba had left. The advocates for the accused had no alternative but to request the presiding registrar to send them back to Luzira prison for fear that they may be captured at night. Following this sad state of affairs, the entire judiciary and all advocates, for the first time in the history of the country, went on a sit-down strike for a week until the President had to issue a written apology promising that such an incident would not happen again.

⁸¹ Sec 57(2) of the Presidential Elections Act.

⁸² Sec 57(3) of the Act.

reasons for the judgment to a future date, although it took almost a year to give the reasons. Judges should be left to regulate the procedure and the time in which the ruling should be delivered.

It should also be noted that the law bars the courts from convicting any person of a criminal offence when hearing an election petition.⁸³ The law does not penalise a person who commits an electoral offence by way of disqualifying him or her from holding a public office for a given period. In my view, the law should be amended to permit courts to penalise those who abuse the electoral process as a deterrent to others.

4.3 Low level of judicial activism

Judicial activism motivates judges to depart from strict adherence to precedent 'in favour of progressive and new social policies which are not always consistent with the restraint expected of appellate judges'.⁸⁴ Through judicial activism, judges creatively and purposively interpret constitutional provisions in order to enhance the promotion of democracy and human rights. Critics of judicial activism argue that the concept permits judges who are unelected to usurp the power of the elected branches of government (the legislature and executive), thereby undermining democracy and the rule of law. It is true that judges are unelected, but according to the Constitution they derive their power from the people and are certainly mandated to check the excesses of the executive and the legislature. The role of a judge as a law-maker cannot be overemphasised. Through judicial activism, judges influence the direction of the law. This occurs where the judges' interpretation goes beyond mere words and matters mentioned in the law. Judges are mandated to breathe life into the provisions of the Constitution in order to enhance the promotion of democracy and human rights. Judges must be proactive and far-sighted in their interpretations of Acts of parliament. Indeed, there are instances where the courts have creatively interpreted constitutional and other legal provisions in a bid to enhance the protection of human rights. For example, they have permitted public interest litigation contrary to the restrictive rules of procedure that require a litigant to have a personal interest in the subject matter.⁸⁵ The Constitutional Court has also purposively interpreted

⁸³ See eg sec 57(7) of the Presidential Elections Act.

⁸⁴ Nolan *et al* (n 26 above) 847.

⁸⁵ See eg *The Environmental Action Network (TEAN) v Attorney-General and National Environment Authority*, Misc App 39 of 2001. For a discussion of cases where the court has relaxed *locus standi* requirements in accordance with art 50(2) of the Constitution, see BK Twinomugisha 'Some reflections on judicial protection of the right to a clean and healthy environment in Uganda' (2007) 3 *Law, Environment and Development Journal* 3 <http://www.lead-journal.org/content/07244.pdf> (accessed 27 February 2009).

the right to freedom from cruel, inhuman and degrading treatment and declared corporal punishment unconstitutional.⁸⁶

However, in other instances the courts have construed constitutional provisions narrowly and restrictively. For example, in *Ssemogerere and Others v The Attorney-General*, the petitioners challenged the constitutionality of the Constitution (Amendment) Act,⁸⁷ but the Constitutional Court declared that it had no jurisdiction to interpret one provision of the Constitution against another or others on the grounds that once the correct procedure for enacting a constitutional amendment is complied with, its provisions become part and parcel of the Constitution, and the Court does not have jurisdiction to challenge such an amendment. The Constitutional Court abdicated its responsibility to promote democracy and human rights by denying itself jurisdiction. Another example is *Susan Kigula and 416 Others v Attorney-General*,⁸⁸ where the petitioners challenged the constitutionality of the death penalty on the grounds that it violated the right to life and subjected them to cruel, inhuman and degrading treatment. The Constitutional Court held that the death penalty was an exception to the right to life under the Constitution and therefore constitutional. The Supreme Court confirmed the ruling of the Constitutional Court and held that it was not the duty of the court, but parliament which passes enabling laws, to impose a method of execution other than hanging. Here the Supreme Court squandered an opportunity to creatively interpret the relevant constitutional provisions and declare the death penalty unconstitutional.⁸⁹

5 Conclusion

This paper had one major objective: to examine the role of the judiciary, especially the Constitutional Court and the Supreme Court, in the promotion of democracy in Uganda. The paper started on the premise that the judiciary has a strong constitutional responsibility to secure the integrity of democracy, especially through the protection of fundamental human rights and freedoms and the resolution of disputes over electoral rules and ensuring that the parties abide by the rules. Judicial review acts as a possible deterrent to the abuse of democratic rights and freedoms. The judiciary can and should play a fundamental role in the promotion of democracy. Democracy and human rights are interdependent and are mutually reinforcing. In protecting fundamental human rights and freedoms, the judiciary enhances democratisation in the country. The Constitution has entrusted to the judiciary the task

⁸⁶ *Simon Kyamanywa v Uganda*, Constitutional Reference 10 of 2000.

⁸⁷ Act 13 of 2000.

⁸⁸ Constitutional Petition 6/2003 (CC).

⁸⁹ For an elaborate discussion of how the death penalty conflicts with human rights in Africa, see L Chenwi *Towards the abolition of the death penalty in Africa* (2007).

of construing constitutional provisions and of safeguarding human rights. Thus, the judiciary must exercise its constitutional powers to ensure the promotion of democracy and human rights in the country.

There are instances where the judiciary has boldly challenged executive and legislative action in defence of democracy, including the protection of fundamental human rights. In other instances, especially regarding the resolution of presidential election disputes, the Supreme Court abdicated its responsibility to promote democracy. It is unfortunate that the Supreme Court abdicated its responsibility by endorsing fraudulent presidential elections.⁹⁰ The decisions by the Supreme Court and any other court that does not respect the will of the people may throw the country back to its violent past. People may resort to civil disobedience, as recently happened in Kenya and Zimbabwe, where President Kibaki and President Robert Mugabe were fraudulently declared winners!⁹¹

Judges must feel compelled to select those values and principles from the Constitution which best promote democracy. Judges can overcome limitations to the exercise of judicial power if they accept an aggressive law-making function regarding all categories of human rights. In short, they must embrace judicial activism. Through their boldness, judges can push the legislature and the executive so that these arms of government move forward on the journey of democracy.

⁹⁰ It should be noted that the Supreme Court has handled other cases, especially concerning parliamentary elections, where the appellants alleged that elections were conducted contrary to the provisions of the Constitution, the Electoral Commission Act and the Parliamentary Elections Act and that the non-compliance affected the results in a substantial manner. See eg *Kakooza John Baptist v The Electoral Commission & Another*, Electoral Petition Appeal 11 of 2007. See also *Amama Mbabazi v Garuga Musinguzi*, Election Petition Appeal 1 of 2001; *Abdu Katuntu v Kirunda Kivejinja*, Election Petition Appeal 24 of 2006; *Mukasa Anthony Harris v Bayiga Michael Philip Lulume*, Election Petition Appeal 18 of 2007; *Gola Nicholas Davis v Loi Kageni Kiryapawo*, Election Petition Appeal 19 of 2007; and *Joy Kabatsi Kafura v Anifa Kawoya Bangirana and Electoral Commission*, Election Petition Appeal 25 of 2007.

⁹¹ Incidentally, civil disobedience is recognised as being in defence of the Constitution (arts 3(1) & (2) of the Constitution).