THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CONSOLIDATED MISC. APPLICATION NO 0296 OF 2023

MISC. APPLICATION NO. 18 OF 2024

MISC. APPLICATION NO. 67 OF 2024

MISC. APPLICATION NO. 39 OF 2024

IN THE MATTER OF AN APPLICATION FOR PREROGATIVE ORDERS OF CERTIORARI, PROHIBITION, MANDAMUS AND PERMANENT INJUNCTION

BETWEEN

NSAMBA GEOFREY::APPLICANT

VERSUS

1. **THE REGISTERED TRUSTEES OF THE FEDERATION OF MOTORSPORT CLUBS OF UGANDA (FMU)**
   - **I. MR JACK WAVAMUNNO**
   - **II. MR MAC DUSAMAN KABEGA**
   - **III. MR DAVID BITALO::RESPONDENTS**

AND

2. **DUSMA OKEE**
3. **GEORGE KAGUMU (ALL (SIC)T/A THE SENATE FMU-UG)::RESPONDENTS**

AND

4. **MR BABULAL DAVESH**
5. **IREN BLICK ARETHA (ALL (SIC) T/A THE EXECUTIVE COMMITTEE OF THE FEDERATION OF THE MOTORSPORTS CLUBS OF UGANDA)::RESPONDENT**

Before: *Hon. Justice Dr Douglas Karekona Singiza*

RULING

1 Introduction

The motorsports fraternity has contributed immensely to the development of new technologies in the automotive industry by enhancing safety features such as automatic braking, hydraulic steering, and advanced airbag-deployment systems.[1] It is thus important that courts of law exercise considerable restraint in any deliberative process to do with motorsports organisations. Such caution stems from the fact that adjudicating motorsports disputes could risk stifling innovative prototype concepts that may ultimately be considered by the automotive industry.

Worldwide, deliberative assemblies may take the form of general or extraordinary assemblies, yet whatever the case may be, an assembly serves as a forum where an organisation's priorities can be assessed and deliberated upon and where public participation by individual members can take place. To echo the note of caution above, courts should therefore always show restraint when dealing with disputes involving organisations' decisions to either assemble and deliberate or not, unless of course good reasons exist for judicial intervention.

1.1 Background

The application before me was brought under the provisions of Order 41 Rules 1 and 2 of the Civil Procedure Rules SI 71–1, section 98 of the Civil Procedure Act Cap 71, and sections 33 and 38 of the Judicature Act Cap 13. The motion seeks a number of prerogative reliefs, with the following as the most crucial ones:

1) To quash and set aside the 4th and 5th unconstitutional, unlawful, illegitimate, and irrational Executive Committee decision to convene an Extraordinary General Assembly (EOGA) of the Federation of the Motorsports Clubs of Uganda (FMU-UG) on 3 January 2024.

2) To quash and set aside the 4th and 5th unconstitutional, unlawful, illegitimate, and irrational Executive Committee decision to convene an EOGA by a notice dated 19 December 2023.

3) A nullification of the both the decision to call an EOGA notice of FMU-UG made by the 4th and 5th respondents.

[1] See generally Roach M, Waterman N & Morrison J *The Science of Supercars: The Technology that Powers the Greatest Cars in the World* (2018) Firefly: Cardiff.

4) A prohibition against holding an unconstitutional, illegal, and illegitimate EOGA of the FMU UG scheduled for 3 January 2024.

5) A prohibition of the 1st, 2nd , 3rd, 4th and 5th respondents and their working committee or groups against reviewing the FMU-UG constitution as amended until the previously scheduled federation's management elections of February 2024 take place.

6) A *mandamus* against the 1st, 2nd , 3rd, 4th and 5th respondents compelling them to:

    a) organise and conduct the elections of the FMU-UG management committee scheduled for 3 February 2024; and

    b) provide a bank statement and a true and proper account of all monies that the 4th and 5th respondents received from the National Council of Sports (NCOS) on various dates between 31 October 2022 and 10 October 2023, all amounting to UGX 2,685,587,589=.

1.2 Grounds of the application

The applicant is an ardent motorsports fan and former rally driver who intends to vie for the top leadership of the FMU-UG. He is uncomfortable about the fact that on 19 December 2023, the 4th and 5th respondents, together with the 1st, 2nd and 3rd respondents, made a decision under a notice to call for an EOGA of the FMU-UG allegedly without the power to do so. In addition, the timeframe under the challenged notice, dated 19 December 2023, which called for the EOGA, was short and at variance with the 30-days' notice period prescribed by the FMU-UG constitution. At any rate, the power to call such an EOGA vests in the FMU-UG management committee. Thus, going by the intended outcome of the EOGA, it will be repugnant and *ultra vires* the constitution of the FMU-UG to hold such an assembly. If the reliefs sought are not granted, the applicant will suffer an injury that cannot be atoned for by an award of damages.

Apparently the 1st respondent is a registered trustee and overseer of the FMU-UG, while the 2nd and 3rd respondents are 'senate' and therefore the highest administrative organ of the FMU-UG. The 4th and 5th respondent, for their part, are president and general-secretary and jointly designated as the 'executive committee' of the FMU-UG. The main complaint is that by convening the EOGA, the 4th and 5th respondents usurped the powers of the management committee and had in any case convened the EOGA with more than one listed agenda item. Furthermore, the executive committee resolved to pay each member UGX 10,000,000, an amount considered a bribe notwithstanding its concealment as 'club governance money'.

In particular, the motion focuses on a proposed agenda item no. 1, on constitutional review, and makes the point that, considering that the FMU-UG elections were 35 days away, any review of the constitution so soon before the elections would be procedurally irregular, and intended for the incumbent to hold on to office.

Furthermore, the challenged decision, together with the notice for the EOGA taken out during the festive season, was a calculated move by the 4th and 5th respondents to disenfranchise FMU-UG delegates and members in that it posed the risk that that any resolutions would be made with no quorum or made by fictitious delegates. A further contention concerns the possibility that an illegal resolution would be made in regard to expending the funds from the NCOS grant without a full and proper account thereof.

1.3 Affidavit evidence

The motion is supported by the affidavit of Mr Nsamba, which largely repeats the grounds in support of the application but adds four main points, as summarised below:

1) The power and right to call for and/or convene an EOGA is exclusively that of the management committee of the FMU-UG.

2) The respondents' assembly planned for 3 January 2024 is *ultra vires* the FMU-UG constitution.

3) The planned constitutional review of the constitution of the FMU-UG is also *ultra vires.*

4) Both of these planned activities are contrary to the principles of 'administrative governance' *(sic)* of the FMU-UG.

Mr Nsamba's deposition makes reference to the 4th and 5th respondents' challenged decision (marked Annexure A); the attendance list of the executive meeting dated 19 December 2023 (marked B); a copy of the FMU-UG constitution (marked C); a copy of the notice that called for the extraordinary AGM (marked D); and documents depicting the various names of the 4th respondents (marked E).

1.4 The 4th and 5th respondent's reply

Only Mr Daresh Babula Ruparelia (an executive committee member of the FMU-UG) deponed an affidavit in reply to the motion, albeit that his deposition covers that of the 5th respondent. The paragraphs below deal with areas of averment therein that are considered the most crucial.

1) Mr Ruparelia is the current president of the FMU-UG and one of its executive members, along with the 5th respondent, who is the general-secretary. The deposition begins by raising preliminary objections that touch on the amenability of the motion to judicial review, *locus standi,* and the non-exhaustion of local remedies.

2) ***Amenability of the motion****:* Mr Ruparelia asserts that the FMU-UG is not a public body. Considering that the FMU-UG is neither established by an Act of Parliament nor regulated by any specific law, only member clubs that comply with its constitution can be affected by its affairs.

3) ***Internal dispute-resolution mechanisms:*** Speaking generally to the FMU-UG's constitutional provisions on internal dispute-resolution mechanisms, Mr Ruparelia makes reference to article 13 of the FMU-UG constitution that empowers the senate to resolve the internal disputes, an option that the applicant never explored. The averment here is that 'members through the Constitution of the federation of Motor Sports clubs of Uganda *[sic]* chose *[sic]* how their disputes should be resolved'.

4) ***Locus standi:*** The evidence of Mr Ruparelia is, furthermore, that the FMU-UG relates to its membership on a contractual basis. Considering that the applicant is not a subscribed member, he lacks sufficient interest to bring the motion before this court. Rather uncharitable words, such as 'busybody', 'bystander' and 'stranger to the FMU-UG Constitution', are used to emphasise his lack of interest in the dispute. The 4th and 5th respondent then pick on the fact that the applicant had in any case not been nominated to stand as the presidential candidate, thereby seeking to drive the point home as to his supposed complete lack of *locus standi*.

That aside, Mr Ruparelia maintains that the executive members of the FMU-UG had lawfully convened the EOGA in terms of article 7.2.2 (b) of the constitution, a body with wider authority with in the FMU-UG. The point here is that in its exercise of executive power, the executive committee may decide on anything as long as such a decision is not the exclusive province of the organisation's general assembly (GA).

Mr Ruparelia then get into specifics by denying that the impugned decision taken at the challenged EOGA was taken inquorate since no member of the FMU-UG ever raised the question of quorum at all. It is his evidence that the notice for the EOGA was called in good faith and that all the decisions that were later taken on 2 December 2023 were for the sake of

the good management of the federation. To reinforce this point, the following factual assertions are made:

1) The questioned elections that formed part of the agenda could not in any way harm the applicant.

2) The decisions taken on 2 December 2023 did not cause any injury to the FMU-UG, its supporters, or the applicant.

3) The applicant's affiliated club (Uganda Motorsports Marshals) was represented by Mr Oscar Ssemwanga, as shown by the copy of the attendance register (Annexure C).

4) The resolution of the FMU-UG's executive committee on the government grants of UGX 8,000,000 to each member club was lawfully adopted and with the correct quorum of FMU-UG members.

5) The NCOS imposes a duty on the FMU-UG 'to realign itself in compliance with the position of 'the National Sports Act 2023 (NSA).

6) No member clubs complained that the time for calling the EOGA was insufficient, considering that more than one-third of the members had in fact attended it.

7) The financial information that the applicant seeks is of a private nature and available only to clubs or associations within the FMU-UG, who in any case have never complained about a lack of accountability.

8) Mr Ruparelia denied ever changing his name, but concedes that in the sports fraternity he has always been referred to by his peers as 'Dipu'.

9) The motion is hinged on collusion with the senate members considering the legal costs that the FMU-UG in Miscellaneous Application No. 1234 of 2023 are likely to incur.

1.5 Nature of the complaint

As already noted, Mr Ruparelia's main point of concern is that the applicant elected to bypass the senate and approach this court, a deposition that speaks to the non-exhaustion of local remedies. The complaint before this court touches on a number of questions, many of which are not necessary to reproduce here. It is clear, however, that the dispute concerns the proper structure of the 1st respondent that is vested with the power to convene an EOGA. In a sense, the complaint is hinged mainly on illegality as a ground for judicial review.

2 Issues for determination

This application was prosecuted by way of written submissions by both sides. Arising out of the written submissions, the following questions were raised:

1) Whether there was an improper consolidation of applications.
2) Whether the application is amenable for judicial review.
3) Remedies that are available.

2.1 Decision on improper consolidation of application

The 4th and 5th respondents argue that this court used incorrectly Order 11 Rule 1(a) of the Civil Procedure Rules to consolidate all related applications.[2] It is indeed true that, at the commencement of the hearing of the main application, this court elected, on its own motion, to consolidate all the applications that dealt, on the one hand, with setting aside the temporary relief orders and, on the other, with contempt of this court's own orders in the past.

I did because, in my view, the final decision of this court will, as a matter of course, address all of the concerns in the different applications; conversely, this wards against the likelihood that deliberating on a multiplicity of similar applications will clutter, obfuscate, and needlessly delay engagement with, the substantive questions this court has been approached to consider in the first place. The court holds that the consolidation is proper because both the questions of law and the facts before it are fundamentally the same.

[2] Order 11 Rule 1 of the Civil Procedure Rules provides that where different applications – like the ones before this court – emanate from similar facts and seek the same remedies, they may be heard together as a single application notwithstanding that they had been filed separately. The key consideration is for a court to be satisfied that the applications deal in principle with the same questions of law or fact. The object of the rule here is to enable a quick and just disposal of the merits of the dispute and at a lower cost of litigation. It has also been argued that the consolidation of applications is intended to promote consistent judicial outcomes. See generally *Visare Uganda Limited Vs Muwema & Co. Advocates and Solicitors* Miscellaneous Application Nos. 0826 and 0827 of 2023 (Consolidated) (arising from Civil Suit No. 0425 of 2023 per Mubiru J). See also the authority of *Patrick Nkoba v Rwenzori Highland Tea Co & Another* (1999) Kalr 776 at 778 per Bamwine Ag J who cautions that consolidation of suits (applications) should not be considered where there are extreme differences in the defences and claims.

2.2 Amenability of the application to judicial review

The first line of the attack by the 4th and 5th respondent is that, in terms of Rule 7A of the Judicature (Judicial Review Rules) as amended, a requirement, among others, is that any person may approach a court for judicial-review reliefs only if:

- the decision complained of is open to the oversight power of this court on the three usual grounds of illegality, irrationality, and procedural irregularity;
- the person complaining about the decision has exhausted local remedies; and
- the decision complained of was made by a public body.

The discussion that follows deals with each of these considerations, though in reverse order.

2.3 Public nature of the dispute

The 4th and 5th respondents insist that, in terms of Rule 2 of the Judicature (Judicial Review) Rules as amended, neither the FMU-UG nor any of its organs is vested 'with the performance of … public acts and duties'. The possibility of drawing any inference from the act of receiving public funds from the NCOS is dismissed on the basis that the NSA was assented to by the President only on 17 August 2023 and is not yet operational.[3] The 4th and 5th respondents also make the point again that, to the extent that the FMU-UG is regulated by its constitution rather than any other legal instruments, only private contractual laws may be invoked to challenge its decisions,[4] considering that the dispute deals with personal or elective motivations.[5]

In addition, the 4th and 5th respondents raise a subset question of *locus standi,* maintaining that the applicant in the motion before this court offends the provisions of Rule 1A *(sic)* of the Judicature (Judicial Review) Rules as amended.[6] Here, the argument seems to be that, for any persons to trigger the oversight power of this court, the injured party must have demonstrated,

[3] Section 27 of the NSA saves the NCOS (in the repealed National Council of Sports Act Cap 48) a body vested with the overall power to administer all types of sports in the country.
[4] To drive the point home, reference was made to articles 5.7, 7.1.2.(a), and 7.1.4, 7.1.6(c) of the FMU-UG constitution and the authority of *Odida Charlese vs Omaya Patrick & 5 Others* Miscellaneous Cause No. 03 of 2023 per Okello Ag J.
[5] Reliance was placed on the decision in *Water & Environment Media Network (U) Limited& 2 others vs NEMA & Another* Miscellaneous Causes No. 239 and 255 of 2020 per Ssekana J.
[6] The correct amended provision is Rule 3A, which seems to adopt a more liberal tenor than the 4th and 5th respondents would have preferred when it states that '[a]ny person who has a direct or sufficient interest in a matter may apply for judicial review'.

among other things, 'a significant interest of his own over and above the general interest of the others members of the public *[sic]* [in] bringing an action …'[7]

2.4 Determination

Given the complaint at hand, the guidance given in Rule 2 of the Judicature (Judicial Review) Rules as amended on the meaning of a 'a public body' is most relevant. Rule 2 defines 'a public body' as 'any corporation, committee board … whether corporate or incorporate established by an Act of Parliament for the purpose of … promotion of sports'. Muburu J explains that

> to bring an action for judicial review it is a requirement that the right sought to be protected is not of a personal individual nature *[sic]* but a public one enjoyed by the public at large. The 'PUBLIC' nature of the decision challenged is a condition precedent to the exercise of the court's supervisory functions [emphasis via capitalisation contained in the ruling].[8]

The argument that the FMU-UG is private entity and therefore not subject to this court's oversight power is not supported by the guidance of the Court of Appeal. The latter's ruling in *Uganda People's Congress and Another*[9] is a decision that relies extensively on the reasoning of the Ontario Superior Court. In my view, this decision is good authority which the present court may not easily depart from. The court in that case took the view that where the impact of a private organisation on society is strong, its decisions must always be construed as 'public' in nature,[10] and hence, by implication, sufficient to trigger the oversight role of the courts. In my view, these considerations are sufficient to trigger the oversight power of this court.

2.5 Exhaustion of local remedies

As already noted, the 4th and 5th respondents argued that, in terms of article 13 of the FMU-UG constitution, the applicant should have exhausted the internal dispute-resolution mechanism which is vested in the senate before approaching this court.

In the debate on the rule on the exhaustion of local remedies, I myself always adopt the approach that Chenwi takes in discussing the African Court on Human and Peoples' Rights. The learned author's preference for a flexible approach is acknowledged with the consideration that, if there are no remedies available at all to exhaust, the rule must always be resolved in

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[7] The decision in *Citizen Alert Foundation (CAF) Ltd and 40 others v the Attorney General and 20 others* Miscellaneous Application No. 339 of 2020 per Ssekana J seems to discuss a related but repealed provision which had been stricter and therefore more exclusionary.

[8] *Arua Kubala Park Operators and Market Vendors and Cooperative Society v Arua Municipal Council* Miscellaneous Cause No. 0003 of 2016.

[9] Civil Appeal No. 202 of 2016 pp 34–38 per Mulyagonja JA.

[10] See *Graaf v New Democratic Party* 2017 ONSC 3579, cited in *Uganda People's Congress and Another, ibid.* p 37.

favour of the applicant.[11] It is ironic that the 4th and 5th respondents accuse the senate of having colluded with the applicant to obtain an induction that could now be expected to fairly resolve the complaint at hand. In my view, it would have been unfair for the applicant to have exhausted any remedies from a senate that was allegedly conflicted. The objection to non-exhaustion of local remedies must therefore fail.

2.6 Merits of the application

The question of whether the application is open to the oversight power of this court is rooted in the true meaning of judicial review as a prerogative remedy. 'Judicial review' refers to the oversight role that courts play in regard to the processes by which public bodies and public officials exercising statutory functions make decisions.[12] Many court decisions continue to call for caution by highlighting the narrow mandate in which that very power may be exercised.[13]

Indeed, prerogative remedies are discretionary and in fact may not be considered at all, even when an affront to certain procedural requirements is apparent.[14] Be that as it may, whenever decisions by public bodies are challenged on account of illegality, irrationality, or procedural impropriety, three remedies are triggered. These are (1) *certiorari;* (2) *mandamus;* and (3) prohibition. Each of the writs available in judicial review operates differently, depending on the act complained of. From the motion papers, there is no doubt that the applicant's complaint deals majorly with the alleged illegality of the impugned decision of the 4th and 5th respondents. Illegality as a ground in judicial review entails that the decision-maker is aware of the legal regulatory framework that may limit his or her decision-making power.[15]

The applicant argues that in terms of articles 7.1.7. (a) of the FMU-UG constitution, only the management committee is vested with the power to convene an EOGA, as long as 15 days' notice is given. For their part, the 4th and 5th respondents make the point that they could validly convene an EOGA using their expanded executive powers in terms of article 7.2.2 (b) of the constitution. These two positions are in fact what the dispute before this court is all about. In resolving such a dispute, it is always safer to go back to what the organisation's founding instrument, as embodied in its constitution, speaks to.

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[11] Chenwi L 'Exhaustion of local remedies rule in the jurisprudence of the African Court of Human and Peoples' Rights' *Human Rights Quarterly John Hopkins University Press* 41(2) 2019 pp 374–398.
[12] See *Oyaro John Owiny v Kitgum Municipal Council* MC No. 0007 of 2018.
[13] See *Minister for Aboriginal Affairs v Peko-Wallsend Ltd*: (1986) 162 CLR 24, 40–41, which cites *Wednesbury Corporation* [1948] 1 KB at 228.
[14] See *Credit Suisse v Allerdale Borough Council* [1997] QB 306 at 355D.
[15] See *Council of Civil Service Union v Minister for Civil Service* [1984]3 ALL ER 935 at 950 per Diplock J.

Some writers regard a constitutional document as an instrument of power that inevitably translates into order and discipline.[16] Indeed, an organisation's constitution details how responsibilities are shared and to whom and for how long. Thus, where there are any proven breaches of any of its constitutive elements, a red flag will always be raised. In promulgating articles 7.1.7. (a), the drafters of the FMU-UG's constitution must have intended to delimit the executive powers of the 4th and 5th respondents such that only the management committee could convene an EOGA.[17]

There is no doubt that the constitution of the FMU-UG vests the power to call an EOGA in its management committee. It would therefore be illegal for its executive committee instead to purport to exercise such a power. It is not entirely in the realm of possibility that an executive committee can unilaterally invoke its executive power under the constitution of the FMU-UG in order perform a function which is specifically reserved for another structure under the same constitution, no matter how convenient it is to do so. On that ground alone, I find that this application must succeed, sufficient enough to trigger an order of *certiorari* against the 4th and 5th respondents' decisions.

It is thus not necessary to delve into questions of whether the proposed agenda to be discussed in the impugned EOGA would disenfranchise potential voters and hence be irrational. That being the case, there is no need to make a further inquiry into whether the 4th and 5th respondents' decision was also irrational or procedurally improper.

2.7 Contempt of the courts as an extension of illegality

In regard to the allegation of contempt of court orders, the evidence that the FMU-UG senate had in fact warned the 4th and 5th respondents not to defy this court's own orders is a good point of departure.[18] In Miscellaneous Application No. 18 of 2024, the applicant's main complaint is that the relief orders granted in Miscellaneous Applications Nos. 1235 of 2023 and 1234 of 2024 were deliberately defied even after the respondents were presented with those very orders.

In the deposition of Mr Ruparelia, the 4th and 5th respondents denied knowledge of those orders at the time of the 3 January 2024 EOGA, and insist that none of the activities that had been

[16] De Vos P, 'The Constitution made us queer: The sexual orientation clause in the South African Constitution and the emergence of gay and lesbian identity' in C Stedin and D Herman (eds) *Sexuality in the Legal Arena* (2000) p 195.
[17] S Prakash 'The essential meaning of the executive power' *University of Illinois Law Review* 2003 at 702 defines the term 'executive power' as 'a shorthand for the power to execute the laws'. Clearly, this definition does not include the power to breach an organisation's very laws.
[18] Reference is made to annexures D and E.

temporarily stopped by the court ever took place. The respondents then revealed that they had sought to set aside the very injunction orders in a separate Application No. 123 of 2024 in terms of Order 7 Rule 27 of the Civil Procedure Rules on grounds of non-service of summons by highlighting two major contentions:

1) the absence of a return of service as required by Order 5 Rule 16; and
2) the reliance of a non-commissioned deposition in breach of section 5 of the Commission of Oaths (Advocates) Act.

The combination of these two procedural deficiencies, the respondents maintain, suggests that there was no order of court that could have been properly brought to their attention. In further response to the alleged contempt-of-court proceedings, the 4th and 5th respondent rely on the deposition of Ms. Iren Blick Aretha, Mr Saeed Kakeeto (a member of the executive committee of the FMU-UG, representing the Central Motor Club), and Mr Mayanja George Kisitu, the deputy Vice President of the FMU-UG (also a representative of the Motorcycles), who support the version of evidence that they were either unaware of the order of the court or, if they were, then the order had not been verified.

Another motion for contempt of court orders *vide* Miscellaneous Application No. 67 of 2024 was again filed by the applicant. In this motion, the complaint again was that the orders of the court that had temporarily stopped the EOAG was served on Mr Kagoro Moses Joseph, Mr Bayendera Frank Jimmy, Mr Solomon Kajura, and Mr Omar Mayanja but defied. This was in spite of the advice by the senate to comply with the very court order. In their depositions, all the four respondents above denied knowledge of the orders of court and indicate that they would have probably respected those orders had the orders of court been brought to their attention.

2.8 The law

Courts in this country take the view that before a complaint of contempt of court orders can be entertained, there must be an order of the court; the persons against whom it has been made must be aware of the order; and the person against whom the order was taken out must have disobeyed it. The court must therefore be satisfied that the failure to comply with the orders of a court was deliberate, unjustified, and done with *mala fide*.[19]

[19] *Ssempebwa op cit.* See also *Stanbic Bank (U) Ltd & Anor v The Commissioner General*, URA MA 42 of 2010.

This court has previously adopted the views of Bashaija J on the uncompromising nature of the obligation to obey court orders as having strong persuasive value. It is argued that a court of law should rarely accept any excuse that may justify why its own orders have been defied.[20] The reason for this position is not hard to fathom: its overriding consideration is to safeguard the rule of law and the integrity of courts.[21] All the parties in fact reiterate the principle in their arguments that any allegation of contempt of court must be proven under the following four circumstances:

1) the existence of an order under the authority of the court;
2) evidence that the order was served or brought to the notice of the contemnor;
3) non-compliance with the order by the respondent; and
4) non-compliance that was wilful and *mala fide.*[22]

2.9 Examination

In view of the five considerations above, I now must decide whether the impugned decision by the respondents in insisting on convening an EOGA on 3 January 2024, in which a number of other challenged decisions were made, was 'wilful', 'unlawful', and with '*mala fides'*.[23] The interpretative outcome of these words requires that the evidence that non-compliance with the order of the court was intentional, contrary to the law, and made with spite against the applicant must be considered, a task that now also requires this court to finally explain why a consolidation of all the applications was necessary. The decision to consolidate these applications, it is submitted, was intended to maintain adjudicative orderliness as well. Besides, even if there were sufficient grounds to set aside the orders of injunction, such an order would still not have had any impact on the final decision of this court.

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[20] *See Erasmus Masiko v John Imaniraguha, Christopher Mulenga & Commissioner Land Registration* High Court Miscellaneous Application. No. 1481 of 2016. In this case, the judge wholly adopted the reasoning of the court in *Hadkinson v Hadknison* [1952] 2 All ER 567. The use of the word 'rarely' suggests that there are some instances where the general rule above may be departed from if good reasons for it exist.

[21] See *In the Matter of Collins Odumba* 2016] eKLR per Marete J. This decision relies on *Johnson v Grant* 1923 SC 789.

[22] The respondent relied on the Supreme Court decision in *Ssempebwa & Ors v Attorney General* [2019] 1 EA 549.

[23] See Bryan G (ed) *Black's Law Dictionary* (1999) Thomson Reuters, which defines 'wilfully' as meaning a deliberate act intended to hurt another regardless of the consequences; 'unlawful' as meaning something that the law does not permit or approve of; and '*mala fides'* as meaning a deceitful act.

2.10 Determination

I have no doubt in my mind that both the temporary and interim orders were proper orders of this court. These orders were taken out following the proper verification that there had been service of the motion papers as required by the law. In fact, in both instances when the orders were taken out, Mr Jack Wavamunno and Mr Mac Dusman Kabega (the 2nd and 3rd respondents) were present in the court and never opposed the two applications. Mr Kabega unequivocally states: 'I deem it fit not to file a reply. In short I am not opposing the application as it is.' Similarly, the 2nd and 3rd respondents did not oppose Application No. 1225 of 2023 even if they were present in the court.

It is noted that none of the other respondents replied to the motion's interim reliefs, even though there is ample evidence that all the parties had been properly served. There is also evidence that there was an attempt to verify the authenticity of these orders, and indeed the registrar of this court did precisely that. There is also evidence that in the course of the impugned EOGA dated 3 January 2024, legal counsel was sought on the legal consequences of defying these interim reliefs. It would be a falsehood for any person to turn around and feign ignorance or even to suggest that none of the acts that had been stopped had taken place. It is clear that the interim reliefs in the orders taken out by this court were in the main intended to stop for the time being the then planned EOGA and all its likely outcomes until the final determination of the main application.

It must have been the intention of the 4th and 5th respondents not to comply with these orders, a decision which they knew was illegal. There being no other explanation, it is very possible that the 4th and 5th respondents were motivated by their personal dislike of the applicant. I hold this view because they truly believed that the applicant was an interloper or 'busybody' who had at best colluded with the members of the 2nd and 3rd respondents to disrupt the FMU-UG. Discernible from this set of facts is a finding that the 4th and 5th respondents were in contempt of this court's own orders, a manifestation of the continuation of their illegal acts which shall be remedied in the final orders of this court.

3 Final orders

In the light of the findings already made, the following final orders are made:

1) A writ of *certiorari* is issued quashing and setting aside as illegal the executive committee decision to convene an EOGA of the FMU-UG on 3 January 2024.

2) A writ of *certiorari* is issued quashing the illegal executive committee decision to take out an EOGA notice dated 19 December 2023 to convene an EOGA.

3) A prohibition against conducting and holding an illegal EOGA of the FMU-UG without the requite authority.

4) An order of *mandamus* compelling the management committee of the FMU-UG to call for a fresh EOGA within one month from today.

5) A consequential order nullifying everything that was done under the already challenged decision in section 2 above.

6) An order of damages against the 4th and 5th respondents personally to pay damages for UGX 10,000,000 for contempt of court orders in MISC. APPLICATION NO. 18 OF 2024 and MISC. APPLICATION NO. 67 OF 2024

7) An order dismissing MISC. APPLICATION NO. 39 OF 2024

8) Costs of all the consolidated applications.

I have not considered the rest of the prayers sought because a legally reconvened EOGA could remedy most of them.

Douglas Karekona Singiza

Acting Judge

08 July 2024