

**THE DEVELOPMENT OF PUBLIC INTEREST LITIGATION IN THE PROMOTION  
OF HUMAN RIGHTS IN UGANDA**

**By:**

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### **DECLARATION**

"This Dissertation is my original work and has not been presented for a Degree or any other academic award in any University or Institution of Learning".

OKUNY INNOCENT



Name and Signature of Candidate

13/06/2017  
Date

### **DECLARATION B**

"I confirm that the work presented in this Dissertation was carried out by the candidate under my supervision".

**MR. OBBO PATRICK**

13/6/2017

Name and Signature of Supervisor

Date

A handwritten signature in blue ink, appearing to read 'Obbo Patrick', written over a horizontal line.

## **DEDICATION**

I wish to dedicate this report to Mr. Obbo Patrick my supervisor who tirelessly dedicated his valuable time and resources to supervise this project. Without you i would have had an impossible task to sail through this challenging endeavor alone.

I also dedicate this report to my parents, the entire family members and other friends like Ntudde Leila, Otim Moses for their continuous support throughout my research work.

I also dedicate this research report to the entire School of Law taking into account the commitment of all the lecturers who i cannot single out individually, in guiding me through the entire course.

May the almighty God bless them.

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The Judicature Act (Cap.13).

The National Environment Act (Cap.153).

The Civil Procedure Act (Cap 71).

## **DOMESTIC STATUTORY INSTRUMENT AND REGULATIONS**

The Constitutional Court (Petitions and References) Rules 2005.

The Civil Procedure Rules SI, No71-1.

The Fundamental Human rights (Enforcement Procedure) Rules No.26 of 1992.

The Judicature (Fundamental Rights and Freedom) (Enforcement Procedure Rules) SI No.55 of 2008.

## **INTERNATIONAL/FOREIGN LEGISLATIONS**

United Nations Convention against Transnational Organized Crime (The Palermo Convention).

The East African Treaty.

The Indian Constitution.



## **ACRONYMS**

AG	Attorney General.
CA	Court Of Appeal.
EAC	East African Court.
ICCPR	International Convention on Civil and Political Rights.
KCCA	Kampala City Council Authority.
NGO	Non-Governmental Organization.
PIL	Public Interest Litigation.
SC	Supreme Court.
SI	Statutory Instrument.
TADA	Terrorist and Disruptive Activities.
ULS	Uganda Law Society.
UPC	Uganda People’s Congress.
DPP	Director of Public Prosecution.
HON	Honorable.
DR	Doctor.
RTD	Retired.
UN	United Nation

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## **ABSTRACT**

*The study analyzed the provisions in the various legislations and case law to establish their relevance and effectiveness in the promotion of human rights in Uganda. The researcher used a comparative analysis method to arrive at his conclusions inter alia that there is no effective legislative frame work for the institution of cases of public interest litigation on the promotion of human rights in Uganda as the country does not have a specific law on public interest litigation cases. The laws on public interest litigation are lacking as the laws have lots of Lacuna. Even the institutional framework is facing a number of challenges. The researcher winds up this research with recommendations for improvement while suggesting an urgent need for the passing of public interest litigation legislation.*

## CHAPTER ONE

### 1.0 Introduction

Public Interest Litigation (PIL) has been defined' differently by various authorities as shown below:-

According to Bhagwati J in case of *Oshlack v Richmond River Council*,

Public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them Social and economic justice, which is the signature tune of our Constitution<sup>1</sup>.

In Tanzania, the High Court in the case of *Mtikila v Attorney General* described PIL as follows;

It is not the type of litigation which is meant to satisfy the curiosity of the people, but it is a litigation which is instituted with a desire that the Court would be able to give effective relief to the whole or a section of the society, the condition which must be fulfilled before public interest litigation is entertained by the Court is that the court should be in a position to give effective and complete relief. If no effective relief can be granted, the court should not entertain public interest litigation<sup>2</sup>.

For there to be public interest litigation the following elements must be satisfied (a) The matter must affect a significant number of people not just the individual or; (b) Raise matters of broad public concern or; (c) Impact on disadvantaged or marginalized group

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<sup>1</sup> Bandhua Mukti Morcha-V-union of India  
AIR 1984 S.C.

<sup>2</sup> Mtikila-V-attorney General [H.C.C.S No. 5 of1993].

and (d) It must be a legal matter which requires addressing by *pro bono* for the common good of the public in general<sup>3</sup>.

In acknowledging the importance of PIL, the Supreme Court of India observed that public interest litigation is an extremely important jurisdiction exercised by the Supreme Court and the High Courts<sup>4</sup>.

The Courts in a number of cases have given important directions and passed orders which have brought positive changes in the country, the Courts' directions have immensely benefited marginalized sections of the society in a number of cases. It has also helped in protection and preservation of ecology, environment, forests, marine life, wildlife etc. The court's directions to some extent has helped in maintaining probity and transparency in the public life, it's against this back ground that Ugandans embraced PIL.

PIL is regulated by a few institutional infrastructures like the parliament, High court, Court of Appeal, Constitutional Court and Supreme Court whose functions shall be analyzed in chapter three, there are also many Acts, Statutory Instruments and case law that help in the exercise of PIL in Uganda and they include; - The constitution of Uganda as amended<sup>5</sup>, The Constitutional Court (Petitions and References) Rules<sup>6</sup>, The Civil Procedure Act Cap<sup>7</sup>, Civil Procedure Rules<sup>8</sup>.

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<sup>3</sup> Penny Martin Defining and refining the concept of practicing in the public interest [Alternative Law Journal Vol. 28 Number 1 February 2003 Page 12, <<http://www.worldwidejournals.com>> accessed on 1<sup>st</sup> February 2017.

<sup>4</sup> State Of Uttaranchal Vs Balwant Singh Chaufal & Ors. On 18 January, 2010 (unreported).

<sup>5</sup> The 1995 Uganda Constitution.

<sup>6</sup> Constitutional court (petitions and references) rules 2005.

<sup>7</sup> Civil procedure Act cap 71.

<sup>8</sup> Civil procedure rules SI, No 71-I.

Human rights in Uganda is provided for under chapter four of the Uganda constitution as amended<sup>9</sup>.

Chapter four of the constitution provides for the fundamental rights and freedoms of the individual to be inherent and not granted by the state, it further stresses that the rights and freedoms of the individual and groups enshrined in this chapter shall be respected ,upheld and promoted by all organs, agencies of government and by all persons.

Human rights are universal values and legal guarantees that protect individuals and groups against actions and omissions primarily by state agents that interfere with fundamental freedoms, entitlements and human dignity, the full spectrum of human rights involves respect for protection and fulfillment of civil, cultural, economic, political and social rights as well as the right to development .Human rights are universal, in other words ,they belong inherently to all human beings and are interdependent and indivisible.

There are many ways of classifying human rights. The more generally accepted classification is the one that categorizes human rights into three namely; First generation rights, second generation rights and third generation rights.

First generation rights are also sometimes referred to as blue rights. These are the civil and political rights. The international covenant on civil and political rights [ICCPR] sets out these rights. These are the rights of individuals as against the state. They are aimed

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<sup>9</sup> Supra (n 5).



at the protection of citizens against right to life, right to personal liberty, right to security, right to privacy, right to a fair trial, right to equality and dignity. Right to freedom from torture, cruel inhuman and degrading treatment or punishment, freedom from slavery and forced labour, freedom of religion, belief and opinion, freedom of expression, freedom of association and freedom of movement, political rights, that is, rights which guarantee individuals the rights to participate in their Government.

### **Second generation rights.**

These are also referred to as Red Rights these are the economic social and cultural rights. The international covenant on economic, social and cultural rights contain these rights. These rights impose a positive obligation on the state to provide or at least create condition for access to those facilities which are considered essential for modern life. These rights include but are not limited to Rights to work, rights to collective bargaining, rights to property, right to housing, right to education, right to health care services, right to social security and right to participate in the cultural life of one's choice.

### **Third generation Rights.**

These are also referred to as the Green rights and also solidarity rights, these are quite recent in origin. Their emergence is linked to the rise of third world Nationalism and the realization by developing states that the existing international order prejudices them. These rights are collective in nature and depend upon international cooperation for their achievement. These include but are not limited to; rights to development, see the UN

declaration on the right to development, right to place and right to a clean environment,

See Kyoto protocol which sets the greenhouse emission objectives]. This categorization is not however rigid. Some rights could actually fall in more than one category e.g. the right to self-determination can be considered as a third generation right as well as civil and political right.

While all rights are important, the right to life is seen as the most important and the source of all other human rights, because without life no one can enjoy any other rights.

In the South Africa case of *S v Makwanyane and another*<sup>10</sup> the court described the right to life and dignity as the most important of all human rights and the source of all personal rights.

In conclusion, human rights are universal and inalienable; indivisible, interdependent and interrelated. They are universal because everyone is born with and possess the same rights, regardless of where they live, their gender or race, or their religion, culture or ethnic backgrounds.

### **1.1 Back ground to the study.**

PIL was drawn from Anglo-Saxon system of jurisprudence<sup>11</sup> the bulk of citizens there alike Ugandans were unaware of their legal rights, and much less in the position to

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<sup>10</sup> (1995) 6 BCLR 665.

<sup>11</sup> Ashok H. Desai and S. Muralidhar, public interest litigation: potentials and problems (New Delhi oxford university press, 2000) p.159, <<http://www.pilac.mak.ac.ug>> accessed on 2<sup>nd</sup> of April 2017.

assert them. Not until lawyers started advocating for the representation of the larger community when need arose.

The origin and evolution of PIL in Uganda is not somewhat obscure, it has been agreed by a responsible majority of people that a number of factors, legal and political and realization of constitutional obligation by the Judiciary towards the poor and the marginalized sections of the society led to the development of PIL.

In Uganda, public interest litigation is coming of age; some examples of PIL are the *Rwanyarare v AG*<sup>12</sup> petitions in the Constitutional Court in respect of political rights; *Uganda Law Society v AG*<sup>13</sup> petition on execution of death penalty sentences passed by a field court martial without affording a right to appeal among many other cases.

## **1.2 Statement of the problem.**

The study is to examine the adequacy, efficiency and practicability of the legal provisions in relation to protection of the rights of citizens. PIL being a recent development in Uganda, its efficiency requires good laws and this can be achieved by studying the laws governing it currently, in a bid to make proper recommendations and conclusion to ensure proper protection of human rights and to avoid PIL cases from being thrown out of court or rendered res-judicata for lack of proper procedures for initiating PIL in courts<sup>14</sup>.

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<sup>12</sup> Constitutional petition no.3 of 1998.

<sup>13</sup> Constitutional petition no.23 of 2001.

<sup>14</sup> Public interest litigation in Uganda practice & procedure shipwrecks and sea marks September 2005 p.3, <<http://www.pilac.mak.ac.ug>> accessed on 2<sup>nd</sup> April 2017.

### **1.3 The broad or main objectives of the study.**

To establish the link between the development of public interest litigation and promotion of human rights in Uganda, much as people are happy about the development of PIL, it's appallingly worrying to have allegations of judges being bribed by the government against the interest of justice, cases being thrown out for lack of proper procedures of initiating PIL and lack of awareness of the existence of PIL among citizens Uganda. It is such erroneous strains that the researcher intends to address.

### **1.4 Specific objectives.**

- 1-To learn about the procedures of initiating PIL.
- 2- To find out the efficacy, adequacy and practicability of international and national laws  
Regulating PIL, so as to offer recommendations on enacting new ones.
- 3-To appreciate the functions of the regulatory body's governing PIL.
- 4-To find out problems associated with PIL and make recommendations.
- 5- To find a means of disseminating PIL.

### **1.5 Hypothesis.**

The laws on enforcement of PIL are underdeveloped and the existing ones are obsolete specially the provisions relating to initiating of PIL in the Courts of law in Uganda

With the above in mind, the central issue for our investigation is whether the provisions in the existing laws germane to PIL satisfactorily address the phenomenon of the promotion of human rights through the development of PIL in Uganda's legal system.

## 1.6 Literature review.

Since PIL is now a global issue, both local and foreign authors have written about it, enabling the researcher to reflect their views in this work.

The literature reflected covers historical developments of PIL, its importance, procedures of initiating PIL in Uganda and its challenges.

Authors who have written on this subject matter include;-

Phillip Karugaba<sup>15</sup> commenting on the procedure for the enforcement of fundamental human rights under PIL, he said, we will focus first on procedure under the constitution<sup>16</sup>. It presents a classic case of needing to know where one is coming from and to know where one is going. Article 50(4)<sup>17</sup> provides for the making of laws by Parliament for the enforcement of the rights in and freedoms under chapter 4 of the Constitution, no rules have been made under Article 50(4)<sup>18</sup>.

In *Uganda Journalists Safety Committee v Attorney General*<sup>19</sup>, the Supreme Court accepted the Attorney General's argument that there was no law in place for the enforcement of rights under Article 50<sup>20</sup>, Similarly in *Jane Frances Amamo v Attorney General*<sup>21</sup>, the case was roundly dismissed in the following words; The Constitution clearly and in no uncertain words said, Parliament was to make laws for the enforcement of the rights and freedoms under the said Constitution. In my humble

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<sup>15</sup> Philip Karugaba at page 6-7, <<http://www.wikipedia.org>>accessed on the 2<sup>nd</sup> April 2017.

<sup>16</sup> Article 50.

<sup>17</sup> The 1995 Uganda Constitution.

<sup>18</sup> Ibid.

<sup>19</sup> Constitutional Appeal No.7 of 1997.

<sup>20</sup> Constitutional appeal No.7 of 1997.

<sup>21</sup> High Court Misc. Application No. 317 of 2002.

opinion this means that Courts can no longer apply the Rules passed in 1992. That would mean to me that until Parliament makes laws under Article 50(4)<sup>22</sup>.

However, Article 273<sup>23</sup> read with S.48 of the Judicature Act allows the preservation<sup>24</sup> and continued application of the Fundamental Human Rights (Enforcement Procedure) Rules<sup>25</sup>, this was the prescribed procedure for enforcement of the rights under Article 22 of the old Constitution<sup>26</sup> that was the precursor of today's Article 50<sup>27</sup> of the current Uganda constitution, it is a testimony to our turbulent past that the rules for enforcement of fundamental rights were only put in place 25 years later. However, the numerous cases now under Article 50 is a good testimony to our recovery and restoration of the Rule of Law<sup>28</sup>. Following the coming into force of the current Constitution, these rules continue to have effect by virtue of Article 273<sup>29</sup> which preserves the existing law subject to modifications as to bring them into compliance with the Constitution<sup>30</sup>. The 1992 Rules were further saved under the Judicature Act<sup>31</sup> and therefore continue to have full force and effect.

Therefore, there is a clear and proper legal basis for the enforcement of Article 50 and several matters have been heard under these rules. With due respect, Phillip Karugaba in his paper was not right in saying that Article 273 read with Section.48 of the

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<sup>22</sup> Supra (n 17).

<sup>23</sup> Ibid (n 22).

<sup>24</sup> (Cap. 13).

<sup>25</sup> S.I No. 26 of 1992.

<sup>26</sup> The 1967 Uganda Constitution.

<sup>27</sup> The 1995 Uganda Constitution.

<sup>28</sup> Supra (n 25).

<sup>29</sup> Supra (n 27).

<sup>30</sup> Ibid (n 29).

<sup>31</sup> Cap 13.

Judicature Act<sup>32</sup> allows the preservation and continued application of the Fundamental Human Rights (Enforcement Procedure) Rules<sup>33</sup>. Because of the following reasons;- First: The Fundamental Human Rights (Enforcement Procedure) Rules<sup>34</sup> was subsequently repealed by The Rules Committee and the latter enacted The Judicature (Fundamental Rights and Freedom) (Enforcement Procedure Rules)<sup>35</sup>.

Second: The Judicature (Fundamental Rights and Freedom) (Enforcement Procedure Rules)<sup>36</sup> was also abolished in the case of *Bukenya Church Ambrose Vs Attorney General*<sup>37</sup>, on grounds that Article 50 (4) of the constitution of Uganda<sup>38</sup> Specifically provides that parliament shall make laws for the enforcement of the rights and freedoms in Chapter Four of the Constitution. Therefore the Rules committee in making statutory instrument of year 2008<sup>39</sup> which clearly provides for the enforcement of the rights and freedoms under Article 50 had usurped the power of parliament.

So Phillip Karugaba did not provide solutions to this problem. However his paper helped the researcher to understand the development of PIL in Uganda and it is therefore against this ground that the researcher developed the idea to study the adequacy of the laws regulating PIL in Uganda provide resolutions where there is lacuna in the law. On corruption of some judges in cases of PIL, Guardial Singh Nijar in his report<sup>40</sup> pointed out that, for some time courts in many developing countries faced the challenge of

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<sup>32</sup> Ibid.

<sup>33</sup> S.I No. 26 of 1992.

<sup>34</sup> Ibid.

<sup>35</sup> SI no 55 of 2008.

<sup>36</sup> Ibid (n 35).

<sup>37</sup> Constitutional Petition No 26 of 2010.

<sup>38</sup> The 1995 Uganda Constitution.

<sup>39</sup> Ibid.

<sup>40</sup> Public interest litigation: a matter of justice an Asian perspective 8<sup>th</sup> October 2006<<http://www.googleusercontent.com>>accessed on 2<sup>nd</sup> April 2017.

considerable proportions. Prime amongst this was their image as being in the service of the rich. The indigent were often dragged through its portals as unwilling suitors, usually as defendants or accused. This perception gravely undermines access to justice. Where grievances go undressed for this reason, the proper functioning of the rule of law is in jeopardy.

Public Interest Litigation (PIL) seeks to correct this judicial image in the eyes of its poorer citizenry and thus restore the rule of law in the justice system, the courts in India and some Asian countries have generally adopted PIL as an essential component of its justice delivery system.

In some areas the achievements have been quite spectacular. For example, the South Asian judiciary is said to lead the world as a guarantor of the legal protection of sustainable development and the environment, the courts in these countries have expanded on substantive rights and removed the constraints of procedural law inhibiting access to the courts, the judicial approach displays an ecological understanding and sensitivity and, as well, a willingness to build bridges whereby all citizens, and not just the strong, may approach the courts for vindication of their rights. Although Singh was talking about India, this report calls for a thorough check on corrupt judges who are in most cases favouring the rich or the government at the expense of the poor citizens in Uganda given that human rights violation is persistent in Uganda. For example allegations of plundering Uganda natural resources like the issue of Mabira forest give away which would have greatly defiled the principle of cross generational equity and the doctrine of public trust are matters of PIL that require only



impartial judges to handle. Thus all these arguments form the basis for the researcher's commitment to provide remedies.

On relaxation of procedural requirements, Ashok .H. Desai and S. Muralidhar in their book entitled *Public interest Litigation, Potential and Problems*<sup>41</sup> says, in order to permit full access to courts, PIL has been marked by a departure from procedural rules extending to the form and manner of filing a writ petition, appointment of commissions for carrying out investigations, and giving the report to the court, and the appointment of lawyers as an *amicus curiae* to assist the court.

The flexibility of PIL procedure can best be illustrated by what is termed as *epistolary jurisdiction*, Taking a cue from the American Supreme Court's decision in *Gideon Vs Wainwright*<sup>42</sup>, where a post card from a prisoner was treated as a petition, the supreme court stated in the case that a public spirited person could move the court even by writing a letter, the courts have accepted the letters and telegrams as petitions.

Ashock's book is great in giving an insight that there is need to relax the procedure of enforcement of fundamental human rights under PIL in Uganda also. Article 126(2) (e) of the constitution<sup>43</sup> provides that substantial justice shall be administered without undue regard to technicality<sup>44</sup>. All these will enable the researcher form a basis for coining up proposal for procedures of enforcing Fundamental human rights.

<sup>41</sup> New Delhi; Oxford University Press at p.4 <<http://www.downlaods: public law clinic>> accessed on 2<sup>nd</sup> April 2017.

<sup>42</sup> Supreme Court, Appeal of 1998.

<sup>43</sup> The 1995 Uganda Constitution.

<sup>44</sup> Ibid.

**1.7 The Scope of the study.**

Public interest litigation is a wide topic requiring a wide analytical treatment. However, owing to the requirement of the paper and time available the researcher found it necessary to restrict the scope of the study. The book will be based on a research carried out in Kampala city which is a home of many lawyers and non-governmental organizations that have steered up public interest litigation.

In order to fully appreciate the intricacies and ramifications of the phenomenon of PIL in the laws relating to the promotion of human rights in Uganda, one ought to critically dissect the main legislations germane relevant to the study.

**1.8 Research methodology.**

The researcher has used a desktop and comparative analysis as a method in this paper. The researcher carried out a detailed library research for literature related to this subject to get relevant statutes, newspapers, internet and extracts from books of authority.

**1.9 Limitations.**

The researcher intended to make a comprehensive report on this study but was limited by a number of factors that shall be discussed below:-

Limited time, this report required a lot of time in order to make an in-depth analysis and study but due to lack of enough time since the researcher had to balance his time for the research with class work given the fact that a report of this kind is always done

in the last year or final semester of study and at this time the student is so busy with class work and lecture's, this really made my research very hard and i could not produce a better report than this given the tight schedules the researcher had while at school.

Inadequate resources, this study required a lot of survey, research via the internet, and visiting the courts of law in order to produce a detailed report, the research came at a time when the researcher was facing a lot of financial difficulties but managed to come out with this report given the fact that he encountered a lot of financial difficulties.

**1.10 Significance of the study.**

The significance of this study is enormous and covers creation of legal and policy frame work to ensure efficiency in PIL. It will also provide a rich source of references for members of academia, corporate representatives and other stakeholders' interested in gaining more knowledge about PIL.

## **CHAPTER TWO**

### **2.0 THE LEGAL FRAME WORK FOR REGULATION OF PIL CASES IN UGANDA.**

#### **2.1 General introduction.**

Public Interest Litigation describes legal actions brought to protect or enforce rights enjoyed by members of the public or larger parts of it, it has been used as a tool of great social change in Uganda on such diverse issues as the environment, health and land issues are concerned.

In Uganda there are many Acts of parliament, Statutory Instruments and court cases that help in the handling of Public Interest Litigation cases in Uganda and these include; The constitution of Uganda as amended<sup>45</sup>, the judicature Act<sup>46</sup>, the Constitutional Court (Petitions and References) Rules<sup>47</sup>, The Civil Procedure Act<sup>48</sup>, Civil Procedure Rules<sup>49</sup>, and a number of case law as shall be discussed below;

The constitution under Article 52<sup>50</sup> provides for the Uganda human rights commission whose duties shall be concerned with the protection and promotion of human rights, the Uganda human rights commission also has mandate to institute public interest litigation cases as a means of promoting human rights in Uganda.

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<sup>45</sup> The 1995 Uganda Constitution (as amended).

<sup>46</sup> Cap 13.

<sup>47</sup> Constitutional court (petitions and references) rules 2005.

<sup>48</sup> Civil procedure Act Cap 71.

<sup>49</sup> Civil procedure rules SI, No 71-1.

<sup>50</sup> Supra (n 45).

**2.2 An In-Depth Analysis of the Legal Frame Work that regulates PIL cases in Uganda.**

The bedrock of PIL lies in Article 50(2)<sup>51</sup>, it provides that any person or organization may bring an action against the violation of another person’s or groups of people who claim that their fundamental right or rights has been violated.

Article 50(1) <sup>52</sup>provides for the enforcement of individuals constitutional rights, by using the expression any person instead of saying an aggrieved person, this mean it allows any individual or organization to protect the rights of another even though that individual is not suffering from the injury complained of, it effectively abolishes *locus standi* as we know it in the common law tradition.

Whenever there is an injury caused by any act or omission contrary to the constitution, any member of the public acting *bona fide* can bring an action for redress for such wrongs, the above Article was applied in the case *Ismail Serugo V AG*<sup>53</sup> where court was emphatic that the right to present a constitutional petition was not vested only in the person who suffered the injury but also in any other concerned individual who feels that a constitutional right of another person has been violated.

Another avenue for PIL lies in Article 137(3)<sup>54</sup> which allows any person who alleges a violation of the constitution to have taken place to petition the constitutional court, such.

<sup>51</sup> The 1995 Uganda Constitution.  
<sup>52</sup> Ibid.  
<sup>53</sup> Constitutional Appeal No.2 of 1998 Page 4.  
<sup>54</sup> Supra (n 51).

a violation may stem from an act or omission of a person or organization or from an Act of parliament being inconsistent with the constitution.

Article 137(3)<sup>55</sup> provides that 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 this constitution may petition the constitutional court for a declaration to that effect and for redress where appropriate.

Also worthy to mention is Section 71 of the National Environment Act<sup>56</sup> which empower any person to apply for an environmental restoration order even though such person is not suffering any harm and has no interest in the land issue in case the matter that shall be under question relates to land.

Section 62(1) of the civil procedure Act<sup>57</sup> requires that suits for public nuisance be instituted by the AG or two or more persons with the consent of the AG.

Section 48 of the judicature Act<sup>58</sup> provides for and allows the preservation and continued application of fundamental human rights of all persons.

In Uganda, the criteria used by the courts to determine PIL cases are that the matter must require a legal remedy and be of Public interest litigation in nature which means it must affect a significant number of people not just the individual or raise matters of

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<sup>55</sup> The 1995 Uganda Constitution.

<sup>56</sup> Cap 153.

<sup>57</sup> Cap 71.

<sup>58</sup> Cap 13.

broad public concern or impact on disadvantaged or marginalized group and it must be a legal matter which requires addressing for the common good.

**2.3 Comparison of Domestic Legislations Regulating Administration of PIL in Uganda with foreign legislations.**

The Constitution of India provides for the protection and prompt delivery of social justice with the help of the law<sup>59</sup>, the said Article of the constitution has been of great use in the following Indian cases:-

The Supreme Court of India, in *Sunil Batra (II) v Delhi Administration*, accepted a letter written to the Supreme Court by Sunil Batra (an inmate of Tihar Prisons, near New Delhi) complaining of inhuman torture in the jail<sup>60</sup>, however this principal is still lacking in the Uganda's current legislation on PIL and this has made it not so easy for the courts to effectively administer justice in relation to enforcement of human rights.

In *Dr. Upendra Baxi (I) v State of U.P.*, the court entertained a letter from two professors at the University of Delhi seeking enforcement of the constitutional right of inmates at a protective home in Agra who were living in inhuman and degrading conditions.<sup>61</sup>, from this case we can now be able to ascertain that Ugandan laws requires an amendment in order to accommodate enforcement of human rights under PIL since Ugandan laws on the administration of PIL cases are so strict on procedural requirements, for example petitions to the constitutional court on question of

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<sup>59</sup> Article 39(a).  
<sup>60</sup> 1980(3) SCC 488.  
<sup>61</sup> AIR 1987 SC 191.

constitutional interpretation can only be entertained through a well written petition pointing out the alleged Article under question and failure to comply with the above requirement renders the suit incompetent and liable to be dismissed by the court.

In *Miss Veena Sethi v State of Bihar*, the court treated a letter addressed to a judge of the court by the Free Legal Aid Committee in Hazaribagh, Bihar as a writ petition<sup>62</sup>.

In *Citizens for Democracy through its President v State of Assam and Others*, the court entertained a letter from Shri Kuldip Nayar (a journalist in his capacity as President of Citizens for Democracy) to a judge of the court alleging human-rights violations of Terrorist and Disruptive Activities (Prevention) Act (TADA) detainees; it was treated as a petition under the Constitution of India.<sup>63</sup>, however this practice is not accommodated in the Ugandan laws, the condition which must be fulfilled before PIL is entertained by the court is that the court should be in a position to give effective and complete relief, if no effective relief can be granted, the court should not entertain PIL<sup>64</sup>, such stringent requirements show how rigid Ugandan laws are in respect of suits regarding PIL.

The South African Constitution provides a clear detail on what amounts to Public Interest Litigation which is not the same case with the Uganda constitution whose provisions are not clear and not express on what amounts to Public Interest Litigation, this makes it quite challenging for the Ugandan courts to fairly administer justice in respect to Public Interest Litigation.

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<sup>62</sup> 1982 (2) SCC 583.

<sup>63</sup> AIR 1996 SC 2193.

<sup>64</sup> H.C.C.S No.5 of 1993.



Another aspect of rigidity of the Ugandan laws in respect of PIL when compared with other foreign legislation was witnessed in the case of *Uganda law society V AG*<sup>65</sup>, ULS petition was premised against the execution of death sentences passed by a field court martial without affording a right of appeal, under Article 178<sup>66</sup> provides the right of appeal as a creature of statute and that an appeal shall lie to the supreme court of India from such decision of all government administrative bodies, agents, tribunals and any other subordinate court to the supreme court without leave of such administrative bodies or such courts and this is greatly contrary to Uganda's existing laws which in most circumstances require leave of the lower court in order to appeal against their decisions which causes injustice to the aggrieved parties who intend to appeal when such application for leave is rejected by such lower courts.

## **2.4 Specific Roles of PIL in Uganda.**

Public Interest Litigation is a new tool in the development of civil society; it presents a strategic opportunity to engage the judiciary in ordinary societal issues which at the end leads to the promotion of human rights.

PIL allows civil society organizations to jump from conference table lamentations to strategic, decisive and enforceable action.

It also allows the judiciary to take its rightful place in the shaping and development of the society.

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<sup>65</sup> Constitutional petition no.2 of 1997.

<sup>66</sup> The India Constitution.

The attempts at Public Interest Litigation in Uganda have been beset with technicalities which the researcher propose to discuss below in a humble attempt to bring clarity to this area of the law and by so doing promote a culture of constitutionalism of human rights enforcement and the rule of law in Uganda and its legal system in order to bring about mutual respect for human rights.

## **2.5 Conclusion.**

From the above discussion, it can be seen that Public Interest Litigation is regulated by quite a number of legal frame work which are weak and not conclusive on the enforcement of human rights in Uganda today.

However from the above discussion, we are now able to also learn how suits regarding Public Interest Litigation can be commenced or instituted before the various courts of law in Uganda as discussed above.

## **CHAPTER THREE**

### **3.0 ADJUDICATION PROCESS OF PIL IN THE VARIOUS COURTS OF LAW IN UGANDA.**

#### **3.1 Introduction.**

Under this chapter, we shall look at how an aggrieved person or any other concerned person who alleges that a fundamental right of a person has been violated may institute civil proceedings before the high court, constitutional court, the supreme court of Uganda.

While discussing the adjudication process before the above mentioned courts of law, the report will also cover the jurisdiction of such courts when handling matters of Public Interest Litigation which majorly covers aspects of human rights in Uganda.

#### **3.2 Adjudication of PIL in the High Court.**

An aggrieved person or group of persons or any other person who feels that his or her fundamental right or of another person has been violated may properly bring an action in respect of that claim under Article 50<sup>67</sup>.

Article 50<sup>68</sup> grants the high court with unlimited original jurisdiction to handle Public Interest Litigation cases and the same Article empowers the high court to grant appropriate remedy where need arises. Therefore, this means that an aggrieved party must seek remedy from the high court once there is a fundamental breach of a person's fundamental right.

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<sup>67</sup> 1995 Uganda Constitution.

<sup>68</sup> Ibid.

Article 50(4)<sup>69</sup> provides for the making of laws by Parliament for the enforcement of the rights and freedoms under chapter 4 of the Constitution.

In order to ascertain the how suits on PIL are instituted before the high court, reference shall be made on various case law.

In *NATIONAL ASSOCIATION OF PROFESSIONAL ENVIRONMENTALISTS V AES NILE POWER LTD*<sup>70</sup>, in the above case the Court was quite clear that the correct procedure for commencing suits on Public Interest Litigation under Article 50<sup>71</sup> was by notice of motion as prescribed under the 1992 Rules<sup>72</sup>.

Another aspect on how suits of PIL may be properly brought before the high court was demonstrated In *BATU LTD V TEAN*<sup>73</sup> where the trial Judge overruled an objection by BATU who argued that since the words public interest did not appear in our Constitution as they did expressly in the South African Constitution, then public interest litigation was prohibited, the learned Judge stated;

It is elementary that a person or organizations and groups of persons can be read into Article 50(2)<sup>74</sup> to include public interest litigants as well as all the litigants listed down in (a) to (e) of Section 38<sup>75</sup>. In fact the only difference between the South African

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<sup>69</sup> The 1995 Uganda Constitution (as amended).

<sup>70</sup> High Court Misc. Application No. 268 of 1999.

<sup>71</sup> Supra (n 69).

<sup>72</sup> Rules 3-8 of SI No.26 of 1992.

<sup>73</sup> High Court Misc. Application No. 27 of 2003 Arising from Misc. Application No. 70 of 2002.

<sup>74</sup> Supra (n 69).

<sup>75</sup> The South African Constitution.

Constitution provision relating to PIL and our provision under Article 50(2)<sup>76</sup> is that the former is detailed and the latter is not.

The role of the high court in adjudication of Public Interest Litigation was clearly seen in the case of *MTIKILA V ATTORNEY GENERAL*<sup>77</sup>, the Court further ruled that the interest of public rights and freedoms transcend technicalities, especially as to the rules of the procedure leading to the protection of such rights and freedoms, the Judge ruled that it was compelling that the Applicant would stand up for the rights and freedoms of others.

The same avenue was also followed in *TEAN V ATTORNEY GENERAL*, In these decisions, the Court of Appeal stated that the proper procedure for an action under Article 50<sup>78</sup> would be by suit commenced by ordinary plaint and that a notice of motion in the absence of a pending suit was an improper procedure<sup>79</sup>, Unfortunately the Attorney General's application for leave to appeal on this point was struck out as being out of time which rendered the Attorney Generals application incompetent.

An important point to note is how the high court treats the requirement of *Locus standi* in the context of actions to enforce environmental rights which falls within matters of Public Interest Litigation and also holds some potential issues as we have seen from the treatment of Article 50 that entitles any person whether aggrieved or not to enforce any

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<sup>76</sup> The 1995 Uganda Constitution (as amended).

<sup>77</sup> H.C.C.S No. 5 of 1993.

<sup>78</sup> Supra (n 76).

<sup>79</sup> Civil Application No.63 of 2003 arising from court of Appeal Civil Appeal No.23 of 2003.

of the constitutional rights including the right to a clean and healthy environment under Article 39<sup>80</sup>.

In *KIKUNGWE ISSA & 4 OTHERS V STANDARD BANK & 3 OTHERS*, the court considered that the grant of *locus standi* was one of judicial discretion to be granted where the Applicant is able to show; that he or she is a citizen of Uganda; with sufficient interest on the matter and must not be a mere busybody; that the issues raised for decision are sufficiently grave and of sufficient public importance; that they involve a high constitutional principle; The Court went further to state that the Applicant should show Court what other steps he/she has taken to protect and preserve the matter at stake and that these steps led to nothing before Court can exercise its discretion to grant locus.<sup>81</sup>

In that case, 5 Members of Parliament filed an action seeking to restrain the sale of what they believed to be public property. The action was premised on Article 17(1) (d)<sup>82</sup> which imposes a duty on citizens to preserve public property and the reference to citizenship must be construed in the context of the above provision<sup>83</sup>.

Article 17(j)<sup>84</sup> makes it the duty of every citizen, including members of the Bench, to create and protect a clean and healthy environment.

Before leaving the subject of procedure under Article 50<sup>85</sup> it is important to note that to proceed under the above provision, the matter must relate directly to a fundamental

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<sup>80</sup> The 1995 Uganda Constitution.

<sup>81</sup> High Court Misc. Application No. 394 OF 2004 and 395 OF 2004.

<sup>82</sup> Supra (n 80).

<sup>83</sup> Ibid (n 82).

<sup>84</sup> Ibid.

human right in the Constitution. In the case of *PASTOR MARTIN SEMPA v UEB LTD*<sup>86</sup> action was brought to object to new electricity tariffs that had been imposed without giving the members of the public a hearing and that accordingly the Applicant's right to fair treatment under Article 42<sup>87</sup> had been infringed. The Learned Trial Judge struck out the action on the ground that it did not disclose violation of a constitutional right, he ruled;-

It is not enough to assert the existence of a right, the facts set out in the pleadings must bear out the existence of such a right and its breach would give rise to relief.

### **3.3 Adjudication of PIL in the Constitutional Court.**

In this sub topic, we shall look at adjudication procedures regarding Public Interest Litigation in the constitutional court.

In regards to Article 137(3)<sup>88</sup> actions relating to Public Interest Litigation can properly be brought before the court in form of a petition to the Constitutional Court, the procedure is governed by Rules of the Constitutional Court (Petitions for Declarations) Rules<sup>89</sup>.

These Rules were made under section 51 (2) (c) of the Judicature Act<sup>90</sup> , it has been said that the Courtroom is the last forum in which the oppressed can speak their minds

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<sup>85</sup> Ibid.

<sup>86</sup> HCCS No.466 of 2000.

<sup>87</sup> Supra (n82).

<sup>88</sup> The 1995 Uganda Constitution.

<sup>89</sup> Legal Notice No. 4 of 1996.

<sup>90</sup> Cap. 13.

and the job of the lawyers is to facilitate that opportunity<sup>91</sup> and help in the adjudication process in the different courts of law in which such suits concerning public interest litigation has been properly commenced and help the aggrieved parties seek remedy from the court in which the matter has been filed.

Article 137<sup>92</sup> empowers the constitutional court with jurisdiction to act like a court of first instance on issues pertaining the interpretation of the constitution and declaration of human rights.

The said Article allows any person to petition the constitutional court for a declaration of the orders sought, this principal was practically put into test by the Constitutional Court in *RWANYARARE V ATTORNEY GENERAL*<sup>93</sup> in this case the court found it difficult to accept that an action could be brought on behalf of an unnamed group of persons, the court ruled that the implications on costs and the doctrine of res judicata would be too great, court further noted that;

We cannot accept the argument of Mr. Walubiri that any spirited person can represent any group of persons without their knowledge or consent that would be undemocratic and could have far reaching consequences. For example, how would the Respondent recover costs from the unknown group called Uganda Peoples' Congress? What if other members of Uganda Peoples' Congress chose to bring a similar petition against the Respondent, would the matter have been foreclosed against them on the grounds of

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<sup>91</sup> International bar News September 2003, "Driven to defend the disadvantaged, a profile of George Bizos"<<http://www.goole.com>>accessed on 10th April 2017.

<sup>92</sup> The 1995 Uganda Constitution (as amended).

<sup>93</sup> Constitutional Petition No. 11 of 1997 page 12.



res judicata, this therefore means that when commencing a suit on PIL, the consent of the aggrieved parties must be obtained by those who wish to represent their interest before any court of law.

The petitioners in that case sued on behalf of the members of Uganda Peoples' Congress (UPC) alleging that their political rights had been infringed. The action was brought before the Constitutional Court under Articles 137<sup>94</sup> of the constitution and the Court went on to hold that it could not be brought on behalf of unnamed persons.

The question arose again in the Non-Smokers rights case, this was an action brought on behalf of non-smokers for declarations that smoking in public places violated the non-smokers constitutional rights to a clean and healthy environment and to life.

It went without saying that all the non-smokers in Uganda could not be and were not named in the motion; the Attorney General raised the objection that the action was not maintainable, the Court overruled the objection and found that in public interest litigation there was no requirement for *locus standi*, the Court relied on the English decision in the case of *IRC V EXP. FEDERATION OF SELF-EMPLOYED*<sup>95</sup>.

In *BYABAZAIRE THADEUS V MUKWANO INDUSTRIES*, it was held that it was only the National Environment Management Authority (NEMA) that could bring an environmental action<sup>96</sup>, it is submitted that a purposive reading of the Constitution read with the National

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<sup>94</sup> The 1995 Uganda Constitution.  
<sup>95</sup> 1982 AC 643.  
<sup>96</sup> H.C.C.S No. 466 of 2000.

Environment Act<sup>97</sup>, should open the gates to all citizens seeking to do their duty in protecting the environment.

It is surprisingly the Commercial Court that has sought to bring clarity to this area of *locus standi*.

In *CHUMCHA MARWA V OFFICER/MUSOMA PRISON*, Court ruled that since the Articles provided that Government may enact such rules, then it was not a must that the rules were enacted prior to the enforcement of the Bill of Rights<sup>98</sup>.

The Tanzanian Court of Appeal took the same position in *DPP V DAUDI PETE*, stating that until Parliament passed the relevant legislation the enforcement of the basic rights, freedoms and duties may be effected under the procedure that is available in the High Court in the exercise of its original jurisdiction, depending on the nature of the remedy sought<sup>99</sup>.

This certainly appears to be the more deserving approach, as every effort should be made to give effect to the fundamental human rights enshrined in the Constitution, as the supreme law of the land. Speaking at the lower level of tortious liability and calling for the need for judicial creativity, a Kenyan Court had this to say;

The law is a living thing and a court would be shirking its responsibility were it to say assuming that there be no existing recognized tort covering the facts of a particular case why then, this must be the end to it, It would undoubtedly be shirking its

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<sup>97</sup> Cap 237.

<sup>98</sup> Misc.crim Case No.2 Of 1988.

<sup>99</sup> Constitutional petition [1991] L.R.C.

responsibilities, for instance in a case in which injustice has been done, were it to take that stand. The law may be thought to have failed if it can offer no remedy for the deliberate act of one person, which causes damage to the property of another.

If a person has a right he must have the means to vindicate it and a remedy if he is injured in the enjoyment or exercise of it; and indeed, it is a vain thing to imagine a right without a remedy: for the want of right and want of remedy are reciprocal. It is most strange that the Rules Committee made all the other rules prescribed in S. 48 of the Judicature Act<sup>100</sup>, being Supreme Court Rules, Court of Appeals Rules, and Constitutional Court Rules<sup>101</sup> but fell just short in making new rules for the enforcement of fundamental human rights in the High Court.

Some gazetted copies of statutory instrument contain an error<sup>102</sup>, the Government Printer printed Interpretation of the Constitution (Procedure) Rules<sup>103</sup> as those of Statutory instrument of 1992<sup>104</sup> and vice versa.

In *ATTORNEY GENERAL V DAVID TINYEFUZA*<sup>105</sup> the court noted that jurisdiction of the Constitutional Court is limited in Article 137(1)<sup>106</sup>, put in a different way no other jurisdiction apart from interpretation of the Constitution is given, in these circumstances I would hold that unless the question before the Constitutional Court depends for its

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<sup>100</sup> Cap. 13.  
<sup>101</sup> Rules 2005.  
<sup>102</sup> S.I No.26 of 1992.  
<sup>103</sup> Rules 3-8 of S.I 25 of 1992.  
<sup>104</sup> Ibid.  
<sup>105</sup> Constitutional Appeal No. 1 of 1997, page 7.  
<sup>106</sup> The 1995 Uganda Constitution (as amended).

determination on the interpretation or construction of a provision of the Constitution, the Constitutional court has no jurisdiction.

The marginal note to Article 137<sup>107</sup> states that it is an article which deals with questions relating to the interpretation of the Constitution, in my opinion as the researcher there is a big difference between applying and enforcing the provisions of the Constitution and interpreting it<sup>108</sup>.

Whereas any court of law and tribunals with competent jurisdiction may be moved by litigants in ordinary suits, applications or motions to hear complaints and determine the rights and freedoms enshrined in the Constitution and other laws, under Article 137<sup>109</sup> only the Court of Appeal sitting as the Constitutional Court may be petitioned to interpret the Constitution with a right of appeal to this Court as the appellate Court of last resort.

Under the Uganda Constitution, courts and tribunals have jurisdiction to hear and determine disputes arising from the application of such articles as 20, 23, 26, 28, 31, 32, 35, 42, 44, 45, 50, 52, 53, 67, 84, 107, and 118 and generally under chapter 4 of the Constitution<sup>110</sup>.

In my opinion, Article 137(1)<sup>111</sup> and 137(3)<sup>112</sup> are not mutually exclusive. I do believe that the jurisdiction of the Constitutional Court as derived from Article 137(3)<sup>113</sup> is

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<sup>107</sup> The 1995 Uganda Constitution.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

concurrent with the jurisdiction of those other courts which may apply and enforce the articles enumerated above, but there is an important distinction that I see and that is that for the Constitutional Court to claim and exercise the concurrent jurisdiction, the validity of that claim and the exercise of the jurisdiction must be derived from either a petition or the Constitution reference to have or one of its provisions interpreted or construed by the Constitutional Court. In other words, the concurrent original jurisdiction of the Court of Appeal sitting as a Constitutional Court can only arise and be exercised if the petition also raises question as to the interpretation or construction of the Constitution as the primary objective or objectives of the petition.

Certainly it would appear from the wording of Section 7 Civil Procedure Act that the doctrine of Res Judicata therein prescribed, does apply to public interest litigation matters<sup>114</sup>.

The doctrine provides that once a matter has been heard and determined by a competent court, it cannot be tried again. Where persons litigate *bonafide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall for the purposes of this section be deemed to claim under the person so litigating, It is however suggested that the construction would be stretching the interpretation of the section to cover a form of action not anticipated by nor created by the Civil Procedure Act<sup>115</sup>.

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<sup>13</sup> Ibid.

<sup>14</sup> Cap. 71.

<sup>15</sup> Ibid.

Public interest litigation is a creature of the Constitution and it cannot be limited by an earlier Act that is premised on requirements of locus standi<sup>116</sup>.

The role of the constitutional court in administering PIL in Uganda has been evidenced by its willingness to grant damages to the aggrieved party as was seen in the case of *EDWARD FREDRICK SSEMPERUWA V ATTORNEY GENERAL* the court noted that there is authority to support the proposition that where a matter is brought bona fide in the public interest, seeking clarification on important matters of law, that the costs be paid to the petitioner in any event<sup>117</sup>

### **3.4 Adjudication of PIL in the Supreme Court.**

Under this chapter, we shall look at how an aggrieved person can successfully commence his or her suit before the Supreme Court, appeal to the Supreme Court is a creature of statute and it is regulated by the Constitution<sup>118</sup> and the Supreme Court rules<sup>119</sup>.

Article 132(3)<sup>120</sup> provides for the jurisdiction of the Supreme Court and it states that any party aggrieved by the decision of the court of appeal sitting as a constitutional court is entitled to appeal to the Supreme Court against such decision.

The Supreme Court is the final appellate court in Uganda and it has original jurisdiction as a court of first instance on the Presidential election petition, this therefore means that the

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<sup>116</sup> The 1995 Uganda Constitution.

<sup>117</sup> Constitutional case No. 1 of 1987.

<sup>118</sup> Supra (n 116).

<sup>119</sup> Rules 2005.

<sup>120</sup> Supra (n 116).

Supreme court only act as the court of first instance on only when it comes to challenging the presidential election in Uganda.

Adjudication of PIL was by the Supreme Court was witnessed in *UGANDA JOURNALISTS SAFETY COMMITTEE V ATTORNEY GENERAL*<sup>121</sup>, the Supreme Court while exercising its appellate jurisdiction under Article 132<sup>122</sup> accepted the Attorney General's argument that there was no law in place for the enforcement of rights under Article 50<sup>123</sup>.

In the case *KIIZA BESIGYE V YOWERI KAGUTA MUSEVENI*<sup>124</sup> the supreme court exercised its original jurisdiction in determining the presidential election petition, the court stated that it is unlikely that this point would still be decided the same way, The irony of a limitation provision for constitutional actions was well articulated by ODER JSC in *ISMAIL SERUGO V AG*<sup>125</sup> where he stated;

It is certainly an irony that a litigant who intends to enforce his right for breach of contract or for bodily injury in a running down case has far more time to bring his action than one who wants to seek a declaration or redress under Article 137<sup>126</sup>.

The Supreme Court went ahead in the same case to handle the question in was when does the perception that an Act of Parliament has breached the Constitution take place? The Court found that for a mature mentally normal person, the date of perception of breach of the Constitution by an Act of Parliament would be the date when the Act comes

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<sup>121</sup> Constitutional Appeal No. 7 of 1997.

<sup>122</sup> The 1995 Uganda Constitution (as amended).

<sup>123</sup> Ibid.

<sup>124</sup> Election Petition No. 1 of 2001.

<sup>125</sup> Constitutional Appeal No.2 of 1998 page 4.

<sup>126</sup> Supra (n 122).

into force because of the presumption of knowledge of the law. However, clearly the Court remained uncomfortable with their own interpretation. They went on to ponder the fate of infants and unborn children who may grow up to find that the continuing effect of a constitutional breach by an Act of Parliament contravenes their rights and freedoms or even threatens their very existence.

It seems to us that a Constitution is basic law for the present and future generations, Even the unborn are entitled to protection from violation of their constitutional rights and freedoms. This cannot be done if the 30-day rule is enforced arbitrarily. In our view Rule 4 of Legal Notice<sup>127</sup> poses difficulties, contradictions and anomalies to the enjoyment of the Constitutional rights and freedoms guaranteed in the Constitution of Uganda. We wish to add our voice to that of the Supreme Court that this rule should be urgently revisited by the appropriate authorities, Perhaps the most comprehensive attack on the rule has been made by maybe its most frequent victim.

PETER WALUBIRI<sup>128</sup> argues extensively why the 30-day rule should be done away with, interestingly one of the lines of his attack is that the Chief Justice had no power to make rules limiting access to the Courts. The matter was laid to rest in *UGANDA ASSOCIATION OF WOMEN LAWYERS & 5 OTHERS V ATTORNEY GENERAL*<sup>129</sup> The Court took the position that rule 4(1) had the effect of amending Article 3(4)<sup>130</sup> which gave the citizens of Uganda the right and duty at all times to defend the Constitution. The Court held; To the extent

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<sup>127</sup> No. 4 of 1996.

<sup>128</sup> Constitutionalism at crossroads<<http://www.pilac.mak.ac.ug>> accessed on 17<sup>th</sup> may 2017.

<sup>129</sup> Constitutional Petition No. 2 of 2003.

<sup>130</sup> The 1995 Uganda Constitution.



that rule 4 (1) of Legal Notice<sup>131</sup> imposes restrictions on the right of access to the Constitutional Court which the Constitution itself does not provide for, it is seeking to adding to and or vary the Constitution and therefore to amend it without doing so through the amendment provisions of the Constitution. It is clearly against the spirit of the Constitution and it is now high time that this Court restored in full the citizens right to access to the Constitutional Court by declaring that the rule is in conflict with the Constitution and is therefore null and void, i would so declare.

It could not have been better said, so it ended the life of an infamous rule on which so many petitions had floundered and which had tied the court up on so many twists and contortions. The lesson learned is that persistence and perseverance pays. One is left only to moan the injustice to those that went before, whose shipwrecks have become our seamarks.

In *EDWARD FREDRICK SSEMPEBWA V ATTORNEY GENERAL*<sup>132</sup> there is authority to support the proposition that where a matter is brought bona fide in the public interest, seeking clarification on important matters of law, that the costs be paid to the petitioner in any event.

The Supreme Court in *PRINCE JOHN RUKIDI V PRINCE SOLOMON IGURU*<sup>133</sup> refused to award costs to the successful party observing that the case brought to light a hotly contested dispute between members of a Kingdom whose importance went beyond its

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<sup>131</sup> Supra (n 127).

<sup>132</sup> Constitutional case No. 1 of 1987.

<sup>133</sup> Supreme Court Civil Appeal No. 18 of 1994.

borders and that the desire to restore peace, reconciliation and harmony in the family dictated that no party should be awarded damages.

Similarly in *COL (RTD) DR. BESIGYE KIZZA V MUSEVENI YOWERI KAGUTA*<sup>134</sup> the Court trashed the Respondent's arguments that the petitioner be condemned in costs so as to discourage frivolous petitions. The Court agreed that this was a historic and important case raising important legal issues crucial to the political and constitutional development of the country.

### **3.5 Conclusion.**

Actions relating to public interest litigation can be commenced in the High Court of Uganda as provided for under the constitution<sup>135</sup>.

However, the tests outlined by the High Court and the emphasis on discretion to grant locus seems to fly in the face of Article 50<sup>136</sup> which is clear, unambiguous and unqualified.

Suits regarding cases of public interest litigation can be commenced before the Constitutional Court under Article 137 of the constitution<sup>137</sup> and the jurisdiction of the Constitutional Court is derived from Article 137(3)<sup>138</sup> which is concurrent with the jurisdiction of those other courts which may apply and enforce the articles enumerated above, but there is an important distinction that I see, for the Constitutional Court to

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<sup>134</sup> Presidential Election Petition No. 1 OF 2001.

<sup>135</sup> The 1995 Uganda Constitution (as amended).

<sup>136</sup> Ibid.

<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

claim and exercise the concurrent jurisdiction, the validity of that claim and the exercise of the jurisdiction must be derived from either a petition or the Constitutional reference to have or one of its provisions interpreted or construed by the Constitutional Court. In other words, the concurrent original jurisdiction of the Constitutional Court can only arise and be exercised if the petition also raises question as to the interpretation or construction of the Constitution as the primary objective or objectives of the petition.

Suits regarding PIL in the Supreme Court can be properly brought under Article 132<sup>139</sup>.

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<sup>139</sup> The 1995 Uganda Constitution (as amended).

## CHAPTER FOUR

### 4.0 HOW PIL HAS PROMOTED HUMAN RIGHTS IN UGANDA.

#### 4.1 Introduction.

Under this chapter ,the researcher concentrated on the role of PIL in the promotion of human rights and reference shall be drawn from the earlier discussion already made in chapter three, the analysis shall be drawn from how the Ugandan courts has handled cases of public interest litigation in chapter three.

#### 4.2 The Role of PIL in the promotion of Human Rights in Uganda.

The courage demonstrated by the bench in *Ostraco V Attorney general*<sup>140</sup> is a good development, in that case the learned judge declined to apply section 14 of the government proceedings Act<sup>141</sup> prohibiting the making of orders for recovery of land against government on the grounds that it did not conform to the constitution ,he ordered the Attorney General to give vacant possession of the suit property to the plaintiff hence a clear demonstration on how the development of PIL has promoted human rights in Uganda.

Another aspect on how the development of PIL has promoted human rights in Uganda was observed in the case of *Rwanyarare V AG*<sup>142</sup> the court also found courage to do away with the protection under the government proceedings Act and it grant an

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<sup>140</sup> H.C.C.S NO.1380 OF 1986.

<sup>141</sup> Cap.77.

<sup>142</sup> Constitutional Application No. 6 of 2002 arising from Constitutional Petition No. 7 of 2002.

injunction against the government, the government proceedings Act<sup>143</sup> provided that an individual or a person would not obtain an injunction against the government in any suit before any court of law.

The *non-smokers rights* case was also a path breaking by the trial judge as one commentator put it by courageous and liberal interpretation to the constitution ,this decision seems not only to have potentially opened wide the flood gates for PIL in Uganda but to have torn out the posts and cast them under, the constitutional court in that case held that smoking in public was illegal since the act of smoking in public places contravened a number of constitutional rights of the non-smokers who may be present in such public places, this greatly shows how the development of PIL has led to the promotion of human rights in Uganda.

A clear aspect of PIL in the promotion of human rights was seen in the case of *kabandize v Kampala city council Authority*<sup>144</sup> where the high court of Uganda took a view that the service of a mandatory statutory notice of 30days of intention to sue government and scheduled corporation on the Attorney General was no longer mandatory and that failure to do so by a party instituting any suit against the government would not render the suit incompetent, this gave room and made it easy to sue government even if the statutory notice was not served on the Attorney General, the court further noted that 30 days provided by the law created inequality between the government and its citizens.

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<sup>143</sup> Cap 77.

<sup>144</sup> H.C.C.S No.1128 of 1998) page 21.

In *Lub V Lub*<sup>145</sup> the high court applied Article 33(1)<sup>146</sup> providing for the equality in marriage and found that even though the petitioner had not proved desertion or cruelty as required under the divorce Act<sup>147</sup>, she would still be entitled to a divorce solely on proof of adultery.

However, there are still very sad traces of restraint by the bench, Lilian tibatema ekirikubinza highlights a number of cases where the bench while identifying human rights problems has still shied away from resolving it, one such case is *Uganda V Harouna Kanabi*<sup>148</sup> where the accused was charged with sedition and in the course of her judgment, the presiding chief magistrate of her own brought up the issues of the constitutionality of the charge after expressing its doubt, the court said,

this court is not a constitutional court ,it therefore lacks capacity to interpret the provisions of the constitution beyond their literal meaning, as such i am of the view that where the state in regards to its supreme law keeps on its statute book a law that makes it an offence to do a certain act and hence to let the enjoyment of a specific freedom prohibited, this court will accept that restriction as lawful and shall go ahead to punish any transgression of the same according to the existing law until such a time as the state deems fit that such restriction violates a certain right, the court went on to use the existence of the constitution and the individual's right to freedom of expression as a point of mitigation.

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<sup>145</sup> Divorce Cause No. 47 of 1997.

<sup>146</sup> The 1995 Uganda Constitution (as amended).

<sup>147</sup> Cap. 249.

<sup>148</sup> Criminal Case No. 997 of 1996.

The question is why didn't court refer the matter for interpretation under Article 137<sup>149</sup>, why did it convict and sentence in light of what it felt was a contravention of the supreme law of the land, even more strange is that on appeal to the high court again though not raised by the parties, the court ruled on the trial magistrates concerns on constitutionality and stated that it should have been referred to the constitutional court, the court declined to do so itself since the matter was not brought before it.

In Uganda's context, this is doubly important, Dr. Rwanyarare's unrestricted access to the courts should be seen as fundamental to the resolution of political disputes, as we have seen before and continue to see when out of choices disadvantaged citizens go to the bush to start war to overthrow the existing government on grievances arising out of political dissatisfaction, the development of PIL has greatly promoted human rights in Uganda since any person who feels that a fundamental right of a cross section of the public or his or her right has been tempered with may institute a court proceedings on their behalf seeking for a declaration on a particular right under question put before the court.

The future of PIL in the context of environmental protection raises interesting questions, so far the charge has been led by the non-governmental organizations burning great holes in their pockets in some cases despite the abundance of local and international legislative materials for environmental protection, a statutory body like NEMA and a responsible minister, the courts have taken a more proactive role in the

<sup>149</sup> The 1995 Uganda Constitution as (amended).

process by giving priority to such cases over others as the custodian of justice and save the planet hence promoting a right to a healthy and clean environment in Uganda.

In *sheilazia V water & power development authority*<sup>150</sup> the supreme court of Pakistan took action on a letter from individuals that questioned the right of the respondent to endanger the right of the citizens by exposing them to electronic hazards from the construction of a power grid installation in a residential locality ,the court recognized that many citizens would not be able to move the court properly on account of ignorance ,poverty and disability and took the initiative to summon the respondent and appoint a commission to examine the matter, this approach has been adopted by some courts in Uganda today as a tool for encouraging justice, it has now been a common practice in Uganda most especially in criminal matters where some judicial officers encourage prisoners to write letters to them in regards of challenges and abuse of human rights they go through while in prison so that the courts can address their grievances in a more simplified and safer way other than raising such complaints openly before the court, an example can be taken from the 2015 joint letter addressed to the high court judge Lira ,justice Dr. Winfred Nabissinde by the prisoners in lira government prison, in the letter the prisoners addressed to the judge how they were being tortured by some prison officers during night hours, the judge took a strong action against the letter by appointing a commission of inquiry and this brought to book many culprits.

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<sup>50</sup> Human Rights Case No.15-k of 1992.



In human rights case *environmental pollution in balochistan*<sup>151</sup> the court was even more proactive, having taken note of a newspaper article that nuclear waste was to be dumped in a coastal area in violation of the constitution<sup>152</sup>, and the court issued orders to prevent such occurrence, this approach to some extent has been adopted by Ugandan courts in administering justice in cases of public and private nuisance hence promoting human rights.

PIL has created an extensive jurisprudence on the full range of human rights and if your case proceeds to the merits stage one is likely to receive a well-reasoned decision, there are leading cases on the obligation to prevent torture and the requirements that military tribunals comply with fair trial<sup>153</sup>, this approach has greatly been adopted in Ugandan courts since the courts advocates for a faster and fair trial in all matters brought before it in order to encourage and promote human rights through the development of public interest litigation.

#### **4.3 Conclusion.**

In Conclusion, from the above discussion, it is now easy for one to access how the development of public interest litigation has led to the promotion of human rights in Uganda.

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<sup>151</sup> Supreme Court PLD 1994 Supreme Court 102 Human Rights case No. 31 –K92Q.

<sup>152</sup> Article 9.

<sup>153</sup> African Commission, Egyptian Initiative for personal Rights and interights v communication 323(2011).

As a matter of fact and has it has been held in a number of cases, no rules have been made under Article 50(4)<sup>154</sup> it can therefore be seen that the development of public interest litigation cases has led to the promotion of human rights by the fact that high court has relaxed the requirement of locus standi.

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<sup>154</sup> The 1995 Uganda Constitution (as amended).

## **CHAPTER FIVE**

### **CONCLUSION, RECOMMENDATIONS.**

#### **5.1 Conclusion.**

After analyzing the statutes applied under the study and the general common law principles germane thereto, we are left with no doubt in our minds that there are loopholes or lacunas that ought to be reformed by our legislature upon the advice and involvement of all the stakeholders.

Generally speaking, the laws on PIL are both out dated pieces of legislation which ought to be revisited entirely if they are to match up with the current trends in the commercial world characterized with high level of inhuman treatment of the citizens by the state agents and other private individuals.

It is therefore my conclusion that the best way forward is to enact a specific law to be named The Public Interest Litigation Act which should incorporate all the provisions and principles enshrined in the aforesaid and other statutes that have an impact or bearing on human rights promotion in Uganda.

#### **5.2 Recommendations.**

It is rather very difficult for us to exhaust all the provisions and principals in the various legislations that regulate the concept of Public interest litigation that should be repealed or amended to suit the modern needs of the ordinary citizens on human rights promotion, the following are however my main proposals for reform.

There must be an amendment to Article 50<sup>155</sup> which must address the issue of cost and the court filing fees.

The provision of Article 50<sup>156</sup> which provides for jurisdiction of the high court in matters of Public interest litigation must be amended to cover and create such jurisdiction for the lower courts such as the magistrate's court.

The successful litigants in suits concerning Public interest litigation must always be awarded sufficient damages where need arises instead of court being so reluctant in awarding damages under such instances of Public interest litigation.

The courts must relax the requirements of locus standi in all matters of Public interest litigation in order to promote human rights and allow both the aggrieved parties and other concerned members of the public to institute such suits.

The limitation period on cases of Public interest litigation is too short and must be extended in order to allow the aggrieved parties or their representative's sufficient time to file their suits within time frame.

Cases of Public interest litigation must be given priority by all courts over other cases when scheduled for hearing by the courts of law on the same day, this shall help in solving the problem of case back-log on issues relating to human rights violation.

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<sup>155</sup> 1995 Uganda constitution.

<sup>156</sup> Ibid.

The judicial officers must be educated through continuous seminars on adjudication of Public interest litigation case since such cases are always complex in nature if human rights is to be promoted through the development of PIL in Uganda's court system.

While legislative reforms may take years and courage often needs to be fostered and mustered, there are some attitudinal changes that the bench could adopt without much ado.

The courts must focus on a rights based approach in the conduct of cases touching fundamental human rights, priority should be given to upholding and promotion of rights over all other matters as was stated in *Attorney general V Hall & others*<sup>157</sup> in my view, a citizen whose constitutional rights are allegedly trampled upon must not be turned away from court by procedural hiccups ,once a complaint is arguable a way must be found to accommodate him so that other citizens become knowledgeable of their rights, this idea would also be a better proposal instead of the long and tedious process of legislative reforms in Uganda if human rights is to be promoted through the development of Public interest litigation.

The requirement for the consent of the AG in matters of public nuisance must be relaxed by courts and the laws of Uganda if human rights is to be promoted in Uganda through public interest litigation, the requirement that the Attorney Generals consent is mandatory in matters pertaining public interest restricts the *locus standi* of the local

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<sup>157</sup> 1989 LRC (CONST) 474.

people in suing on cases relating to public, this then shows a clear restriction on the prevalence of justice in Uganda.

There must be a special mandatory provision incorporated into the Advocates Act<sup>158</sup> that enables lawyers to carryout *pro bono* activities relating to matters of public interest litigation before the renewal of their practicing certificate upon expiry, the current laws regulating the carrying out of *pro bono* work by lawyers is general in nature and does not concentrate much on matters relating to public interest litigation, it is therefore my proposal that that a mandatory provision be incorporated into the advocates Act that shall make it mandatory for advocates to give *pro bono* services each year on matters of Public interest litigation.

However, there must be an amendment to the provisions of the Constitution<sup>159</sup> that shall demand all the respective arms of the government to maintain mutual respect for each other's mandate in the performance of their functions and duties, a clear lack of mutual respect and co-operation was witnessed in the case of *KIIZA BESIGYE V YOWERI KAGUTA MUSEVENI*<sup>160</sup> where the government used military men and armed police men to surround the Supreme Court of Uganda while the court was on the verge of delivering its judgment with a view of threatening the judges of the supreme court so that they could not rule against the incumbent president, this action by the government was termed as a broad day attack on the fountain of justice which is one of the most sensitive organs of the government.

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<sup>158</sup> Cap 267.

<sup>159</sup> The 1995 Uganda Constitution (as amended).

<sup>160</sup> Election Petition No.1 of 2001.

Similarly, other examples of lack of mutual respect among the organs of the government can be traced from the lack of respect for the court orders that is always issued against government by the Ugandan courts, some organs of the government such as the Uganda police force has on several times disrespected court orders by only implementing the orders of government at the expense of the innocent Ugandans and this in turn violates peoples fundamental human rights.

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