

**THE INDEPENDENCE OF THE PARLIAMENT OF UGANDA IN
IMPLEMENTING ITS LEGISLATIVE ROLE SINCE 1995**

BY

JOHNSON KIBIRIGE

DATE: March 2016

**THE INDEPENDENCE OF THE PARLIAMENT OF UGANDA
IN IMPLEMENTING ITS LEGISLATIVE ROLE
SINCE 1995**

**JOHNSON KIBIRIGE
DIL/42747/141/DU**

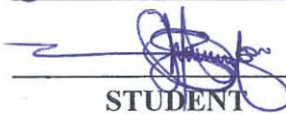
**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF
REQUIRMENTS FOR THE DIPLOMA IN LAW AT KAMPALA INTERNATIONAL
UNIVERSITY**

DATE: March. 2016

DECLARATION

I Johnson Kibirige solemnly declare that this research has been never submitted in this institution or any other institution that I know of for the award of a Diploma or any other qualification.

Compiled by: JOHNSON. KIBIRIGE

Signature: 
STUDENT

Date: 16-Aug-2017

Approved by: BAMUKUNDA CHARINE

Signature: 
SUPERVISOR

Date: 15/8/17

APPROVAL

This is to satisfy that this work has been under supervision, and that it is now ready for submission as approved by:



MS. CAROLINE BAMUKUNDA
Supervisor

TABLE OF CONTENTS

	Pages
Declaration.....	i
Supervisor's Approval.....	ii
Table of Contents.....	iii
Dedication.....	iv
Acknowledgement.....	iv
Abstract.....	v

CHAPTER ONE

1.0	Background.....	1
1.1	Statement of the Problem.....	3
1.2	Research Objectives.....	4
1.2.1	Overall Objective.....	4
1.2.2	Specific Objectives.....	4
1.2.3	Research Question.....	4
1.3	Significance of the Study.....	5
1.4	Scope.....	5
1.4.1	Geographical scope.....	5
1.4.2	Content.....	5
1.4.3	Time scope.....	5
1.5	Major Terms.....	7

CHAPTER TWO

2.0	Introduction.....	8
2.1	Literature Review.....	8
2.1	Challenges Affecting Parliamentary Independence.....	12

CHAPTER THREE

3.0	Methodology.....	15
3.1	Limitations.....	15
3.2	Library Research / Interviews.....	15
3.3	Synopsis.....	15

CHAPTER FOUR

4.0	Introduction.....	17
4.1	Research Findings, Analysis and Interpretation of Data.....	17

CHAPTER FIVE

5.0	Introduction.....	19
5.0	Recommendations / Opinions.....	19
5.1	Conclusion.....	21
5.2	Bibliography.....	22
5.3	References.....	23
5.4	List of Cases.....	24

DEDICATION

This dissertation is dedicated to my caring and loving mother Gertrude Namitala (R.I.P) and Hon. Nasser Basajjabalaba for his availability and closeness has been encouraging, thank you for your tireless effort to ensure that I get my university education.

I thank God almighty for the grace and encouragement that has seen me this far.

ACKNOWLEDGEMENT

Behind all my success God's grace is evident. My sincere thanks go to my Supervisor Ms. Caroline Bamukunda for her positive criticism on this study, God bless you always.

ABSTRACT

This is a study on the Parliamentary Independence, a doctrine that has attained universal force which requires that Parliament must act independently. Parliament is the only institution that is entrusted with the role of making new laws and amending or repealing the existing laws. It therefore means that for efficient making of laws, Parliament must not be subject to any person or authority in the exercise of its Legislative role.

The study looks at the origin or the genesis of the doctrine of Legislative Independence (Parliament), its link with the British monarch rule and why it became important to separate the three (3) arms of government. It is fundamental that for the three (3) arms of government to act efficiently and meaningfully to the people, there has to be a clear separation of powers within the Legislature, Executive and Judicially. The separation of arms promotes independence of the arms and enhances checks and balance with high level of accountability. Parliament being the sole organ with the Constitutional mandate to make laws has a high responsibility to protect the democratic governance of Uganda. This is a responsibility that can only be fully and meaningfully performed by an Independent, fearless and impartial Parliament.

The research looks into the legal basis and legal provisions on Parliamentary independence both National and International levels are studied into extensively. The legal basis highlights the basic principles of the Independence of Parliament, Financial Security, Autonomy of the institution and protection from liability arising from implementing its Legislative role.

The study looks at the performance of Parliament in Uganda, the reason why it has not been effective in implementing its legislative role. It is looked at in this research to what level has Parliament acted independently and why still the public still perceive Parliament as not being independent, Interference by the Executive arm and Corruption are some factors that have affected the efficiency of Parliament in implementing its legislative role.

The study finally looks into the possible solutions to the problems that have negatively affected the Independence of Parliament in form of recommendations.

CHAPTER ONE

1.0 BACKGROUND

A Legislature is a deliberative assembly with the authority to make laws for a political entity such as a Country or City. Legislatures form important parts of most governments. The theory of Separation of Powers requires a State or Country to pose the three arms which make up government that is the Executive, the Judiciary and the Legislature. Laws enacted by the Legislatures are known as Legislations and often observe and steer government actions and usually have exclusive authority to amend the budgets involved in the process. The members of the Legislature are called Legislators; in a democracy, Legislators are almost always elected. These Legislators vote on proposed laws brought before Parliament before they are passed. In Parliamentary systems of government, the Executive is answerable to the Legislature which may remove it from power with a vote of no Confidence and according to the Separation of Powers doctrine the Legislature in a Presidential system is considered an Independent and coequal branch of government along with both the Executive and the Judiciary.

The autonomy of the Legislature dates way back in the ancient Monarchs and the struggle to attain Parliamentary independence was in 1641 the first time that Parliament so openly challenged a Monarch when John Pym and four other members of the House of Commons of England drafted the Grand Remonstrance, a list of Parliament's grievances to King Charles I regarding his methods of raising Tax, the Wars he fought and his refusal to call Parliament to meet. This incident demonstrated the autonomy of the House of Commons and initiated a tradition that no Monarch ever enters the lower house of Parliament which later led to the emergence of Political Parties in England called The Whigs and The Tories. The Whigs became the modern day Liberal Democrats who believe in change and reforms. The Tories are the modern day Conservative Party who support the power of the Monarch and the Church of England and unwilling to give the British Parliament more power.

From an International perspective, names for national legislators include "Parliament", "Congress", "Diet" and "Assembly". Nations with "Parliaments" include; United Kingdom (UK Parliament), Scotland (Scottish Parliament), Arab League (Arab Parliament), Kenya (Parliament of Kenya) DRC (Parliament of the Democratic Republic of the Congo), and Uganda (Parliament of Uganda). Examples of Nations with "Congress" include; United States of America (United States Congress) and China (National People's Congress), France (the Congress of the French Parliament), Mexico (Congress of Mexico), and Argentina (Congress of the Argentine) Nations with "Diet" include; Japanese, the Holy Roman Empire and Germany Bundestag (Federal Diet). Example of an "Assembly" is the National Assembly of Wales. In the United Kingdom the Executive is formed almost exclusively from the Legislature. The German

Constitution stipulates that members of the Bundestag,¹ shall not be bound by any order or institution and shall act according to their conscience.

The Constitution of the Democratic Republic of the Congo,² also stipulates that the legislature power is exercised by Parliament consisting of two chambers; the National Assembly and the Senate and each of the chambers enjoys administrative and financial autonomy. It is the same autonomy stipulated under chapter 8 of the Kenyan Constitution.

The first parliament of Uganda was in 1962-1963 known as Legislative Council (LEGCO) made of 92 members and was presided over as Speaker by Sir John Bowels Griffin a British lawyer and former Uganda Chief Justice. The Second Parliament was in 1963-1971 with Narendra M. Patel a Ugandan of Indian descent as speaker, it is during this when Prime Minister Milton Obote abrogated the Constitution and declared himself president of Uganda in 1966. This parliament also witnessed the abolition of Uganda's traditional kingdoms and the declaration of Uganda as a Republic. This parliament ended when Idi Amin overthrew Milton Obote's government in January in 1971. The Third Parliament was in 1979-1980 chaired by Professor Edward Rugumayo following the overthrow of Idi Amin in April, a new Legislative body known as the Uganda Legislative Council was established an initial membership of 30 and later increased to 120. This legislative body continued to function until the general election of December 1980. The Fourth Parliament was in 1980-1985 and marked the returned of Obote and the Uganda People's Congress (UPC) following the disputed national elections of 1980. The speaker of the Fourth Parliament was Francis Butagira a Harvard trained lawyer. It ended when General Bazilio Okello over threw Obote government and the UPC government in 1985. The Fifth Parliament was from 1986-1996 known as the National Resistance Council (NRC) established following the end of the Ugandan 1981-1985 gorilla war starting with 38 historical members of the National Resistance Movement (NRM) and National Resistance Army (NRA) with Yoweri Museveni as speaker who concurrently served as the President of Uganda and was gradually expanded to include representatives from around the country. The Sixth Parliament was constituted during one party rule (NRM) with James Wapakhabulo as speaker from 1996 until 1998 and Francis Ayume from 1998 until 2001. The Seventh Parliament 2001-2006 was presided over by Edward Ssekandi and the most controversial legislation passed during this period was the amendment of the Constitution to remove Presidential term limits. The Eighth Parliament 2006-2011 was a continuation of the Seventh Parliament with Edward Ssekandi as Speaker and Rebbeca Kadaga as Deputy Speaker. The Ninth parliament 2011-2016 was presided over by Rebbeca Kadaga as Speaker and Jacob Oulanyah as Deputy Speaker and the duo retained their positions in the Tenth Parliament 2016-present.

¹ Article 38.1, Constitution of the Federal Republic of German, second sentence

² Article 100, Constitution of the Democratic Republic of the Congo, Pg.25

1.1 STATEMENT OF THE PROBLEM

It is with no doubt that from the existing laws, that it is ideal for Parliament to be an independent institution free from control of any authority or any person.³ It can also be concluded from the oath taken by MPs that they are required to give faithful service to parliament and support and uphold the Constitution.⁴

Though Parliament is supposed to be independent in implementing its legislative roles, reality is that Parliament in Uganda has suffered a lot of external influence especially from the Executive arm of government and members of parliament have on many occasions surrendered their power to the Executive. Since Uganda is under multi-Party politics the ruling party National Resistance Movement (NRM) with the majority of members in parliament caucuses almost on every issue on the floor of parliament, finds a common ground and all party members in parliament are bound to support their party position in Parliament.

This external influence on parliament by the Executive has affected passing of good law since the brilliant ideas from members from other political parties like Forum for Democratic Change (FDC), Uganda People's Congress (UPC) or Democratic Party (DP) are easily suffocated by the majority ruling party NRM. As a result it has created conflict of interest among members of parliament between addressing issues of the people they represent or addressing interests of the Executive which has resulted into parliament defending government in its failures to address issues of the common citizens hence poor service delivery and lack of Freedom of Speech especially by the ruling party members of Parliament which has in the end lowered the confidence of the Public in Parliament as an institution worthy to make a further examination to find whether Parliament is as Independent as required by law.⁵

However not only multiparty politics is affecting the Independence of Parliament in implementing its Legislative roles. Parliament is faced with a problem of limited resources in terms of funds to facilitate the smooth running of Committee activities and enough staff service, this coupled with the late tabling of Bills which does not give M.Ps enough time for research and study to make informed decisions.

Committee work is constrained by time because Parliamentary work is not limited to Committees but also Plenary and other constituency demands and as such M.Ps tend to try to balance thus affecting Parliament in implementing its legislative roles.

³ Chapter Six, Constitution of the Republic of Uganda 1995

⁴ Fourth Schedule of the Constitution of Uganda 1995

⁵ Ibid

1.2 RESEARCH OBJECTIVES

1.2.1 Overall Objective

The main purpose of this study is to analyse whether Parliamentary Independence realistically exists as regards to the provisions of the Constitution and other relevant laws. Having acknowledged that Power belongs the people and this can be attained meaningfully through a representative procedure known as Parliament⁶. It is with these parameters of this study to find out whether Parliament is Independent in implementing its Legislative role.

1.2.2 Specific Objectives

The research will be seeking to establish the following to;

- i. To analyse the Independence of Parliament in implementing its legislative roles.
- ii. To examine the challenges faced by Parliament visa-a-vis its independence.
- iii. To propose recommendations to alleviate the challenges that compromise Parliamentary Independence.

1.2.3 Research Question

- i. What are the roles of Parliament?
- ii. Whether Parliament is Independent in implementing its legislative roles?
- iii. What are the challenges faced by Parliament in implementing its legislative roles?

⁶ Ibid. Article 1

1.3 SIGNIFICANCY OF THE STUDY

- Some of the events that have triggered this Study are the regular criticism of Parliament of it not being independent and being used by mainly the Executive arm of government to meet its ends and how Multi-Party Politics has affected Parliament in implementing its Legislative roles.
- Civil activists, Opposition Politicians and the public at large have had a negative perception towards Parliament. Several incidences such as the passing of the controversial Petroleum Exploration, Development and Production Bill 2012 and the deployment of Ugandan Troops to South Sudan without approval of Parliament among others coupled with sentiments made by highly ranked political figures against Parliament are some events that have enhanced doubts as to whether Parliament is Independent in implementing its Legislative role.
- Independence of Parliament is one of the tenets of Rule of law, to further and add more literature to already existing one on the Rule of law in Uganda is the major significance of this Study.

1.4. SCOPE OF THE STUDY

The parliament of Uganda is located in Kampala the Capital City of the country situated at Parliament Avenue. This is a study aimed at closely studying the Independence of Parliament of Uganda in implementing its legislative role. The study looks at practical operation of Parliament Vis-à-vis its Independence, the challenges experienced by Parliament against it acting independently. The study suggests some of ethical considerations that need to be implemented by Parliament in order to attain independence in implementing its legislative roles. It is a study that looks at the legislature system in Uganda from 1995-2015 but main focus is on the 8th Parliament (2006-2011) and 9th Parliament (2011-2016) in relationship to the post 1995 Constitution period. In every democratically elected government today there are three arms of the government, the Executive, the Judiciary and Legislature, all these arms exist in Uganda and are provided for under the Constitution of the Republic of Uganda.

The Executive arm of government is headed by the President,⁷ and in most instances the Executive under the respective Ministry brings up Bills to the Legislature for debate under the Public Bill which is a major way on how government introduces new policies.

The Judicial arm of government is headed by the Chief Justice,⁸ with the function of adjudicating disputes amongst different parties within the State. It is the Institution given powers by the Constitution to Interpret the Constitution where there is any contest as to

⁷ Ibid. Chapter 7

⁸ Ibid. Article 133 (1) (a)

what a given provision of the laws mean.⁹ The Constitution gives the Judiciary the powers to give redress to any person whose rights under the Constitution has been violated.¹⁰ In the exercise of its functions the Judiciary is required by the Constitution and other laws to be impartial and independent from any other person or authority.¹¹

The Legislature,¹² (Parliament) the study area of this Study is that arm of government entrusted with making new laws and amending or repealing the existing laws.¹³ The head of the Legislature is the Speaker of Parliament. It also consists of Members of Parliament (MPs) who are elected to represent people from their area of elect and therefore required at all times to represent the interests of their people, decides collectively making government accountable for its actions or omissions through the doctrine of checks and balance. The Constitution also bestows powers to Parliament to exercise Legislative powers.¹⁴ MPs have a right to move a Private Members' Bill within the limits prescribed by the Constitution, such bills are used as a means of drawing attention to ideas in the hope that they may subsequently be incorporated within the government bills.¹⁵ MPs are also mandated to ask questions directly especially to Ministers to raise issues pertaining to protection of their Constituents' rights and promotion of their interests.¹⁶ Legislature also acts as the accountability authority commonly known as the "Power of the Purse" where they regulate the expenditure of government resources among other oversight roles hence making Permanent Secretaries accountable to Parliament for funds in their Ministries and empowers MPs to monitor all expenditure of Public funds,¹⁷ thereby implementing the doctrine of Checks and balance.

⁹ Ibid. Article 50 & 137

¹⁰ Ibid. Article 51

¹¹ Ibid. Article 128

¹² is the body having primary powers to make written law, Oxford Dictionary of law, 7th Edition, Pg. 322

¹³ Ibid. Article 79

¹⁴ Ibid. Article 91

¹⁵ Ibid. Article 94

¹⁶ Rules of Procedure of the Parliament of Uganda, 2006 Nos 31, 33, 35 & 37

¹⁷ Ibid. Article 164

1.5 MAJOR TERMS	MEANING
Assembly	Men of the Assembly.
Congress	Member of Congress.
Diet	Is a formal deliberative assembly e.g general assembly of the Imperial estates of the Holy Roman Empire.
Legislature	Parliament.
Judiciary	Courts of Judicature
Constitution	The Constitution of the Republic of Uganda 1995
Private Members' Bill	A bill tabled before parliament by a Member of Parliament.
Plenary	Proceedings in Parliament.
Power of the Purse	The Constitutional authority bestowed in Parliament to regulate expenditure of government resources.
Legislator	Member of Parliament.
Legislations	These are laws enacted by Parliament / Legislature.
Precincts of Parliament	The entire Building in which the chamber of Parliament is situated.

CHAPTER TWO

2.0 LITERATURE REVIEW

The study of the subject Independence of Parliament has been of interest to many writer perhaps due to the role played by Parliament towards attaining rule of law. In addition some events have encouraged many writers to write on the subject notably the interference by the Executive on Parliamentary activities and the increasingly corruption activities and multi-party politics in Parliament are some of the studies that have been done on this subject.

Hulst,¹⁸ noted that “Parliamentary mandates are more progressive and democratic because they stem directly from the popular sovereignty which has inevitably led to total Independence of Parliamentarians”.

Rousseau,¹⁹ suggests that “assemblies be held in which every citizen can assist in determining the general will, that without this input from the people, there could be no legitimate government”.

Dicey,²⁰ states that; “The principles of parliament sovereignty means neither more or less than this, namely that parliament thus defined has, under the English constitution the right to make or un make any law whatever and further, that no person or body is recognized by the law of England as having a right to override or set aside the legislation. A law may, for our present propose be defined as any Rule which will be enforced by the courts then the principle of parliamentary sovereignty may be looked at from its positive side be thus described any Act of Parliament, which makes a new law or repeals or modifies an existing law, will be obeyed by court. The same principle looked at from its negative side may be thus stated: There is no person or body of person who can under the English Constitution make rules which override or derogate from an Act of parliament or which (to express the same thing in other words) will be enforced by the courts in contravention of an Act of parliament”.

Locke,²¹ states that; “If people, have set limits to the duration supreme power of their Legislature and made this supreme power in any person or assembly on temporally, it is forfeited upon the forfeiture of their rules or at the determination of the time set, it reverts to the society and the people have a right to act as supreme and continue the legislature in themselves or place it in a new form or new hands as they think fit”. From the above, it can be understood that parliament can exercise powers over the Executive in assertion to

¹⁸ The Parliamentary Mandate: A Global Comparative study by Marc Van der Hulst, 2000, Jeneva, pg.7

¹⁹ The Social Contract by Jean Jacques Rousseau, Book III, 1762, Pg.74.

²⁰ Introduction to the Law of the Constitution by AV Dicey, 1885, pg.36

²¹ An essay concerning the true original extent and end of civil government by John Locke, 1690, Pg.104.

any public matter. It reveals that parliament in its legislative work; it should be independent from anybody or organ like the Executive.

Mill,²² wrote of Parliament, "Instead of the function of governing for what it is radically with the proper office of a representative assembly is to watch and control the government, to throw the light of publicity on its acts, to compel a full exposition and justification of all of them which any one considers questionable, and if the men who compose the government abuse their trust to fulfill it in a manner which conflict with the deliberate senses of the nation, to expel them from office and either expressly or virtually appoint their successor". In the above phrase, parliament exists to represent the views and opinions of the people and to influence constrain and demand justification for the actions of government and to give them legitimacy.

Erskine defines Privileges as being... ..*the sum of the peculiar rights enjoyed by members of the House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals. This privilege although part of the law of the land is to a certain extent an exemption from the general law.* Parliament privilege provides protection for members of parliament against accusations of defamation from outside parliament and also protects individual members in the exercise of his or her freedom of speech from the Executive.

In the case of *National Provincial Bank vs Ainsworth*,²³ Lord Denning's contribution to developing the law marked in many areas; His Judicial "Campaign" to protect the occupational right of deserted wives through the case (supra) ultimately led to enactment of *Matrimonial Homes Act 1967* giving Statutory protection to rights of occupation of power and the position of judges as subordinate to parliament, it can be seen that the courts developed the common law to a point where parliament felt it necessary to legislate.

In the case of *Ellen Street Estates Ltd vs Minister of Health*,²⁴ court ruled basing on the doctrine of implied repeal, which provides the mechanism by which a judge gives effect to the rule against parliament being bound by previous parliaments or being able to bind subsequent parliaments and thereby guarantees contemporary sovereignty.

In *Uganda vs Kato Kajubi Godfrey*,²⁵ Parliament exercised its Independence when it criticized the acquittal of Kato Kajubi who was charged with murder of a child. It was argued that the acquittal of the later was breach of conventional rules as a result the case

²² Considerations on Representative Government by John Stuart Mills, 1861, London; Parker, Son and Bourn.

²³ (1965) AC 1175.

²⁴ (1934) 1 KB 590.

²⁵ Cr. Appeal No. 39 of 2010.

was later put before the Court of Appeal and Kato Kajubi was convicted for murder of a child and was sentenced to Life Imprisonment.

Parliament exercised its independence when the speaker of Parliament Rt Hon. Rebecca Kadaga received a letter from the National Resistance Movement party asking her to invoke her powers to direct the Clerk of Parliament to declare the seats of the “Rebel” MPs (Theodore Ssekikubo, Barnabus Tinkasimire, Mohammed Nsereko and Winfred Niwagaba) after the MPs were expelled from the ruling party but the Speaker of Parliament stood her ground and said that; “There is no legal and constitutional basis for them to be expelled from Parliament and that Article 83 of the Constitution outlines circumstances under which a lawmaker is likely to lose his or her seat in Parliament”. The Supreme Court later up held the Speaker’s decision in its ruling in the case of Attorney General vs Ssekikubo & 4 Others, Civil RefNo 13 of 2016. It was held that an MP cannot lose his/her seat after being expelled from a Political Party

Article 79 (1),²⁶ entrusts Parliament with power to make laws on any matter for Peace, Order and Good government of Uganda. Being the legislative arm of government; Parliament obtains its independence from the law encompassed in the various Statutes of the Country which parliament enacts and interpret to suit the general role which requires absolute autonomy. Neither the Executive nor the Judiciary has power over the Legislature and it is not legal for parliament to operate under any individual or office but it should be totally free in implementing its legislative functions.

The Parliamentary Commission, a body corporate acts as the administration of the affairs and business of Parliament so as to realize the Independence of Parliament in holding her functions. The Commission is composed of the Speaker, the Leader of Government Business, the Minister responsible for Finance and three (3) members of parliament elected by parliament none whom shall be minister.²⁷ The Commission regulates affairs of parliament, without any external influence which could distort parliamentary functions. Among the functions of the parliamentary commission is to appoint, promote and exercise disciplinary control over persons holding public offices in parliament, to maintain proper security for the members of parliament and facilities within the precincts of parliament, to provide such other staff and facilities as is required to ensure the efficient functioning of parliament.²⁸

²⁶ Ibid.at pg.3

²⁷ Section 2(a), Administration of Parliament(Amendment) Act 2006, Cap 257

²⁸ Ibid.Section 6

Members of Parliament are immune,²⁹ from legal proceedings both Civil and Criminal for words spoken before or written in a report to parliament or to a Committee or by reason of any matter or thing brought by the member in parliament or a Committee by Petition, Bill and Motion or otherwise.

The The Parliament (Power & Privilege) Act protects parliamentary sessions from jurisdiction of courts in any way which draws a uniform demarcation between parliament and courts of law. Members of parliament are therefore free from any distortion while in precincts of parliament and any distortion which enables them to exercise their Legislative work freely. Section 4 of the Act states that;

“No process issued by any Court Jurisdiction shall be served or executed with in the precincts of Parliament while Parliament is sitting or through the Speaker, the Clerk or any officer of parliament.”

Parliament is therefore accorded independence from Courts of law. This Section operates to protect members of parliament from Court proceedings while in precincts of parliament. Precincts of parliament alone is accorded to protection from outside interference without authorization by the Act breach of which results into an offense under Section 17.

Section 5 of the Act well states that; “No stranger shall be entitled as of right to enter or remain within the precincts of parliament”. The law restrains strangers from the precincts of parliament anyhow, despite the fact that parliament is a government organ serving the general public, entry into her precincts, one has to secure authority and follow the established rules and guidelines governing the Institution.

Parliamentarians are entitled to Salary and Gratuity for the services they procure to the Nation and also to care for the expenses anticipated in their roles as Members of Parliament. Section 1,³⁰ provides that; “There shall be payment to Members of Parliament in respect of his/her office as a member or other office which he/she holds by salary and gratuity.” It is from the Consolidated Fund that members and officers of parliament get paid. Parliamentarians have fixed salary set by the law and publically recognized to prevent them from temptations from the public in implementing their Legislative roles for example MPs in the ninth parliament were earning monthly twenty five million shillings (Ush.25,000,000) broken down into basic pay, constituency allowances, mileage facilitation and substance allowance among others. Members of Parliament are of prerogative to decide on the amount of their salary depending on the economic spheres of the Country in that they can increase on their salary through a proposal to parliament. The Act settles financial restrains of members of parliament through providing them with

²⁹ Section 2, The Parliament (Power & Privilege) Act, Cap 258

³⁰Parliamentary (Remuneration of Members) Act, Cap 259

salaries and gratuities for the service they render to the nation which enables them to solidify their independence.

2.1 CHALLENGES AFFECTING PARLIAMENTARY INDEPENDENCE

Despite the strides that have been made by Parliament, there are challenges that are yet to be addressed in order for a free Parliamentary institution to be viable in Uganda.

To a large extent Parliament is faced with a challenge of Multi-Party Politics which as a result given the Executive a solid base to undermine the autonomy of Parliament in implementing its Legislative roles. Parliament is composed of members from the different Political Parties namely; National Resistance Movement Organisation (NRM-O), Forum for Democratic Change (FDC), Democratic Party (DP), Uganda People's Congress (UPC) and worse enough there are many MPs in Parliament without Political Parties known as "Independent MPs" and because of this Political Party system Members of Parliament have on many occasions been compromised to surrender their power to their respective Political Parties especially to the ruling NRM-O which has the majority in the house and at the same time forms the Executive Arm of Government. The ruling party (NRM-O) caucus almost on every issue on the floor of parliament, finding a common stand and it's a crime for a member to give a different opinion while on the floor which limits the members' freedom of speech. Caucuses are a sharp contradiction of Article 78 of the Constitution as MPs should talk on behalf of their constituents directly first not vice versa. In 2007 government through the then Minister of Information, Ali Kirunda Kivenjinja refused to commit itself to any timelines to re-open NTV despite pleas from the MPs who accused the Executive of deliberately undermining the authority of Parliament and frustrating an investor. The Speaker Rebecca Kadaga got frustrated and concluded that "we have done our part and stand by our position which is that NTV should be re-opened, we leave the rest to the Executive",³¹ thus Parliament is compromised and not Independent in implementing its Legislative roles.

Members of Parliament are also biased by the fact that some of the members double as Cabinet Ministers and at the same time act as representatives of their Constituents. This creates conflict of interest between addressing issues of their Constituents by presenting them on the floor or address interests of government by defending government in its failures to address issues in the Constituents. When interviewing Hon. Latiff Ssebagala, MP Kawempe North Constituency regarding this matter he cited an example of former Prime Minister Amama Mbabazi who was a Member of Parliament for Kinkizi South, Secretary General of National Resistance Movement (NRM) and Leader of Government

³¹ Toothless Parliament: Uganda's big problems by Maria Wamala, Department of Journalism and Communication, Makerere University.

Business at the same time. He further stated that this controversy was at one time brought to the floor of the 8th Parliament by Hon. Omara Atubo but was thrown out immediately a clear indication that Parliament is not Independent in implementing its Legislative roles.

On the other hand Parliament is faced with a challenge of Incompetent MPs due to commercialization of Politics during Parliamentary elections, Voters go for money not quality from the Candidates. Those without money and are quality are ignored thus voting in uneducated people as Members of Parliament hence poor discussions on the floor. Federal Alliance Party President Betty Olive Namisango Kamya former MP for Rubaga North agrees during the interview to the above and she urges that un-educated MPs become a soft target for the Executive to assert its powers in Parliament discussions because they cannot competently stand to challenge the state. She stated that Deputy Speaker of the 9th Parliament Jacob Oulanyah one time lashed out on Legislators in a press brief at Parliament and said the quality of discussion on the floor has deteriorated because MPs are less informed on issues because they do not research.

Secondly, Politics is now a lucrative venture leading to corruption, many people are going in for Politics because there is quick money. During the interview Hon. Theodore Ssekikubo, MP Rwemiyaga noted that currently there are 375 MPs yet Parliament Chamber was built for 80 people. This has impacted on the quality of discussion due to the huge numbers, each member is given only 3 minutes to make a point in plenary which is very little time especially for members who would like to illustrate stories in their Constituents for clarity. Parliamentary Score Card 2006-2007 shows that on average, Ugandan MPs attended only 23 out of 89 Plenary Sessions.

Parliamentary elections are characterized by violence, fraud and coercion. Voters cannot freely choose their representatives because elections are held in an environment where the Army and Police forces are patrolling the streets and Polling stations, arrests and imprisonment of Candidates and their supporters who try to question vote rigging on polling station. Hon Theodore Ssekikubo vehemently confirmed the above practices and gave clear examples in Mukono where Hon. Betty Namboze represents and the recent occurrences in Rubaga North elections between Singh Katongole and Hon. Moses Kasibante.

The Legislature is also faced with a challenge of use of Parliamentary resources such as office space, staff time and funds by incumbent MPs and Ministers to transact their private business other than Parliament work, Ministers and MPs for example use government vehicles to transport produce from their farms up country, use of official government drivers to fetch their children from school yet they are paid by government to do

government duties. The same trend is evident during Campaigns where incumbents use state resources like fuel, office space, staffs to help out in their campaigns.

Lastly the ethical professional conduct of MPs is highly deteriorating, there is increased rate of love affairs among legislators which has resulted in to marriage problems among the member today. Legislators do not conform to standards of ethics in practice and their continued impropriety appearance in Newspapers and other social media networks. A number of members have been arrested by Police driving while drunk and the extreme to this surfaced when MP Vicent Kyamadidi MP for Rwampara County appeared on social media urinating at Police officers who had arrested him for excessive drinking.

However there are instances where Parliament has stood its ground against bias from the Executive. Most memorable of all is protecting National interests for example the demand for Transparency in the management of Oil and other extractive resources in Uganda. In 2007 Parliament accused the Executive of deliberately undermining the authority of Parliament and frustrating an Investor when the then Minister of Information Ali Kirunda Kivenjinja refused to commit to any time lines to re-open NTV despite pleas from MPs and as Parliament through the Speaker stood by their position which was that NTV should be re-opened. Last but not least is when the Central Executive Committee (CEC) of NRM-O wrote to the Speaker Rebecca Kadaga (also a senior member of NRM-O) asking her to invoke her powers to direct the Clerk of Parliament to declare the seats of the “Rebel” MPs (Theodore Ssekikubo, Barnabus Tinkasimire, Mohammed Nsereko and Winfred Niwagaba) after the MPs were expelled from the ruling party but the Speaker of Parliament stood her ground and said that; “There is no legal and constitutional basis for them to be expelled from Parliament and that Article 83 of the Constitution outlines circumstances under which a lawmaker is likely to lose his or her seat in Parliament”. Hence Independence of Parliament in Implementing its legislative roles.

CHAPTER THREE

3.0 METHODOLOGY

The research employed both quantitative and qualitative methods. However, the qualitative method was adopted as the primary method. Much of the work was done through interviews and library research especially at the Department of the Library, Research and Documentation at Parliament and therefore qualitative method was appropriate. Samples were picked from incumbent Members of Parliament from the different Political parties who served in the 8th Parliament and other Parliamentary staff.

3.1 Limitations:

In employing qualitative method as the primary method of the research study, the following limitations were faced;

- i. Data gathering and analysis was time consuming and expensive.
- ii. Drifting away from the original objective of the study in response to the changing nature of the context under which research was conducted.
- iii. Being ignored by some respondents due to issues of anonymity and confidentiality.

3.2 Library Research / Interviews:

This Study was done through interviews and materials in the following libraries;

- i. Kampala International University (K.I.U) e-Library.
- ii. Department of the Library, Research and Documentation, Parliament of Uganda.
- iii. Search by use of Internet
- iv. Newspaper articles.

3.3 Synopsis:

The research study is divided into Five Chapters.

3.3.1 Chapter One:

This contains the Scope of the research, the Introduction to the study, the Statement of the Problem, the Hypothesis, and the Significance of the study and Major Terms.

3.3.2 Chapter Two:

It contains the legal basis of the doctrine of Parliamentary Independence, the various legal provisions in the Ugandan Legal System on Parliamentary Independence and also entails the Literature Review.

3.3.3 Chapter Three:

It contains the research methodology of the study, Data gathering procedure, Instruments used, Data analysis and limitations of the study.

3.3.4 Chapter Four:

This contains Findings of the research, Analysis and Interpretation of Data in light of the study.

3.3.5 Chapter Five:

This contains the ethical considerations and final Conclusions of the research.

CHAPTER FOUR

4.0 INTRODUCTION

This Chapter deals with the findings of the Study and an analysis of data but as earlier indicated in Chapter Three, the Methodology of the study was majorly qualitative not quantitative, it was due to lack of enough time and resources that it became impossible to go out to the field to get the statistics to give a clear picture at the moment but recent statistics from other studies will be used to give a quantitative illustration. The research has mainly relied on the Interview of Members of 8th Parliament and the available data and findings on studies that have been done prior to this study mainly African Leadership Institute-Parliament Score Card Reports and Parliamentary Watch Bulletin Reports.

4.1 RESEARCH FINDINGS, ANALYSIS OF THE STUDY AND INTERPRETATION OF AVAILABLE DATA.

In analysis of the research findings and available data regarding the Independence of Parliament in implementing its legislative roles, it is evident that since 1995 Parliament has portrayed a high degree of Independence compared to the period before the coming into force of the new Constitution which was characterized by political instability and lack of Rule of law. This is exhibited by the fact that the Speaker of the 9th Parliament and MPs through their respective committees have been independent with brave character to ensure a smooth and clear legal frame work without intimidation or favor to any person or authority. It is worth noting that there are a number of Bills that have been passed by Parliament such as the Anti-Homosexuality Bill, 2009, the HIV and AIDS Prevention and Control Bill, 2010, the Prohibition and Prevention of Torture Bill, 2010, the Anti-Pornography Bill, 2011, the Petroleum (Exploration, Development and Production) Bill, 2012, the Petroleum (Refining, Gas processing and Conversion, Transportation and Storage) Bill, 2012, the Lotteries and Gaming Bill, 2013, the National Council for Elders Bill, 2013 among others, an indication of a free and Independent Parliament.

Secondly regarding the Independence of Parliament in implementing its legislative roles and in analysis of research findings and available data, the 9th Parliament is rated high in terms of Legislation and oversight scoring 60 percent.³² It was able to pass up to 11 Bills and adopted 23 Bills that were left out by the 8th Parliament. This is due to vigilance of the members of the Public Accounts Committee (PAC),³³ which is to most Ugandans is one of the most outstanding committee in the 8th Parliament known for grilling public officials to account for funds and has left a bitter taste in the mouths of several government officials. Most memorable among others is protecting national interests for example in April 2008, the minister of Foreign Affairs Sam Kuteesa was implicated in a case for irregularly

³² Uganda Government Monitoring Project (UGMP) Report, 2004, Pg.17

³³ Rule No. 148 of Rules of Procedure of the Parliament of Uganda, 2006.

securing a 1.2 Billion shillings deal for Hunton and William a P.R firm in United Kingdom from March 2005 to April 2006 to promote the image of Uganda in retaliation to the allegations, minister Kuteesa accused the committee chairperson Nandala Mafabi (M.P for Budadili West) of witch-hunting him because of being a member of the NRM.

To some extent PAC has been able to put into effect some of its recommendations like ensuring that the then Minister of Ethics and Integrity Dr. James Nsaba Buturo refunds about 20, 000,000 (Twenty Million Shillings) that he diverted from government owned Mega F.M in 2005. But there has not been much for the committee to show as a practical undertaking they have accomplished against Corruption and in my opinion this is simply because most of the people implicated are fellow MPs serving in senior government positions and more so are the people expected to implement these recommendations hence a chronic syndrome of corruption in Uganda today.

In examining the Challenges faced by Parliament vis-a-vis its Independence it is clearly exhibited that there has been significant challenges most especially due to the Multi-party dispensation. Multi-party politics has as a result given the Executive a solid base to undermine the Independence of Parliament because Members of the ruling party, NRM-O face intense pressure especially from decisions from the NRM Caucus where party members including the Speaker and Deputy-Speaker of Parliament too are forced to pass controversial Bills in favor of the Executive. To make the already bad situation worse, most Members of Parliament are biased by the fact that they double as Cabinet Ministers. This has created conflict of interest between upholding the Independence of Parliament and being loyal to the Executive hence compromising the autonomy of Parliament in implementing its legislative roles.

Furthermore according to available data, the Public Accounts Committee (PAC) work has not been fully manifested in terms of publicizing their findings or handling those implicated. Actually PAC has on several occasions followed up on its recommendations to Parliament so that they are implemented on those government officials implicated but some of these followings never materialize especially those recommendations that target members of the Executive because they are sabotaged by some members of the Executive and in such instances the Speaker sometimes does not encourage debate on such recommendations from PAC but opts time to scrutinize the recommendations.

The available data further shows the increased interaction and consultations with the different parties which has increased transparency in Parliament hence freedom of speech expressed by MPs in Parliament thereby improving its image among Ugandans.

CHAPTER FIVE

5.0 INTRODUCTION

Chapter Five contains opinions / recommendations to alleviate the challenges arising from the findings of the research, considerations of areas for further research on the same subject and finally the conclusion of the research. considerations are made in the following areas; MPs doubling as Cabinet Ministers, Incompetence of MPs, Corruption and Commercialization of Politics, Deteriorating quality of discussion on floor of Parliament, Violence, Fraud and Coercion during Parliamentary elections and Ethical Professional misconduct of MPs.

First and foremost, according to the research in Uganda most of the Members of Parliament are the majority members of the Executive and come from a single political party. This has made it very difficult for the legislators to realize independence in performing their legislative roles, in my opinion Members of Parliament should not be recruited into Cabinet in other words member of the legislature should not be part of the Executive as is the case in Kenya where the Executive is clearly different from Parliament, one is required to resign as a member of Parliament to become minister, you cannot hold two posts at the same time this will erase the habit of caucusing by the ruling party especially on issues of National interest thus independence of Parliament in implementing its Legislative roles.

There is need to consider civic education especially to Voters on what the real role of a Member of Parliament is. This will help Voters to ignore incompetent and un-educated political candidates who commercialize politics and vote for quality people as well as reduce the mentality that politics is a lucrative venture but rather a service that requires selfless devotion. This will drastically improve the quality of discussion on the floor of Parliament and attendance of MPs in Plenary.

Another opinion is adoption of clear rules for Transparent Political Financing whereby Political Parties and Parliamentary candidates are required to place all contributions above a certain limit in an official bank account which are fully documented and disclosed. Disclosure should cover all income, assets and expenditure related to an independent official agency, an oversight by an independent authority (Internal like parliamentary committee or external) and a uniform and reliable software should be put in place to help monitor all income and expenditure during political campaigns, verify and report on the Parliamentary campaign data and publication of information this will help to drastically reduce on the level of corruption among MPs and members of the Executive thereby increasing the level of independence of MPs in making independent and sound decisions for national interest rather than selfish interests.

To reduce on the burden that Political Parties put on to its members in Parliament, I suggest that Legislators should not be required to run for office as MPs exclusively under the nomination of a Political Party because they represent people in Parliament not their Political parties and the process of the election of members of parliament should be open and transparent, allowing for full citizen participation and free of Coercion, Fraud, or Violence. Government should create an environment conducive to equality and political competition. There must be full citizen participation.

I further recommend that MPs must also be free from Censorship and Defamation laws that restrict the right to criticize government, thereby curtailing Parliamentary oversight of the Executive because the true expression of democracy lies in the right to Freedom of Speech. This is not just a right guaranteed to the general public.

There should be free flow of information from Parliament Committees to its members and the public as well as avenues that allow consultation and citizen participation in the different stages of law making process from the moment Parliament receives a Bill from the Executive or from the moment a Bill is drafted by a committee and Civil society representatives should have a voice and be consulted. This will add a fresh input and the resulting law will better reflect real needs of the local people. Thus an open, transparent and accountable Legislature system to the general public since Parliament is the voice of the people.

The legislature should consider making Parliamentary Committee meetings to be generally open just like court rooms and allow public attendance and participation. Committee Reports should be published and made readily available to both government and the public.

Members of Parliament should be subjected to some internal codified rules regulating standards of behavior and restricting certain ventures or members' participation in certain activities or being in certain public places such as Bars. This will go a long way in establishing Institutional Integrity, Trust and Respect by the Public and effective discharge of duties on the part of legislators as they are fully conscious of ethical parameters which govern them as a profession.

Government should consider the need to set up a secretariat for PAC so that the Committee can independently do its work instead of only relying on the Auditor General Reports and build capacity for resource persons to facilitate the Committee's work.

5.1 CONCLUSION

The principle that Parliament must be Independent in the performance of its legislative role is one that has been not only adopted in laws of Uganda but other Jurisdictions all over the world. Parliament is the only institution that can protect the people from the excess of government. It is the Institution that is mandated by law to tame government from extorting and oppressing its own people by making new laws or repealing existing laws. Therefore Parliament must be free from the influence of the Executive, the Powerful in society and any person or authority.

Parliament must exercise its powers in accordance with the law. It has been established in this study that for there to be an Independent Parliament, there must be a clear Separation of Powers within the government. The Legislature, the Executive and the Judiciary must not usurp any the power of another branch of government. The three arms must interact with each other to facilitate their performance but not to render any other incapable of performing its Constitutional mandate. It is Parliament that ensures that government (Executive) executes its duties in accordance with the prevailing laws and up holds the Constitution through the doctrine of Checks and Balance. This can only be possible if parliament has meaningful Independence.

In Uganda though the doctrine of Parliamentary Independence has been significantly in practice since the adoption of the 1995 Constitution there still remains challenges which need to be solved in order to attain a higher level of Parliamentary Independence.

The characteristic of Parliament in Uganda is high and deeply entrenched by Pressure of Political parties its members in Parliament, abuse of freedom of speech by the Executive, Corruption, Violence, Fraud and Commercialization of parliamentary elections. These and many others have become to be associated to be part of Parliament which as a result have greatly damaged its reputation. However, that withstanding, I do not ignore the significant strides made by Parliament towards implementing its legislative role without manipulation, I do think that a lot still needs to be done to ensure that Parliament promotes the will of the people, Corruption and Coercion of the ruling Political party members must be eliminated, Violence in Parliamentary elections and commercialization of politics must be reduced, Interference of Parliament by other arms of government especially the Executive through the NRM-O party caucuses must be stopped and Parliament (Powers and Privileges) Act must be tightened to ensure that they are putting in place an Independent Legislature free from external interferences.

- African Commission on Human and Peoples' Rights; Declaration of Principles on Freedom of Expression in Africa, 17-23 October 2002, Banjul, The Gambia, 32nd Session.
- Assessing the performance of Uganda's Legislators, Score Card 2009-2010, African Leadership Institute.
- Assoc.Prof. Yasin Olum; Multiparty Politics in Uganda, December 16, 2011, Uganda, Konard
- Common wealth Parliamentary Association (CPA).
- Dr.Christopher Ward; Wicks Commit Report on Standard of Conduct in the House of Commons, Session 2002-2003, Press Notice No.4
- G.Mandelbaum; Holding Parliament Accountable, September 2011, The National Democratic Institute for International Affairs.
- Maria Wamala; Toothless Parliament; Uganda's big problems, Department of Journalism and Communications, College of Humanities and Social Sciences, Makerere University.
- Strengthening Legislative Capacity in Legislative-Executive Relations, The National Democratic Institute for International Affairs, Pg.10-29.
- Uganda Governance Monitoring Project (UGMP) Report, 2004, Dutch Uganda platform, Pg.17.

- Constitution of the Republic of Uganda, 1995.
- Administration of Parliament (Amendment) Act 2006, Cap 257.
- A.V Dicey; Introduction to the Study of the law of the Constitution, 1885, Oxford; All Souls College, Pg.36
- Constitution of the Democratic Republic of the Congo, 2012, William S. Hein & Co. Inc. Pg.25.
- Jean-Jacques Rousseau, The Social Contract, Book III, 1762, Forderis aequas Dicamus Leges, Virgle, Aeneid, Pg.74
- John Locke, The True Original Extent and end of Civil Government, 1690, Pg.104
- John Stuart Mill, Considerations on Representative Government, 1, Parker, Sons & Bourn.
- Mar Van Hulst, The Parliamentary Mandate: A Global Comparative Study, 2000, Geneva, Inter-Parliamentary Union, Pg.7.
- Oxford Dictionary of Law, 7th Edition, Pg.3221
- Rules of Procedure of the Parliament of Uganda (2012).
- The Parliament (Powers and Privileges) Act, Cap 258.
- The Parliamentary (Remuneration of Members) Act, Cap 259
- Thomas Erskine May, A Treatise upon the Law, Privileges, Proceedings and Usage of Parliament, 1844, London, Charles Knight & Co.

LIST OF CASES

- National Provincial Bank vs Ainsworth (1965) AC 1175
- Ellen Street Estates vs Minister of Health (1934) 1 KB 590.
- Uganda vs Kato Kajubi Godfrey Cr.Appeal No.39 of 2010.
- Attorney General vs Ssekikubo & 4 Others Civil Ref No. 13 of 2016.