

## Summarized Tribunal Report

On 15th May 2013, Hon. Frank Tumwebaze, the Minister of the Presidency, who is also the Minister in charge of Kampala Capital City, received a Petition from Seventeen (17) councilors of the Kampala Capital City Authority (KCCA).

The Petition set out grounds upon which the Councillors sought the removal of Mr. Erias Lukwago from his position as Lord Mayor of Kampala Capital City. The allegations levelled against the Lord Mayor were;

- abuse of office,
- misconduct or misbehaviour and
- Incompetence.

On receipt of the Petition, the Hon. Minister in consultation with the Chief Justice, constituted a Tribunal to investigate the allegations contained in the Petition. The Tribunal members were

- Honourable Lady Justice Catherine Bamugemereire,
- Mrs. Joska Ocaya-Lakidi and
- Mr. Alfred Okello Oryem.

The Terms of Reference of the Tribunal, in addition to setting out a time-frame of two months for its operation, specified that a decision was to be reached as to whether the Petition's assertions **could support a *prima facie* case for the removal of the Lord Mayor.**

The Tribunal further noted that the Petition seeking the removal of Mr. Erias Lukwago from his elective position of Lord Mayor of Kampala Capital City, was a matter of great public interest which had created an atmosphere of collective euphoria within sections of the population of Kampala.

The sheer gravity and the far reaching ramifications of this exercise compelled the Tribunal to subject the evidence adduced before to such rigour and care as akin to the standard ordinarily applied to election petitions. Indeed whilst the standard of proof applied by the Tribunal was not beyond reasonable doubt as required in criminal cases it was a lot higher than proof on a balance of probabilities which is the accepted standard of proof in cases of a civil nature such as this one.

The Tribunal noted that some provisions of the KCC Act, relating to the process of the removal of the Lord Mayor, are couched in Criminal Law terms but remained aware that the proceedings to remove the Lord Mayor are governed by principles of natural Justice and, where applicable, civil procedure. The Tribunal, subject to the provisions of the KCC Act, developed its own rules of procedure followed in its investigation. These were adopted on 14th June 2013 during a consultative, pre-hearing meeting attended by the Petitioners, the Respondent's team of eight lawyers, some members of the technical team of KCCA, the press and the public. Also, both the Petitioners' and the Respondent's teams agreed on a managed calendar that was to be followed over the course of the Tribunal proceedings.

Notably though, the Tribunal's mandate was contested in ***Erias Lukwago v. the A.G and Anor Miscellaneous Cause No. 281 of 2013***. In this suit, the Respondent and his lawyers challenged the legality of the Tribunal and applied for an order to quash all of its proceedings. In his Ruling on the matter, the Hon. Mr. Justice Vincent T. Zehurikize agreed with the Respondent and his lawyers that the ground of "failure to convene two consecutive meetings" be struck out in strict enforcement of Section 12 (1) (e) of the KCC Act but that other than that the Tribunal was at liberty to continue its work unfettered.

The Tribunal, in its investigative quest, adopted a delicately managed balance of both the inquisitorial and adversarial approaches of evidence gathering (the latter generally being a preserve of practice in the Common Law system). Both oral and written witness statements and Exhibits as well as audio and video recordings were received in evidence by the Tribunal. It was not imperative on the Tribunal to attempt to establish a burden of

proof that was “beyond reasonable doubt”. Instead, the Tribunal, as required by law, merely sought to establish if there existed a *prima facie* case for the removal of the Lord Mayor in light of the Petitioners’ allegations.

After evaluating the grounds raised by the Petitioners, the body of evidence adduced to support either side’s contestations as well as the submissions of the lawyers, the Tribunal established its findings which are briefly explained hereafter.

- **Concerning the allegations of abuse of office**, the Tribunal established that the Lord Mayor, in writing a letter (tendered as Exhibit P1), indeed incited the public against paying taxes. He did so in abuse of his office. Hence, a *prima facie* case was made out in respect of this allegation. Nonetheless, the Tribunal did not find sufficient evidence to support the accusation that the Lord Mayor engaged in other acts of inciting the public. In particular, the Petitioners failed to establish a causal link between the activity of cleaning Kampala, which had been sanctioned by the Uganda Police, and the unfortunate destruction of property, merchandize and death of innocent citizens of Kampala as alleged in the petition. Accordingly, the Tribunal determined that no *prima facie* case had been made out against the Lord Mayor in respect of this allegation.
- **In the matter of appointing and recalling representatives**, the Tribunal found that the Universities and Tertiary Institutions Act provided, in no uncertain terms, that representation of KCCA on the Boards of the respective institutions would be undertaken by councillors elected by the Authority. The evidence on record indicated that the Lord Mayor, without approval or election by the Authority, unilaterally appointed, recalled and replaced representatives to Makerere University and Mulago Nursing School. This was unlawful, illegal and in abuse of his office. For that reason, a *prima facie* case was made out against the Lord Mayor in respect of this allegation.
- **Regarding the failure to convene petitioned meetings according to the provisions of Item 1 (2) of the Fourth Schedule of the KCC Act**, the Tribunal concluded that there were several occasions when more than one third of KCCA’s 34 councillors petitioned the Lord Mayor to convene special meetings to discuss

specific agenda items. On many occasions, the Lord Mayor refused or failed to convene the petitioned meetings. In such instances, the Lord Mayor either changed the agenda items unilaterally without assigning any reason, or he based his refusal to convene meetings upon frivolous reasons as the evidence on record shows. By so doing, the Lord Mayor acted unlawfully, illegally and in abuse of his office. Consequently, a *prima facie* case was made out against the Lord Mayor in respect of this allegation.

- The councilors also complained against the Lord Mayor's failure **to accord due importance to Standing Committees and failed to renew their mandate.** The essence of this complaint was pleaded as the fourth particular under the ground of Abuse of Office and as the fifth particular under the ground of Incompetence. Although the above particulars were presented under different heads and grounds, the Tribunal found these two complaints to be related. Consequently, **it chose to deal with them together under the ground of incompetence.** The Tribunal established that it was the Lord Mayor's duty to cause the committee reports to be presented to the Authority and either be adopted or rejected. Any concerns about the competence of these reports could only be raised in the Authority meeting. The Tribunal found no evidence in writing or otherwise to suggest that the Respondent as the Political head of the Authority took leadership in this regard. The failure to consider Standing Committee reports prejudiced the operations of the Authority. It was not in dispute that Standing Committees are an indispensable component of the governance of the Authority. The Tribunal also established that it was not in dispute that since 24th June 2012 to-date, a period in excess of one year, Standing Committees had been neither been operational nor in existence. The Tribunal found that the Respondent did not assign any importance to the work of the committees or the tabling and adoption of their reports. Indeed, the Tribunal found that the Respondent failed to accord importance to the functions of the Standing Committees and to cause them to be reconstituted after they expired. The Tribunal concluded that incompetence, on Respondent's part, is the only plausible explanation for this failure. Therefore, the Tribunal determined a *prima facie* case

against the Lord Mayor on the two allegations of failure to accord importance to Standing Committees and the failure to reconstitute them upon their expiry.

- **On the matter of “failure to convene meetings”**, the Tribunal determined that the KCC Act does not expressly draw a distinction between special meetings of council and meetings of the Authority. The Tribunal concluded that, for all intents and purposes, a special meeting is a meeting of the Authority. Whereas the councillors accused the Lord Mayor of the failure to “convene ordinary Authority meetings to transact business of the Authority” preferring special/crisis Authority meetings instead, the Tribunal found a multiplicity of extenuating developments that contextualized the status quo. Among the reasons for this were: the failure of the Lord Mayor to issue notices for these meetings; the failure of the technical staff to attend Business Committee meetings thereby leading to lack of Order Papers; the failure of the councillors to attend Authority meetings thereby causing the meetings to abort on account of lack of quorum; and boycotts and walk-outs by councillors from convened meetings which led to their abortion on account of lack of quorum. In view of the extenuating circumstances, the Tribunal could not attribute the failure to convene ordinary meetings, in accordance with Section 12 (1) (e) of the KCC Act, solely to incompetence on the part of the Lord Mayor. Consequently, a *prima facie* case was not made out against the Lord Mayor in respect of this particular.
- On the allegation against **the Lord Mayor, for “failure to sign minutes”**, the Tribunal found the reasons given by the Lord Mayor (such as the explanation about clerks being withdrawn and minutes needing corrections first) untenable in light of the fact that the Authority had passed a resolution authorizing the Lord Mayor to sign them in the presence of two councillors. The Lord Mayor offered a litany of excuses for not signing the minutes. Minutes of meetings that were exhibited proved that even when a resolution to treat minutes as a true copy was adopted, the minutes had not been signed. Even when the councillors delegated authority to the Respondent to sign minutes from the comfort of his office, he still did not do

so. The notices for meetings constantly had no agenda item for consideration, confirmation and signing of minutes of the Authority. The Tribunal established that even when it was listed as an agenda item, confirmation of minutes was omitted except on two occasions. The Tribunal could not find any substantive justification for this especially since the Respondent never originated any correspondence about the alleged absence of Authority clerks or the absence of minutes. Despite a query, about unsigned minutes, raised by the Auditor General in his report (Exhibit P44 (3)) and the admonition to expeditiously handle the matter, this was not done. It was clear to the Tribunal that the Respondent did not accord the signing of minutes the importance the law accords it under Item 3 para. (2) of the Fourth schedule of the KCC Act. The Tribunal notes with great concern the effects of the failure to sign Authority minutes. The effect is not only limited to the failure of the Authority to have any binding record but also the failure of the implementation of some programmes of the Authority designed to deliver services to the citizens of Kampala. Nothing can explain the failure of the Respondent to sign and validate the minutes of the Authority other than sheer incompetence on his part.

**The Tribunal defined incompetence as the routine failure to perform a duty or function expected of a person possessed of skills to perform those functions when compared to other similarly placed individuals. Accordingly, a *prima facie* case was made out against the Lord Mayor in respect of this allegation.**

- About allegations of **misconduct**, particularly concerning the accusation that the **Respondent carried out persistent attacks on technical staff and used abusive language**, the Tribunal found the evidence, in their support, insufficient. Equally wanting was the evidence of the alleged storming of City Hall. Therefore, a *prima facie* case was not made out against the Lord Mayor in respect of this allegation.

- About the **willful misuse of information accessed by the Lord Mayor**, by virtue of his office, to misinform the public and propagate lies against officers of the Authority the Tribunal found this accusation well-founded. The Tribunal assessed, in detail, the submissions of witnesses regarding the Respondent's publicization, via a press conference, of the Auditor General's Management letter (tendered as Exhibit P3) knowing full-well that it was an incomplete commentary on the Authority. Although some issues, in that letter, such as the matter of Julius Kabugo<sup>2</sup>, who held two jobs in two Parastatals at the same time, as well his dearth of qualifications to warrant his post as Deputy Director, Treasury Services of the KCCA, were not rebutted by Management during the Tribunal proceedings, it was unacceptable for the Respondent to have taken this document to Parliament as if it were a final position of matters in the Authority. Eventually, the Tribunal determined, the Auditor General's ultimate position, Exhibit P44 (3,) was contrary to the Respondent's ill-conceived, improper and alarmist treatment of the Management letter. The Tribunal agrees with the councilors that however alarming the information the Respondent discovered was, he ought to have resolved the matter through the proper channels. The Tribunal considers that it was irresponsible of the person of the Lord Mayor to disseminate the contents of the Management letter beyond the environs of the Authority. Indeed the Tribunal construes the manner in which the Lord Mayor handled the Management letter as misconduct since, in his defence, he admitted to knowing what it was. For that reason, a prima facie case was made out against the Lord Mayor in respect of this allegation.
- Concerning the **allegation, of failing to heed technical, legal and administrative advice**, the Tribunal determined that the KCC Act, despite not being clear on who actually heads the Authority, is emphatic about the Respondent being accountable to the Minister for Kampala. The Tribunal notes that the Respondent himself admitted to this together with RW5 Sulaiman Kidandala. It was not then explicable to the Tribunal why the Respondent ignored Ministerial Directives that were issued to him (such as Exhibit P5). While the advice of the

Technical Staff was not necessarily binding on the Lord Mayor, he had a duty to implement Ministerial Directives. **The Tribunal faults the Lord Mayor's failure or refusal to implement Ministerial Directives and determined it as Misconduct on his part.** Consequently, a *prima facie* case was made out against the Lord Mayor in respect of this allegation.

In conclusion the Tribunal distilled all the evidence presented before it and distinguished matters that had been proven from those that had not. Matters that were not proved have been clearly pointed out and the Respondent duly exonerated thereof. Similarly, allegations that were proved were also identified and evaluated against a high standard of proof. Having carefully listened to arguments from both sides and considered all the evidence presented in respect of the three grounds of the Petition raised by the Councilors, **the Tribunal found that the three grounds of; Abuse of Office, Incompetence and Misconduct/ Misbehaviour were proved and a *prima facie* case for the removal of the Lord Mayor from office was established.**