

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO.152 OF 2019

1. CENTRE FOR CONSTITUTIONAL GOVERNANCE (CCG)

10 2. STRATEGIC RESPONSE INTERNATIONAL (SRI)

3. ABONEKA MICHAEL ..... APPLICANT

VERSUS

1. UGANDA COMMUNICATIONS COMMISSION

2. GODFREY MUTABAZI


15 3. ATTORNEY GENERAL ..... RESPONDENT

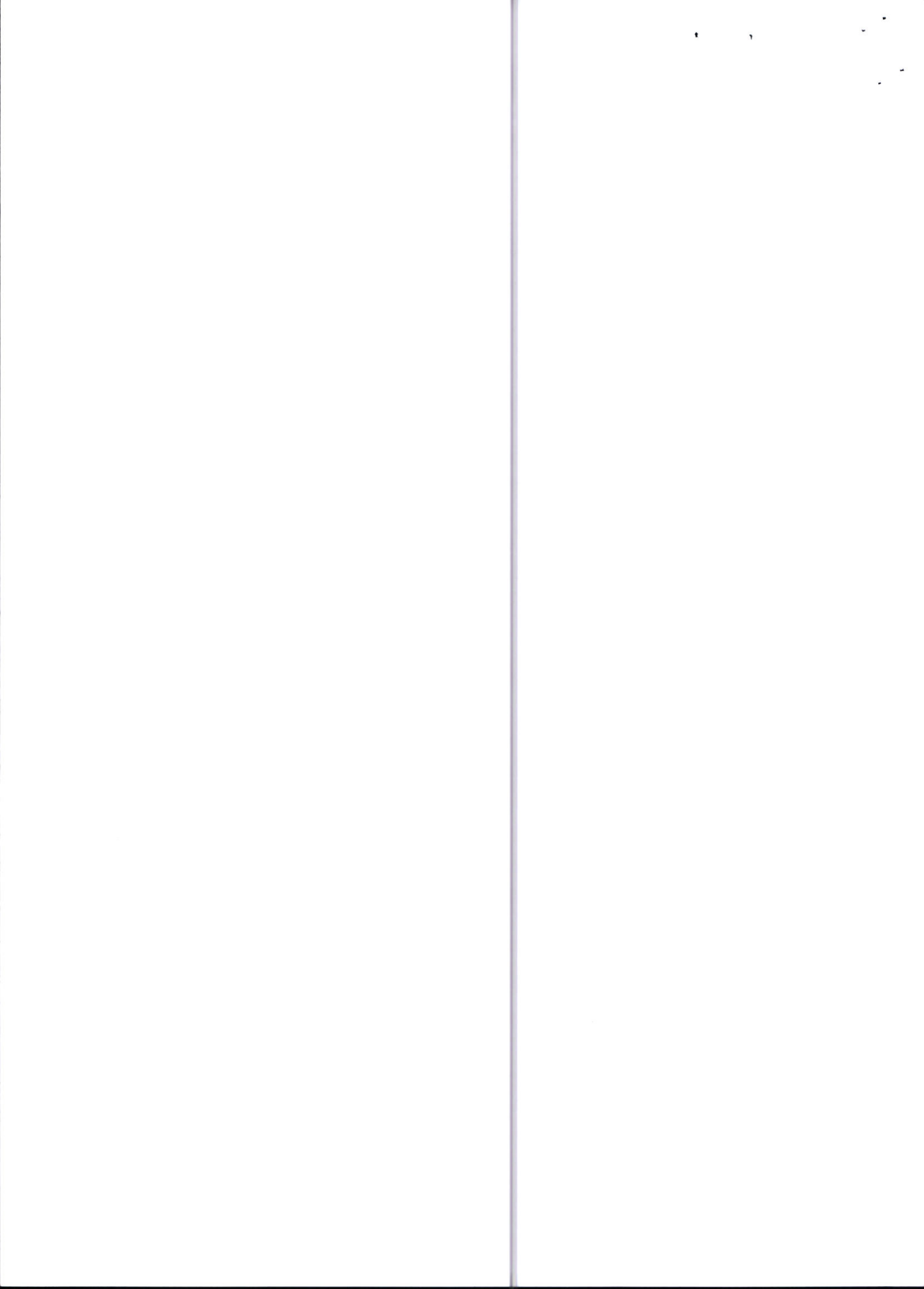
BEFORE: HON. JUSTICE ESTA NAMBAYO

RULING

The Applicants, Centre for Constitutional Governance (CCG), Strategic Response International (SRI), Aboneka Michael (hereinafter referred to as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants respectively) brought this application under **Articles 20, 28, 29, 40, 41, 42, 44, 50 (2) of the 1995 Constitution of Uganda, Sections 14, 33, 36 of the Judicature Act, Cap.13 as amended, Section 98 of the Civil Procedure Act, Cap. 71 and Rules 3, 6, 7, 8 of the Judicature (Judicial Review) Rules, 2009** against Uganda Communications Commission, Godfrey Mutabazi and the Attorney General (hereinafter referred to as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents respectively), seeking for: -


1. A declaration that the directives of the 1<sup>st</sup> Respondent (UCC) in its letter dated 30<sup>th</sup> April, 2019 under reference number OED/181 to thirteen media houses; Akaboozi FM, BBS TV, Beat FM, Bukedde TV, Capital FM, CBS FM, Kingdom TV, NBS TV, NTV, Pearl FM, Salt TV, Sapeintia FM and Simba FM directing suspension of their staff is ultra vires, illegal, arbitrary, unfair and a breach of

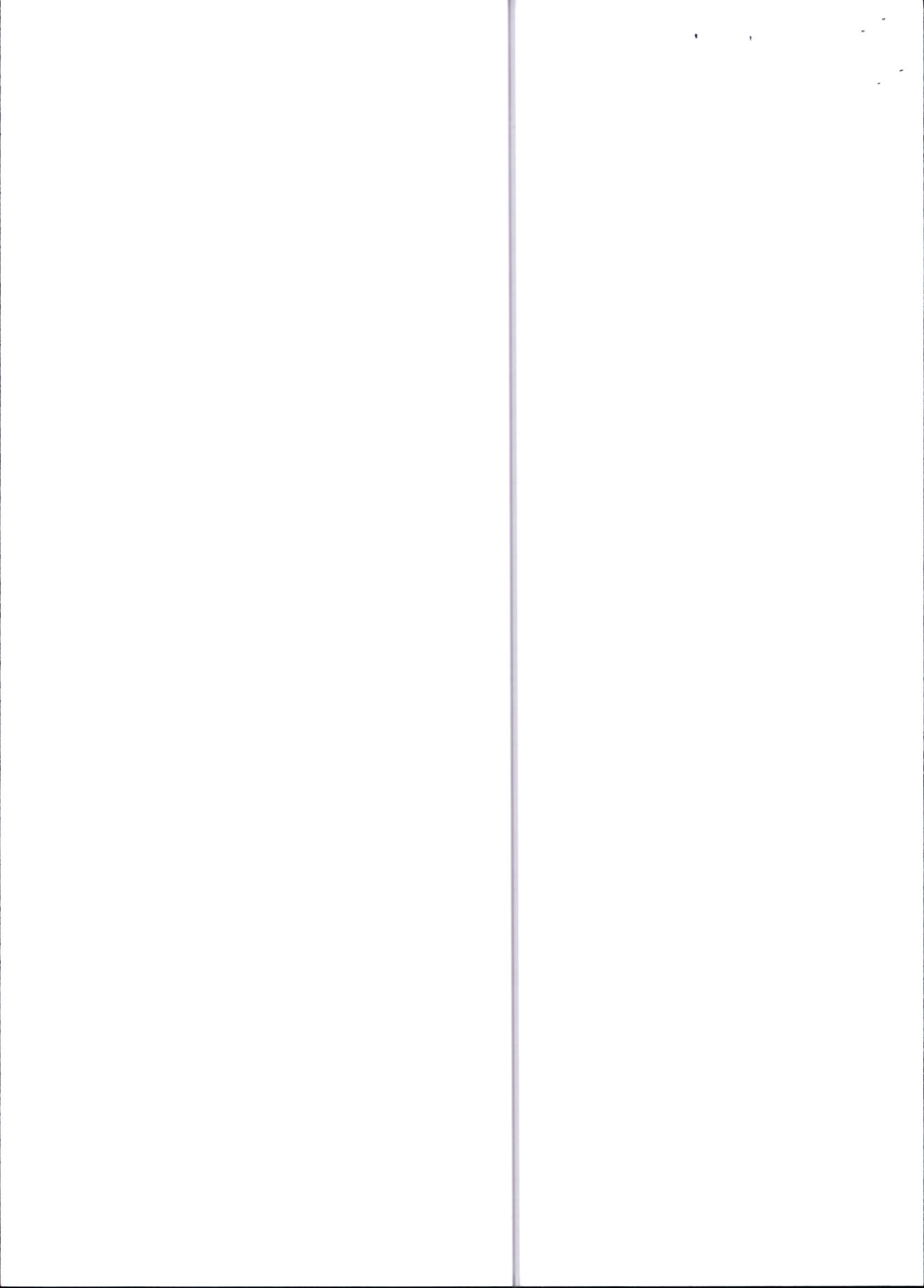
  
22/1/2024



the fundamental right to be heard and that the same is an abuse of law and null and void.

2. A declaration that the acts of the 2<sup>nd</sup> Respondent are abuse of statutory powers as he is acting beyond his mandate contrary to the law (sections 16 & 17 of the Uganda Communications Act, 2013).
3. A declaration that the 2<sup>nd</sup> Respondent's acts of directing suspension of Journalists, demanding for their qualifications and calling for their disciplinary actions against them are unfounded in law and are a usurpation of the powers of the Board of the Commission and that of the Media Council as opposed to the law (section 15 of the Uganda Communications Act and Section 8 of the Press and Journalist act cap 105) respectively.
4. A declaration that the 2<sup>nd</sup> Respondent's acts of probing, sanctioning and taking lead of investigations by himself against the Journalists without following due process of law that requires a committee or person to be appointed to make inquiries into any issues is an abuse of statutory power contrary to the law. (Part VIII of the Uganda Communications Act, 2013)
5. An order for certiorari quashing all the directives of the 1<sup>st</sup> Respondent issued by the 2<sup>nd</sup> Respondent contained in letters of suspension and investigation respectively above as they are ultra vires and violate the fundamental right to a fair hearing and right to practice one's profession.
6. A declaration that the continuous arbitrary switching off of various radio stations under the watch of the 1<sup>st</sup> Respondent without due process across the country, whenever some members of the Public appeared for talk shows, is neglect of its sole duty as a regulator and an abuse of process of law and violation of fundamental rights to freedom of expression, opinion, information, fair hearing and right to practice one's profession
7. An order of mandamus compelling the 1<sup>st</sup> respondent and the President and Minister for Information Communication and Technology represented by the 3<sup>rd</sup> Respondent (Attorney General) to Constitute a TRIBUNAL as enjoined by the law. (Section 60 of the Uganda Communications Act,2013)

  
22/1/2024



8. An order for mandamus compelling the Minister for Information, Communication and Technology (ICT) represented by the 3<sup>rd</sup> Respondent to appoint members of the Media Council to wit; two (2) distinguished scholars in Mass Communication and Nominate two (2) members of the Public as mandated by the law under sections 8(b), 8(e) and (i) of the Press and Journalist Act Cap 105 respectively.

9. A declaration that the continuous acts of the 2<sup>nd</sup> Respondent above are an abuse of law and usurpation of powers of the Media Council contrary to the law and amount to an abuse of office by the 2<sup>nd</sup> Respondent and that he should be held personally liable for all the violations and abuse of due process by the 1<sup>st</sup> Respondent.

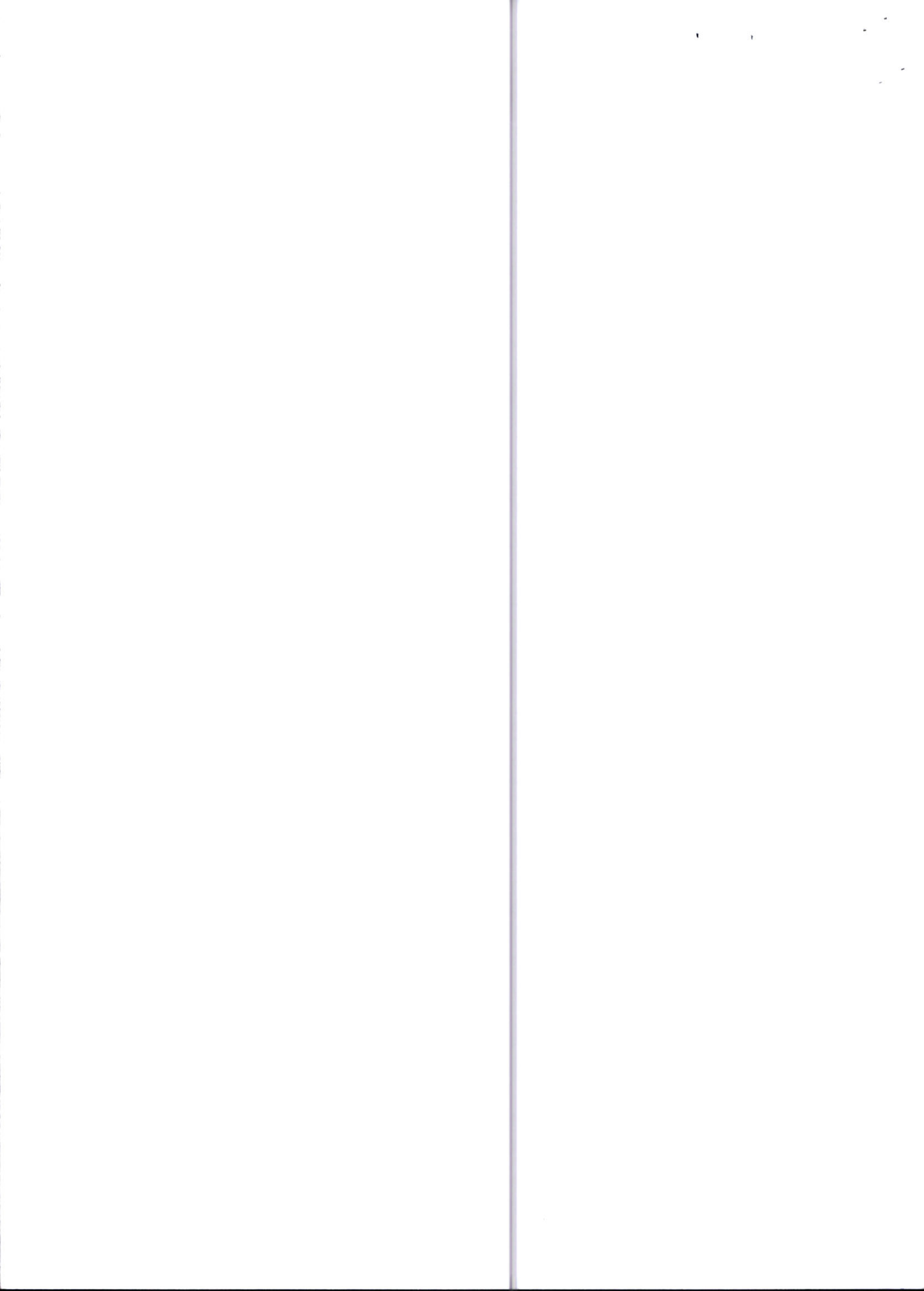
10. An order of prohibition and/or permanent injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondent from suspending staff of media houses, allowing arbitrary switching off radio stations under its watch without following due process of law and according them a fair hearing.

11. Costs of the Application.

The grounds for this application are premised on the affidavit of Bwowe Ivan but briefly are that: -

1. This application is brought in public interest to defend freedoms of expression, opinion, media and information and a right to practice one's profession.
2. The 1<sup>st</sup> Respondent's Acts are ultra vires and an abuse of office and statutory powers by the 2<sup>nd</sup> Respondent as they are outside their legal mandate.
3. The failure by the President and the Minister of Information, Communication and Technology to appoint and constitute members of the Uganda Communications Tribunal to handle matters arising from the acts of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is neglect of law and due process.
4. The failure by the Minister of Information, Communication and Technology represented by the 3<sup>rd</sup> Respondent to fully constitute the Media Council by appointing and nominating the members as prescribed by the law is an abuse of law and due process.

  
22/1/2024



5. The acts of the 2<sup>nd</sup> Respondent amount to usurpation of powers of the board and that of the Media Council as obliged by the law and are therefore illegal and a nullity.

95 6. The 1<sup>st</sup> Respondent's acts of neglecting its sole mandate and duty as a regulator while the arbitrary switching off of radio stations across the country happened without any due process of law and fair hearing is an abuse and neglect of mandate of law and principles of natural justice.

7. It is just and equitable that orders sought are granted.

The Respondents filed affidavits in reply opposing this application.

100 **Brief background to the application.**

The brief background to this case is that on the 30<sup>th</sup> April, 2019, the 1<sup>st</sup> Respondent issued a letter to the Managing Director, NBS TV titled "**REPEATED BREACH OF THE MINIMUM BROADCASTING STANDARDS**". The Applicants have now filed this application seeking for declarations that this directive is illegal, ultra vires and abuse of the law.

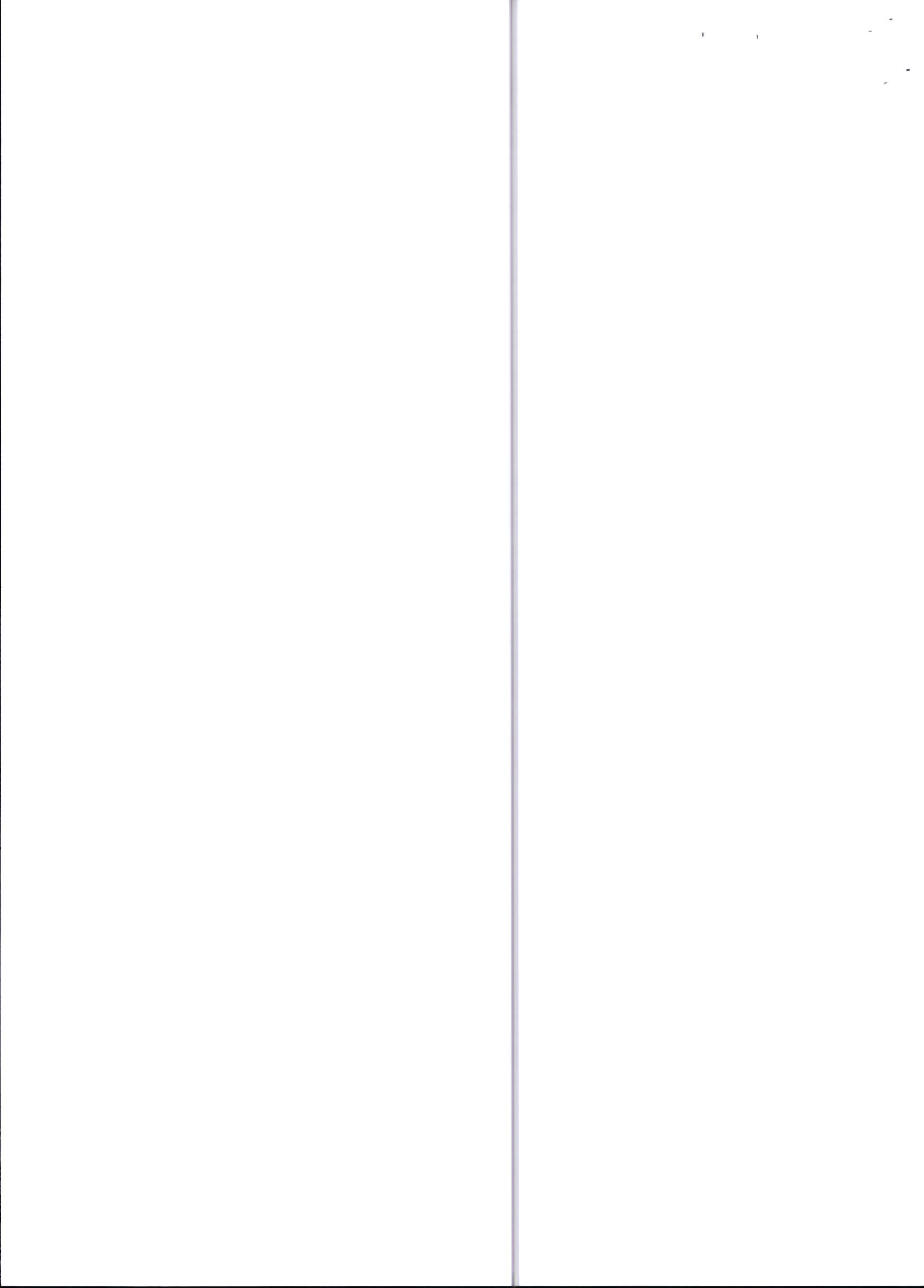
105 **Representation**

Learned counsel Michael Aboneka represents the Applicants while Learned Counsel Rita Ssekadde Zaramba was for the 1<sup>st</sup> & 2<sup>nd</sup> Respondents and Learned State Attorney Brian Musota was for the 3<sup>rd</sup> Respondent. Written submissions were filed as directed by Court.

Issues for determination are as follows: -

- 110 1. **Whether or not the Applicants have sufficient grounds for Judicial Review**
2. **Whether or not the failure by the President and the Minister of Information Communication Technology to appoint and constitute the Media Council by appointing and nominating the members as prescribed by the law is an abuse of law and due process.**
- 115 3. **Whether or not the failure by the Minister of Information Communication and Technology to fully constitute members of the Uganda Communications Tribunal to handle matters arising from the acts of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is a neglect of law and due process.**
- 120 4. **Whether or not the Applicants are entitled to the remedies prayed in the application.**

 22/11/2024





In their submissions, Counsel for the Respondents raised 5 preliminary objections on grounds that;

- i. The applicants have no locus standi to make this application.
- ii. The applicants brought this application on behalf of NBS TV, Akaboozi FM, BBS TV, Beat FM, Bukedde TV, Capital FM, CBS FM, Kingdom TV, NBS TV, NTV, Pearl FM, Salt TV, Sapeintia FM and Simba FM without obtaining a representative order.
- iii. There is no decision in this case.
- iv. The application is stale and the time for rendering a decision has since lapsed.
- v. The applicants have contrary to Rule 7A (1) (b) not exhausted alternative remedies available under the law before lodging this application.

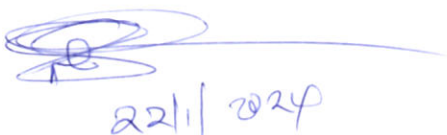
### **Determination of the preliminary objections**

**Preliminary objection No.1: The applicants have no locus standi to make this application.**

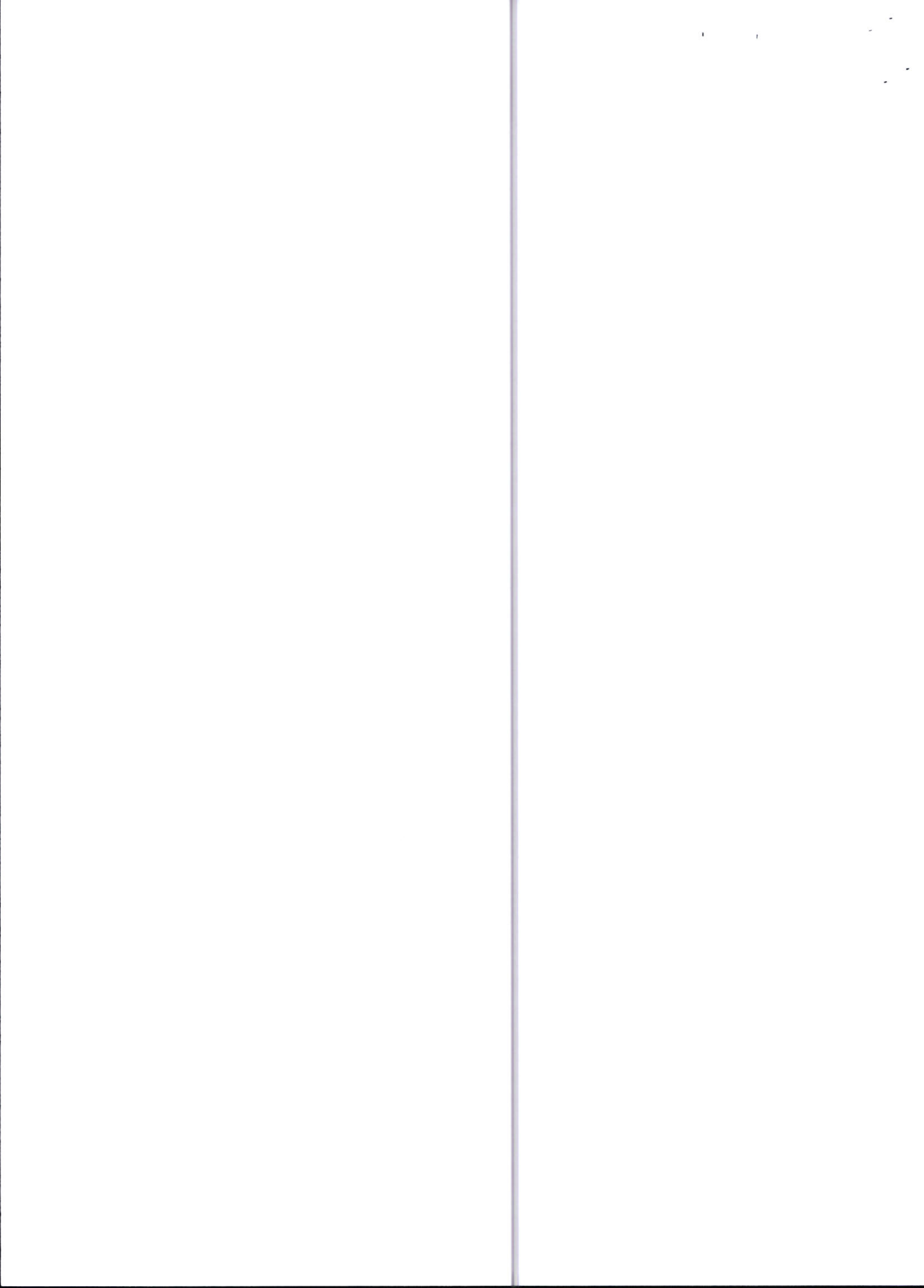
#### **Submissions for the Respondents**

Counsel for the 1<sup>st</sup> & 2<sup>nd</sup> Respondents agreed with the submissions of Counsel for the 3<sup>rd</sup> Respondent that the applicants have not demonstrated sufficient interest in the decision which is the subject of this application as required by Rule 3A of the Judicature (Judicial Review) Rules, 2009 (Statutory Instrument 11 of 2009). That according to Osborn's concise law dictionary, 11<sup>th</sup> Edition, Sweet & Maxwell, locus standi means a place of standing, the right to be heard in court proceedings.

Counsel explained that a person found to have no locus standi will ordinarily not have standing to bring an action and the courts cannot hear his/her complaint and therefore, no application for Judicial review should be made unless the applicant has sufficient interest in the matter to which the application relates. He relied on Article 42 of the Constitution which, according to Counsel gives the right to apply to court to only those persons whose right to be treated fairly by an administrative body has been violated. He also referred this court to the case of *Hon. Abdul Katuntu & Anor -v- MTN (U) Limited & Ors, HCCS No. 248 of 2012.*



Handwritten signature and date: 22/1/2024




150 Counsel contended that locus standi may be considered as applicable to two groups of  
applicants; the individuals & pressure groups. That where interest or pressure groups such  
as the Applicants are concerned, the issue of locus standi is more complicated especially  
where the group has been formed simply to challenge a decision which does not directly  
concern its members. That in such a situation, the group will not have sufficient standing,  
155 but if a group can demonstrate that some or all its members are personally interested in  
the decision, locus standi will be found. He referred court to the case of *R –v- Secretary  
of State for Environment Exparte Rose Theatre Trust [1990] 1 QB 504* and *R –v- HM  
Inspectorate of Pollution exparte Greenpeace Ltd No. 2 [1944] 4 ALL ER 329*.

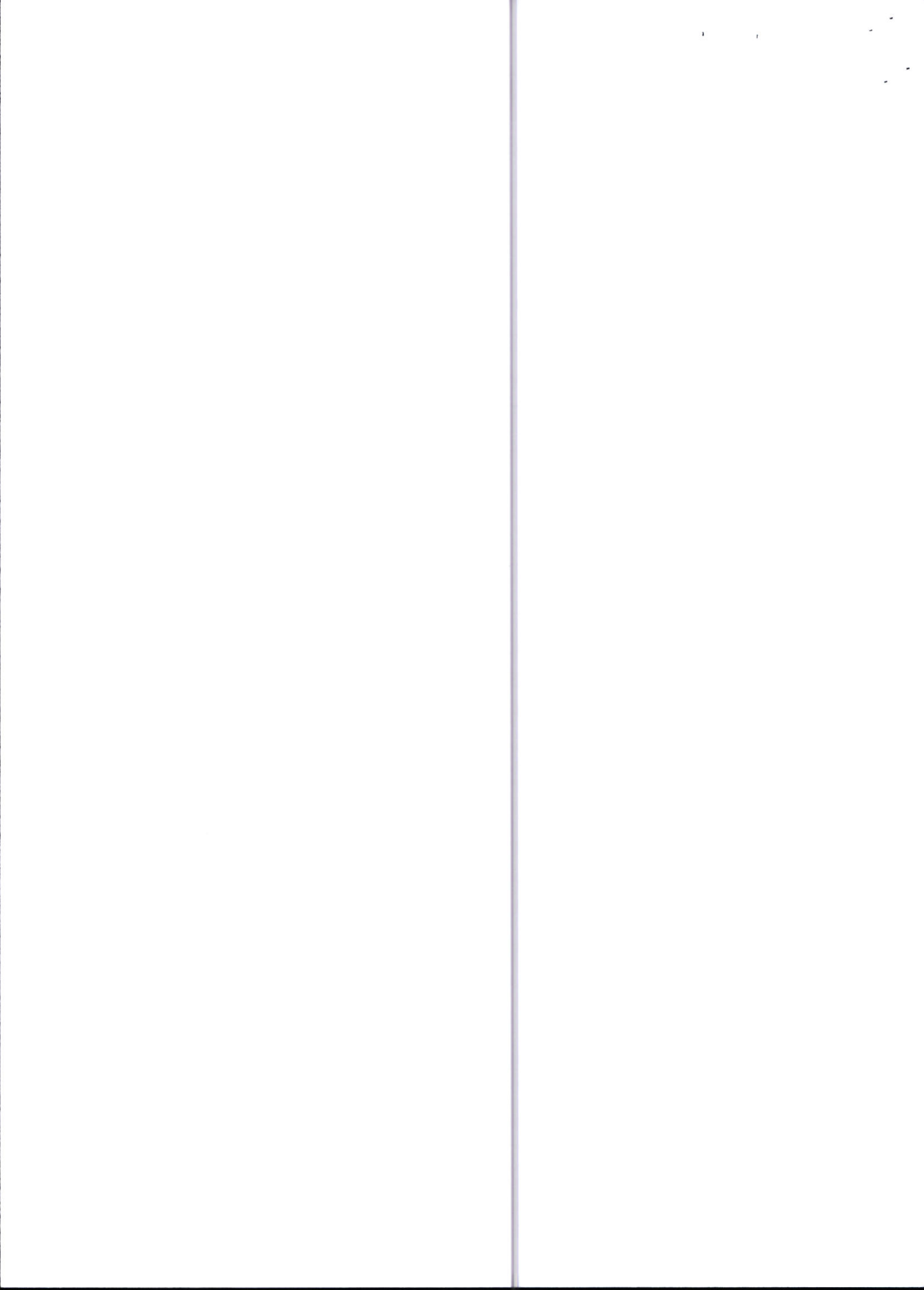
Counsel submitted that in the instant application, none of these aspects have been  
160 demonstrated by any of the Applicants. That there is no explanation of any connection  
between the Applicants and the request for information which the ED UCC made to the  
Managing Director, NBSTV. That the applicants are mere busy bodies who do not deserve  
to be heard. He prayed that this Court finds that the Applicants have no locus standi to  
file this application and this court be pleased to strike out this application with costs.

165 **Applicant's submissions in reply**

In reply, the Applicants submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Applicants are organizations working  
to promote the rule of law, human rights and good governance and not pressure groups  
as referred to by the 3<sup>rd</sup> Respondent. That the two were founded in 2011 and incorporated  
in 2017 respectively and their work is anchored under Article 38 (2) and Objective II of the  
170 *National Objectives and Directive Principles of State Policy* and as such, they are rightly  
before this court.

That the 3<sup>rd</sup> Applicant is a citizen of Uganda, a lawyer by profession, an advocate practicing  
in the areas of rule of law, democracy and human rights and has the firm belief that it is  
his right to defend the Constitution of Uganda and therefore comes to this court because  
175 he believes that the matters before court are of great public interest and therefore  
possesses sufficient interest. Counsel relied on **Article 29 (1) (a) & 50** of the 1995  
Constitution of Uganda.

  
22/1/2024



180 Counsel explained that the Applicants brought this Application under **Article 50(1) (2)** Of the Constitution of Uganda whose framing/wording gives any person or organization leeway to bring an action against violation of another person's human right. That it is the claim of the Applicants that the Respondents violated the right to fair hearing, the decision process was tainted with illegality and the right to expression thereby causing a threat to the media and information contrary to **Articles 29, 41, 42** of the constitution and therefore  
185 the Applicants possess sufficient interest in this matter. Counsel prayed that this objection be overruled so that the matter is heard on its merits for Judicial Review.

### **Analysis**

**Rule 7A (1) of the Judicature (Judicial Review) (Amendment) Rules, 2019**, enjoins Courts in considering applications for judicial review to satisfy themselves that: -

190 *(a) the application is amenable for judicial review,*


*(b) the aggrieved person has exhausted the existing remedies available within the public body or under the law and;*

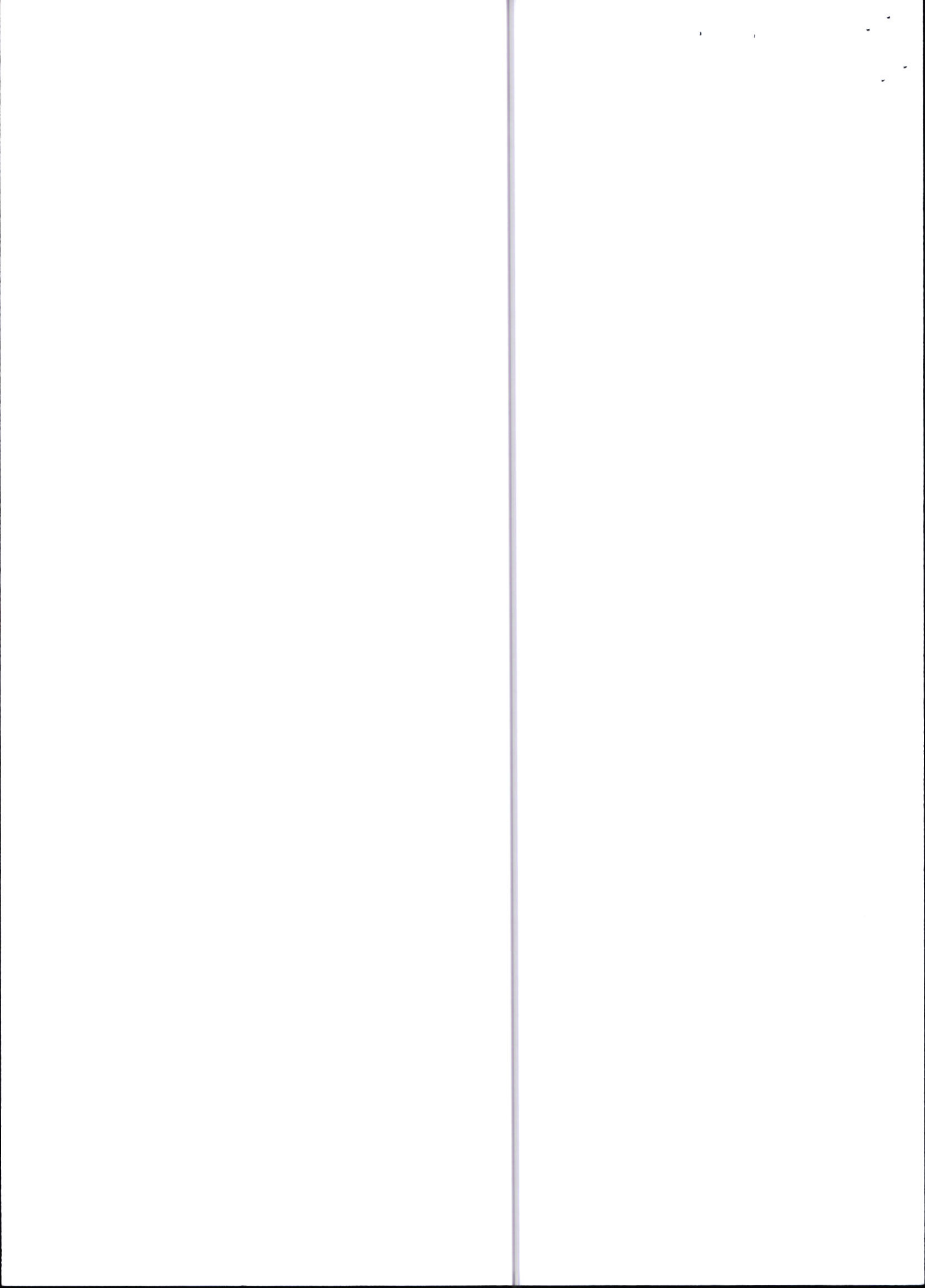
*(c) the matter involves an administrative public body or official among others*

Counsel for the Respondents submitted that the Applicants have no locus standi to file  
195 this application because the Applicants have not demonstrated sufficient interest in the decision which is the subject of this application as required by Rule 3A of the Judicature (Judicial Review) Rules, 2009 (Statutory Instrument 11 of 2009).

Rule 3A of the Judicature (Judicial Review) (Amendment) Rules, 2019, provides that any person who has a direct or sufficient interest in a matter may apply for judicial review.  
200 The question regarding what amounts to direct or sufficient interest in judicial review has not been defined by the rules but a number of court decisions have come up with a test as to what amounts to "direct or sufficient interest". In the case of **Advocates for the People (AFP) & Musa Muhamad Kigongo -v- National Drug Authority & Jena Herbals HCMA No.209 of 2021**, it was stated that; -

205 *"it is the duty of courts to protect the scarce state resources and the overburdened court system by ensuring that litigants who appear in court in matters of judicial Review have direct or sufficient interest to come to court. Precious resources would be wasted on adjudication and defence of claims if mere busy bodies could challenge every minor or*

  
22/1/20 24



alleged minor infraction by the state or public officials. Without sufficient interest threshold  
210 for standing the flood gates will open, inundating the courts with vexatious litigation and  
unnecessary court disputes.”


Similarly, in the case of **Community Justice and Anti-Corruption Forum -v- Law Council  
and Ssebalu Lule Advocates HCMA No.338 of 2020**, Court noted that; -

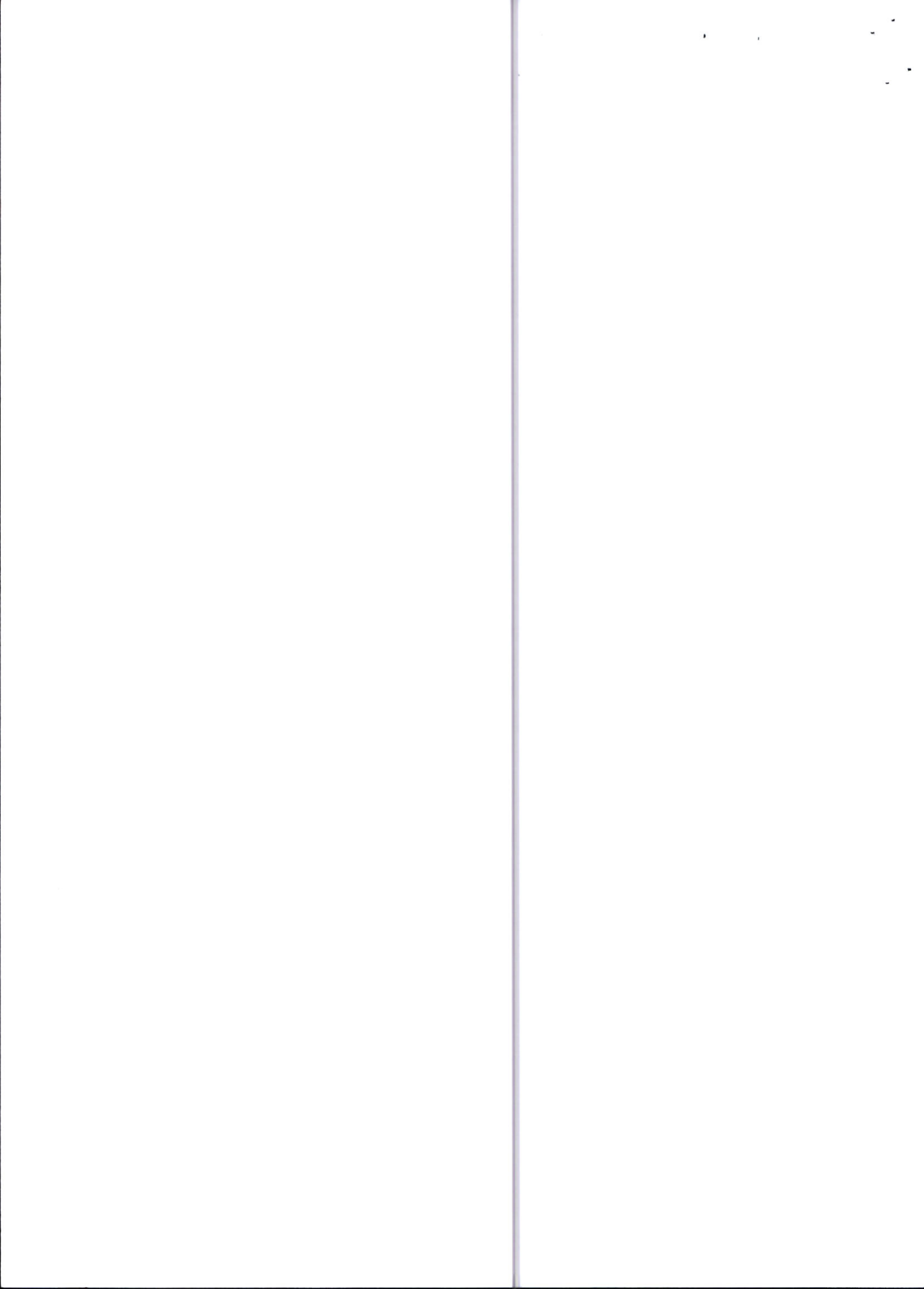
215 “In particular, a citizen’s concern with legality of government action is not regarded as  
interest that is worth protecting itself. The complainant must be able to point out to  
something beyond mere concern with legality; either a right to factual interest. Judicial  
review applications should be more restrictive to persons with direct and sufficient interest  
and should not be turned into class actions or actions popularis which allow any person  
to bring an action to defend someone else’s interest under Article 50 of the Constitution.”

220 In **Ben Muhumuza -v- Attorney General & Others, HCCM No.212 of 2020**, it was held  
that the interest required by law is not a subjective one; the court is not concerned with  
the intensity of the applicant’s feelings of indignation at the alleged illegal action, but with  
objectively defined interest. Strong feelings will not suffice on their own although any  
interest may be accompanied by sentimental considerations. Every litigant who approaches  
225 the Court, must come forward not only with clean hands but with a clean mind, clean heart  
and with clean objective. The learned judge further stated that in order to sustain an action  
on account of public interest in judicial Review application, the applicant must fulfill either  
of the two elements namely; that the matter before court has such a real public significance  
that it involves a public right and an injury to the public interest; or that he/she has  
230 sufficient interest of his or her own over and above the general interest of other members  
of the public.

In this case, counsel for the Applicants submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Applicants are  
organizations working to promote the rule of law, human rights and good governance  
while the 3<sup>rd</sup> Applicant is a citizen of Uganda, a lawyer by profession, an advocate of rule  
235 of law, democracy and human rights and has a firm belief that it is his right to defend the  
Constitution of Uganda.

It is my view that it is not enough for the Applicant to say that he is a Human Rights  
Advocate and he therefore seeks to challenge the legality of the Respondents actions.  
Being a Human Rights practitioner per se does not demonstrate sufficient interest within  
240 the meaning of Rule 3A of the Judicature (Judicial Review) (Amendment) Rules, 2019. It is  
my understanding that the direct or sufficient interest referred to under the above provision

  
22/1/2024





of the Amendment Rules must be objective. I'm fortified by the holding in the case of **Ben Muhumuza -v- Attorney General & Others, (supra)**, that;

245 *"court is not concerned with the intensity of the applicant's feelings of indignation at the alleged illegal action, but with objectively defined interest. Strong feelings will not suffice on their own."* **(underlining is mine for emphasis).**

In view of the above, I find merit in this preliminary objection, which I do hereby uphold and dismiss this application from court with costs.

I so order.

250 **Dated, signed and delivered by mail at Kampala this 22<sup>nd</sup> day of January, 2024.**



**Esta Nambayo**

**JUDGE**

**22<sup>nd</sup> /1/2024.**

