



THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION No. 26 OF 2018

- 1) CYBER LAW INITIATIVE (U) LIMITED
- 2) OPIO DANIEL BILL,
- 3) BAGUMA MOSES,
- 4) OKIROR EMMANUEL
- 5) SILVER KAYONDO
- 6) RAYMOND MUJUNI



VERSUS

- 7) THE ATTORNEY GENERAL OF UGANDA
- 2) UGANDA COMMUNICATIONS COMMISSION (UCC)
- 3) UGANDA REVENUE AUTHORITY (URA)



PETITION

[Under Article 137 (1), (3) (a) and (b), (4) of the 1995 Constitution of Uganda; and the Constitutional Court (Petitions and References) Rules, S.I. 91/2005]

THE HUMBLE PETITION of **CYBER LAW INITIATIVE (U) LIMITED, OPIO DANIEL BILL, BAGUMA MOSES, OKIROR EMMANUEL, SILVER KAYONDO** and **RAYMOND MUJUNI** whose addresses for the purpose of this petition is stated at the foot of this petition, states:

1. **Your** First Petitioner is a company limited by guarantee with a mission to explore the impact of new technologies: their bearing on everyday life and business and provide legal solutions to the challenges posed; and a vision to transform and shape the interaction of technology with law.

Received by Attorney Saltom Warawa for the 2nd Respondent on 27/7/2018

FEES PAID 10,000
RECEIPT NO. 2190000007220
SIGN. [Signature]
DATE 02/07/2018

DEPOSIT 200000
RECEIPT NO. 71846319
SIGN. [Signature]
DATE 02/07/2018

2. THAT the Second, Third and fourth petitioners are male adult Ugandans of sound mind; avid social media users, and directors of the First Petitioner. The Fifth Petitioner is a male adult Ugandan of sound mind interested in open internet, net neutrality, telecommunications, media and technology law. The six Petitioner is a lawyer and journalist keen on rule of law, press freedom, and human rights.
3. The first Respondent is the principal legal adviser and representative of the Government of Uganda.
4. The second Respondent is the statutory regulator of the Telecommunications, Broadcasting and Postal Communications in Uganda.
5. The third Respondent is the designated national revenue collecting agency for the Republic of Uganda.
6. The Petitioners are ardent believers in the rule of law, fundamental human rights and freedoms, and constitutionalism and are interested in the matters herein below which the petitioners firmly believe are inconsistent with, and in contravention of, the specified provisions of the 1995 Constitution of the Republic of Uganda, as follows;

(a) **THAT** Section 3(b) and 6(e) of the Excise Duty (Amendment) Act, 2018 which imposes excise duty of USHS.200 per user per day of access to over the top (OTT) services on Telecommunications Service Operators contravenes **Article 21 of the 1995 Constitution of the Republic of Uganda** in making access to social media platforms a preserve of the economically empowered; and economically circumscribing social media use and access.

(b) **THAT** Sections 3(b) and 6(e) of the Excise Duty (Amendment) Act, 2018 imposing excise duty of USHS.200 per user per day of access to over the top (OTT) services on Telecommunications Service

Operators impede, suffocate and hamstring internet based or enabled business start ups, budding entrepreneurs, job searches, talent promotion, creativity and innovation in contradistinction, infringement and contravention of economic rights guaranteed by **Articles 40 (2), 79, 43, 20, 8A (1), and 45 of the 1995 Constitution of the Republic of Uganda.**

- (c) **THAT** Sections 3(b) and 6(e) of the Excise Duty (Amendment) Act, 2018 imposing excise duty of USHS.200 per user per day of access to over the top (OTT) services on Telecommunications Service Operators inhibits access to internet and social media based or enabled fundamental human rights and freedoms of expression, civic/public participation, political mobilization, peaceful assembly, unarmed demonstration, contravening, infringing and inconsistent with **Articles 29, 38, 43, 45 and 8A of the 1995 Constitution of the Republic of Uganda.**
- (d) **THAT** Sections 3(b) and 6(e) of the Excise Duty (Amendment) Act, 2018 imposing excise duty of USHS.200 per user per day of access to over the top (OTT) services on Telecommunications Service Operators inhibits internet/social media enabled access to information contravening **Article 41 (1) of the 1995 Constitution of the Republic of Uganda.**
- (e) **THAT** Sections 3(b) and 6(e) of the Excise Duty (Amendment) Act, 2018 imposing excise duty of USHS.200 per user per day of access to over the top (OTT) services on Telecommunications Service Operators are unnecessary and incompatible in a free, open and democratic society contravening **Articles 29, 43 and 45 of the 1995 Constitution of the Republic of Uganda.**
- (f) **THAT** Sections 3(b) and 6(e) of the Excise Duty (Amendment) Act, 2018 imposing excise duty of USHS.200 per user per day of access to over the top (OTT) services on Telecommunications Service Operators are unnecessary and incompatible with profound good

internet governance principles and tenets of open internet and internet neutrality contravening **Articles 21, 79, 43, 29, 8A (1), 45 and 38 of the 1995 Constitution of the Republic of Uganda.**

(g) **THAT** Sections 3(b) and 6(e) of the Excise Duty (Amendment) Act, 2018 imposing excise duty of USHS.200 per user per day of access to over the top (OTT) services on Telecommunications Service Operators were enacted without prior and meaningful public participation or consultations about the same contravening **Articles 38, 29, 43, 79, 8A (1), 45 and 20 of the 1995 Constitution of the Republic of Uganda.**

(h) **THAT** Sections 3(b) and 6(e) of the Excise Duty (Amendment) Act, 2018 imposing excise duty of USHS.200 per user per day of access to over the top (OTT) services on Telecommunications Service Operators contravenes and is inconsistent with national interest and common good of online promotion of accountability in the running of public affairs under **Articles 8 (A) (1) and National objectives and directive principles of state policy XXVI of the 1995 Constitution of the Republic of Uganda.**

(i) THAT the First and Second Respondents have hitherto failed or neglected to enact free internet access, net neutrality and open internet compliant regulations.

(j) THAT unless restrained, the Third Respondent is already collecting and will continue to collect the impugned social media tax.

(k) THAT none of the Respondents is alive to their Article 20(1) 1995 Constitutional obligations in the context of the impugned tax.

7. Your humble Petitioner contends that::

(a) The impugned social media tax economically complicates, circumscribes and strangulates the online enjoyment of fundamental human rights and freedoms that are not hindered offline.

(b) The process enacting the impugned law was devoid of any meaningful public participation or consultation.

(c) The social media tax offends online press freedom as well as the principles of open internet and neutrality.

8. This Petition is supported by the Affidavits sworn by **OPIO DANIEL BILL, BAGUMA MOSES, OKIROR EMMANUEL, SILVER KAYONDO** and **RAYMOND MUJUNI** attached hereto; and any other affidavits and evidence that shall be made available before or during the hearing;
9. Your petitioners' advocates are: M/S Aguma Kifunga & Co. Advocates, Master Plaza, Second Floor, Room S.9 P.O. Box 1443, Kampala; AND M/s ORTUS LLP of 7th Floor Park Royal Building, Plot 26 Buganda Road, Kampala.
10. Your petitioners' address of service for the purposes of this petition is: C/o M/S Aguma Kifunga & Co. Advocates, Master Plaza, Second Floor, Room S.9 P.O. Box 1443, Kampala; AND M/s ORTUS LLP of 7th Floor Park Royal Building, Plot 26 Buganda Road, Kampala.
11. **THAT** the Respondent's address is the Attorney General's chambers, Bauwman's House, Parliament Avenue, P. O. Box 7183 Kampala, Uganda.

WHEREFORE your humble petitioners bring this petition as aggrieved persons, and in public interest; and humbly pray that this honorable court may be pleased to grant the following declarations and orders:

I. DECLARATIONS THAT:

- (a) **THAT** Section 3(b) and 6(e) of the Excise Duty (Amendment) Act, 2018 which imposes excise duty of USHS.200 per user per day of access to over the top (OTT) services on Telecommunications

Service Operators contravenes **Article 21 of the 1995 Constitution of the Republic of Uganda** in making access to social media platforms a preserve of the economically empowered; and economically circumscribing social media use and access.

- (b) **THAT** Sections 3(b) and 6(e) of the Excise Duty (Amendment) Act, 2018 imposing excise duty of USHS.200 per user per day of access to over the top (OTT) services on Telecommunications Service Operators impede, suffocate and hamstring internet based or enabled business start ups, budding entrepreneurs, job searches, talent promotion, creativity and innovation in, infringement and contravention of economic rights guaranteed by **Articles 40 (2), 79, 43, 20, 8A (1), and 45 of the 1995 Constitution of the Republic of Uganda.**
- (c) **THAT** Sections 3(b) and 6(e) of the Excise Duty (Amendment) Act, 2018 imposing excise duty of USHS.200 per user per day of access to over the top (OTT) services on Telecommunications Service Operators inhibits access to internet and social media based or enabled fundamental human rights and freedoms of expression, civic/public participation, political mobilization, peaceful assembly, unarmed demonstration, contravening, infringing and inconsistent with **Articles 29, 38, 43, 45 and 8A of the 1995 Constitution of the Republic of Uganda.**
- (d) **THAT** Sections 3(b) and 6(e) of the Excise Duty (Amendment) Act, 2018 imposing excise duty of USHS.200 per user per day of access to over the top (OTT) services on Telecommunications Service Operators inhibits internet/social media enabled access to information contravening **Article 41 (1) of the 1995 Constitution of the Republic of Uganda.**
- (e) **THAT** Sections 3(b) and 6(e) of the Excise Duty (Amendment) Act, 2018 imposing excise duty of USHS.200 per user per day of access to over the top (OTT) services on Telecommunications Service

Operators are unnecessary and incompatible with a free, open and democratic society contravening **Articles 29, 43 and 45 of the 1995 Constitution of the Republic of Uganda.**

(f) **THAT** Sections 3(b) and 6(e) of the Excise Duty (Amendment) Act, 2018 imposing excise duty of USHS.200 per user per day of access to over the top (OTT) services on Telecommunications Service Operators are unnecessary and incompatible with profound good internet governance principles and tenets of open internet and internet neutrality contravening **Articles 21, 79, 43, 29, 8A (1), 45 and 38 of the 1995 Constitution of the Republic of Uganda.**

(g) **THAT** Sections 3(b) and 6(e) of the Excise Duty (Amendment) Act, 2018 imposing excise duty of USHS.200 per user per day of access to over the top (OTT) services on Telecommunications Service Operators were enacted without prior meaningful public participation or consultations about the same contravening **Articles 38, 29, 43, 79, 8A (1), 45 and 20 of the 1995 Constitution of the Republic of Uganda.**

(h) **THAT** Sections 3(b) and 6(e) of the Excise Duty (Amendment) Act, 2018 imposing excise duty of USHS.200 per user per day of access to over the top (OTT) services on Telecommunications Service Operators contravenes and is inconsistent with national interest and common good of online promotion of accountability in the running of public affairs under **Articles 8 (A) (1) and National objectives and directive principles of state policy XXVI of the 1995 Constitution of the Republic of Uganda.**

THAT Sections 3(b) and 6(e) of the Excise Duty (Amendment) Act, 2018 imposing excise duty of USHS.200 per user per day of access to over the top (OTT) services are illegal, unconscionable, null and void.

ORDERS

(i) An order permanently stopping and/or restraining the Third Respondent, and all her agencies, authorities and officials from

imposing and/or collecting any consumer tax on internet or social media use and enjoyment.

- (j) An order directing the Second Respondent to within six (6) months from the date of Judgment enact regulations for over the top (OTT) services in a manner that guarantees free access, net neutrality and open internet principles.
- (k) Each Party bears its own costs hereof

DATED at Kampala this 2nd Day of July **2018**



COUNSEL FOR THE PETITIONER

JOINTLY DRAWN AND FILED BY:

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