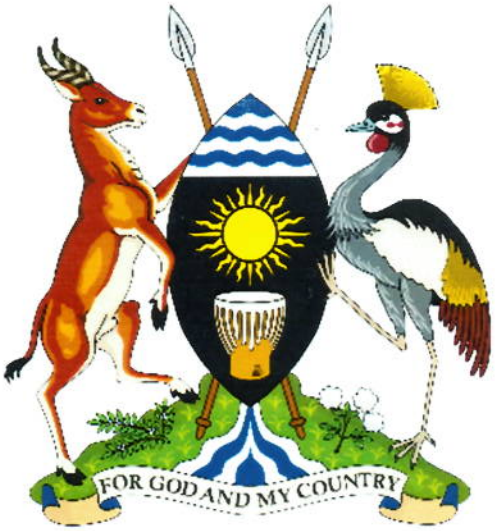

STATEMENT BY THE HON. ATTORNEY GENERAL

OF

UGANDA ON THE REACTION TO THE ACTIONS OF

THE JUDICIAL SERVICE COMMISSION IN THE

MATTER OF JUSTICE ESTHER KITIMBO KISAAKYE,

JUSTICE OF THE SUPREME COURT OF UGANDA

23.3.23

The Attorney General of Uganda has taken note of the coordinated statements that were issued on 10th and 14th of March 2023 by the International Bar Association Human Rights Institute (IBAHRI) and the Commonwealth Lawyers Association, respectively. The statements arise from the recommendation by the Judicial Service Commission (JSC) to H.E. the President of the Republic of Uganda, to appoint a tribunal to investigate the question of the removal of Justice Esther Kitimbo Kisaakye, a Justice of the Supreme Court, the JSC having established through an inquiry, a prima facie case of misbehavior or misconduct by Hon. Justice Esther Kitimbo Kisaakye.

The Commonwealth Lawyers' Association (CLA) has stated that:

"CLA is gravely concerned about reports that the Judicial Service Commission in Uganda has recommended the removal of Supreme Court Justice Esther Kisaakye from office. Justice Kisaakye gave the only dissenting judgement in the 2021 election petition between Robert Kyagulanyi Sentamu, otherwise known as Bobi Wine ...", and that "Justice Kisaakye has subsequently been the subject of disciplinary proceedings which have ultimately resulted in the Ugandan Judicial Service Commission recommending that the Republican President (sic) remove her from office. Questions have arisen about whether due process was followed during the disciplinary proceedings ..."

On it's part, the IBAHRI Co-Chair commented as follows:

"Justice Kisaakye acted in accordance with international standards on the independence of the judiciary in delivering her dissenting judgement, seemingly despite overwhelming pressure not to do so. The IBAHRI is concerned that her actions have led to her being punished with calls for her to be removed from the bench apparently without due process being followed. Rather than there being calls for her removal, she should be applauded for her bravery in standing up for the rule of law and independence in her capacity as a judge."

The Attorney General wishes to correct the above unfortunate falsehoods and state as follows:

1) The Judicial Service Commission (JSC), acting under it's constitutional mandate to handle complaints concerning the Judiciary, received a complaint regarding the conduct of Hon. Justice Esther Kitimbo Kisaakye. The complaint detailed several allegations including: the holding of a press conference, in what served as a court room, where she made a scathing and disparaging attack on and in denigration of the person of The Hon. Chief

23.3.23

Justice; holding a second press conference concerning a case she was handling, together with the concerned litigant at the gate of the Supreme Court premises, having been admittedly prompted by a call from the said litigant and a WhatsApp message from a member of the press; refusal to act in collegial manner on a matter being handled by a panel of 9 judges; and abscondment from duty.

2) The JSC carried out extensive interviews of all parties involved and reviewed all exhibits including recordings of the events. Hon. Justice Esther Kitimbo Kisaakye made representations in writing to the JSC on 20th April 2021, 15th November 2021 and 24th February 2022. The Commission extended several invitations to Justice Kisakye who eventually appeared before the Commission on 8th February 2023 in the company of her Advocates, Mr. Peter Walubiri and Mr. Emmanuel Kirya.

3) Having interviewed all the witness, reviewed the documentary and audio-visual evidence availed to it, the JSC reached the conclusion that there are possible grounds of improper conduct and recommended the appointment of a tribunal to investigate the question of the removal of Justice Esther Kitimbo Kisaakye for having conducted herself in a manner prejudicial to the good image, honour, dignity and reputation of the service.

4) It is absolutely false and indeed slanderous to say, as the IBAHRI and CLA have done, that Justice Kisaakye is facing disciplinary action for having written a dissenting judgment. Justice Kisaakye is answering a complaint regarding her conduct as a judge of the Supreme Court which fortunately, was captured on camera and is a matter of public record. Dissenting judgments in our jurisdiction are common in all cases including electoral petitions. Indeed, in the last four (4) Presidential Election Petitions in which the incumbent President was a respondent, only one (1) outcome has been unanimous. In any event, the IBAHRI and CLA, as associations of lawyers, should know that a dissenting judgment does not alter the majority decision of a court.

5) It is a falsehood to state, as the IBAHRI and CLA have unfortunately done, that due process was not followed in the investigation by the JSC. Justice Kisaakye was granted every accommodation to present her response to the complaint, both in writing and in person, which she did. We would have expected the IBAHRI and CLA to indicate which legal processes were flouted. Being dissatisfied with an outcome of a process is not proof that the due process was not followed.

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6) The Uganda Code of Judicial Conduct prohibits a judicial officer from conduct that might undermine confidence in the judicial officer's impartiality and prohibits association by a judicial officer with parties in a matter before the court. A judicial officer is required to refrain from acting in a manner that is inconsistent with the dignity of the office and judicial officers willingly accept appropriate personal restrictions including holding press conferences on court matters. These standards are not unique to Uganda and certainly will not be unfamiliar to the IBAHRI and the CLA.

I implore everyone to remain calm and allow the matter to be handled within the clearly set out legal process.

This matter will not be resolved outside the constitutional process set out under the laws of Uganda. It is imperative, therefore for all concerned to respect the process.

This statement is issued today the 23rd day of March 2023

Signed:

Kiryowa Kiwanuka
ATTORNEY GENERAL