

# All smiles as court strikes

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BY JULIET KIGONGO & ANTHONY WESAKA

The Constitutional Court has nullified the controversial Computer Misuse (Amendment) Act, 2022, in a landmark ruling that deals a major blow to the government's efforts to regulate online speech.

In a unanimous decision delivered by a panel of five justices, the court found that Parliament violated constitutional and procedural requirements when passing the law, including failure to verify quorum at critical stages of debate and voting.

Justice Irene Mulyagonja, who authored the lead judgment, said the evidence presented by the Attorney General of Uganda failed to demonstrate compliance with parliamentary rules.

"It is my view that these anomalies resolve the question as to whether or not there was a quorum on the passing of the Bill into law in favour of the petitioners. I would find so because the evidence (the Hansard) that was produced by the Attorney General to prove the assertion of the Clerk... does not show that the Speaker complied with the impugned provisions of the Constitution and the Rules of Procedure of Parliament," Justice Irene Mulyagonja, who wrote the majority judgment, ruled.

She added: "... Instead, the copy of the Hansard exposed glaring omissions in the process of passing the Bill into an Act of Parliament. I would therefore find that when Parliament passed the Computer Misuse (Amendment) Bill, 2022, into an Act of Parliament, it did not comply with the provisions of Rule 24 (3) of the Rules of Parliament."

The court specifically held that there was no proof that the Speaker ascertained the presence of the required quorum before the Bill was passed, as mandated under Rule 24 of Parliament's Rules of Procedure.

The ruling renders the law null and void, meaning ongoing criminal cases built on its provisions are expected to collapse like a house of cards.



Lawyer Male Mabiriz (right) Kiwanuka is seen in the dock at Buganda Road Chief Magistrate's Court on February 3. He is speaking to Uganda Law Society vice president Anthony Asimwe (his lawyer), shortly after he was remanded to Luzira prison. PHOTO/JULIET KIGONGO

Among those set to benefit are city lawyer Hassan Male Mabiriz, currently on remand at Luzira Prison for allegedly insulting Chief Justice Flavio Anetia; social media personality Ibrahim Musana, aka 24/7, accused of hate speech against Gen Muhoozi Kainerugaba; and Emmanuel Nabugodi.

The Uganda Law Society welcomed the judgment but lamented that it came too late for individuals who had already served sentences under the invalidated law.

"The judgment comes too late for those whose objections went unheeded... and have already served sentences under this abhorrent law," the society said in a statement signed by its president, Isaac Ssemakadde, urging affected persons to seek legal redress.

### Contested provisions

Core to the arguments of the petitioners was that the Act had vaguely criminalised and unjustifiably impeded the

enjoyment of the rights to freedom of expression, practicing one's profession and carrying on any lawful occupation, trade, business and access to information by prohibiting any access or interception of any program or another person's data or information; voice or video recording of another person, sharing of any information about or that relates to another person, without specifying or defining the nature of the said information.

The court struck down several key provisions of the Act, including Section 11, which criminalised unauthorised access to data and recording of individuals, and Section 23, which penalised sharing information about children without consent.

Also nullified was Section 26, which criminalised the sharing of information deemed to be defamatory, or to demean others, a provision widely criticised for being vague and prone to abuse.

Sections 28 and 29 were also annulled, which used to criminalise sending malicious information relating to another person, and Section 29,

### Background to the case

The law, popularly known as the "Nsereko law" after its mover Muhammad Nsereko, was enacted in 2022 amid criticism from civil society, journalists, and digital rights advocates.

The punishment for the convicted person is Shs15 million or a seven-year jail term, if not both.

Multiple petitions were subsequently filed by a coalition of organisations and individuals, including Human Rights Network for Journalists, Chapter Four Uganda, and the African Centre for Media Excellence.

Some of the notable petitioners were Mr Norman Tumuhimbise, Mr Arnold Anthony Musoke, Ms Farida Bikobere, Mr Jeremiah Mukibi, Mr Kato Tumusiime, Ms Lillian Luwedde, Mr Rogers Tulyahabwe, Ms Teddy Teangel Nabukeera, Ms Angella Namirembe, Mr Simon Peter Esomu, MP Anthony Odur, former Leader of Opposition Winnie Kiiza, Ms Agather Atuhaire, Mr Andrew Wandera, Mr Morgan Muhindo, and Ms Lillian Drabo.

Mr Tumuhimbise had argued that the impugned law had made it impracticable for them to practice their trade as digital journalists, as it unreasonably controls editorial independence of an editor responsible for social media publications and undermines the freedom of speech by imposing limitations.

The petitioners argued that the law imposed vague and sweeping restrictions on online communication, undermining editorial independence and exposing citizens to arbitrary prosecution.

They also faulted Parliament for passing the legislation without ensuring the constitutionally required quorum, a claim the court ultimately upheld.

### Wider implications

The ruling is expected to reshape Uganda's legal framework governing digital communication and online conduct, while reinforcing the importance of procedural compliance in law-making.

It also marks a significant victory for free speech advocates, who have long decried the use of cyber laws to clamp down on dissent and critical voices online.

Legal experts say the decision could open the door for compensation claims by individuals who were prosecuted or convicted under the now-nullified law.

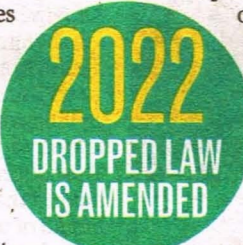
## SECTION 11

**Access to data.** The constitutional court also struck down several key provisions of the Act, including Section 11, which criminalised unauthorised access to data and recording of individuals.

which used to prohibit the misuse of social media through sharing prohibited information under a disguised or false identity.

Also notable in the decision of the court was the annulment of provisions that used to regulate online behaviour and prosecute offenders, including the dissemination of content deemed harmful or offensive.

Legal analysts had long argued that such clauses unjustifiably restricted fundamental rights, particularly freedom of expression and access to information.



# down Computer Misuse Act

### What some of the key players say...



Isaac Ssemakadde, president of the ULS.

"The Uganda Law Society welcomes the decision of the Constitutional Court... ULS calls upon all affected persons to seek legal advice from licensed advocates on the remedies available to them. Those unable to afford private counsel are encouraged to seek legal assistance from any of the branches of the legal aid project of the Uganda Law Society."



Lawyer George Musisi, Kira MP elect

"I am glad that the Constitutional Court has breathed life into the Constitution. The court has mentioned that freedom of speech is one of the cornerstones of a democratic institution. So it's important that any person, and we don't argue that computers can be misused and we are not arguing for defamation....."



Lawyer Stanley Okech, a policy analyst

"I wonder why a lot of money is spent on Members of Parliament (MPs) who don't attend sessions. I advise the relatives of those charged under this law to apply for a production warrant and have them released with immediate effect."



Lawyer Erót Kiiza, human rights defender

"I welcome the decision of the court. The passing of the act was incompetent with impunity. They were warned, but they didn't heed. They smuggled in some provisions after the law. The issue of children [for example] is already covered under the Children's Act of 2016, and the other is of privacy, which is also covered elsewhere."



Prof Christopher Mbazira, Mak law don.

"When you look at the decision on the face of it, it's good as it annuls a number of amended provisions, though not the entire Act. The court should have dealt with the merits of the matter because the government might go back and pass it with a requisite quorum, just like it did in the Anti Homosexuality Act."



21-year-old Tik Toker Emmanuel Nabugodi raises his hand during his sentencing on November 18, 2024 at Entebbe Chief Magistrates Court. He was handed a 2-year-jail term for 'demeaning' President Museveni. PHOTO/PAUL ADUDE