

THE REPUBLIC OF UGANDA

THE CONSTITUTIONAL COURT OF UGANDA

AT KAMPALA

(Coram: Buteera, DCJ; & Kiryabwire, Kibeedi, Mugenyi & Gashirabake, JJCC)

CONSTITUTIONAL APPLICATION NO. 42 OF 2023

(ARISING FROM CONSTITUTIONAL PETITIONS NO. 14 OF 2023)

1. E. TENDAYI ACHIUME
2. GIRAMACHEW ALEMU ANEME
3. JAMES THUO GATHII
4. ABADIR M. IBRAHIM
5. MUNA B. NDULO
6. FRANS VILJOEN



APPLICANTS

VERSUS

1. HON. FOX ODOI-OYWELowo
2. FRANK MUGISHA
3. PEPE ONZIEMA
4. JACKLINE KEMIGISA
5. ANDREW MWENDA
6. LINDA MUTESI
7. KINTU NYAGO
8. JANE NASIIMBWA
9. ATTORNEY GENERAL



RESPONDENTS

RULING OF THE COURT

Introduction

[1] This application was brought under Rule 5 and 6 of The Judicature (Amicus Curiae) Rules ,2022 by the 6 applicants, seeking to be admitted as amici curiae. The application was brought by Notice of Motion under Article 126(1) and 127 of the Republic of Uganda, 1995 & Rule 6(1) (a) of the Judicature (Amicus Curiae) Rules 2022 seeking for orders that:

- a. Leave be granted to the Applicants to join the proceedings in Constitutional Petition No. 14 of 2023 as *Amici Curiae*.
- b. Leave be granted to the Applicants to file amicus curiae brief in the form of written submissions and/or any other materials that the Court may deem fit.
- c. No order as to costs.

[2] The Application is premised the following grounds spelt out in the Notice of Motion and also contained in the affidavit(s) of the above-named Applicants;

1. *The applicants are a group of internationally recognized, leading African legal scholars with valuable legal expertise in the fields of international law, human rights law, and African Constitutionalism and would offer a unique contribution for the resolution of the issues before the court in the public interest.*
2. *The applicants particularly wish to aid the court with this expertise in the determination of Constitutional Petition No. 014 of 2023 pending before this Honourable Court.*
3. *The Applicants are neutral, impartial and are independent of the dispute between the Parties in the substantive Constitutional Petition.*
4. *The Applicants are seeking to give this Honourable Court on the requirements that the State must meet to justify restrictions on human rights on the basis of public interest, as well as in the human rights, in particular:*
 - (i) *The right to equality and protection from sex discrimination, including on the basis of sexual orientation;*
 - (ii) *The right to liberty, including the right to sexual autonomy; and*
 - (iii) *The right to property, including related socioeconomic rights.*

5. *The aforesaid points of law are novel, not canvassed by the Petitioners in Constitutional Petition No. 14 of 2023 and as such will aid the development of jurisprudence.*
6. *The interest of the applicants to participate in the pending proceedings as amicus curiae is aimed at ensuring that universal application of human rights standards of the resolution of the issues at hand.*
7. *It is just, fair and equitable that the orders sought herein are granted to the Applicants.*

Appearances

- [3] At the hearing of the application, the applicants were represented by Mr. Josephat Mutesasira.
- [4] Mr. Henry Byansi, Mr. Fox Odoi Oywelowo, Mr. Nicholas Opio, Ms. Fridah Mutesi and Mr. Derrick Tukwasibwe represented the 1st - 8th respondents, while the Attorney General (9th respondent) was represented by Mr. Martin Mwangustya, Director Civil Litigation, Ms. Elizabeth Namakula, Senior State Attorney, Ms. Jackie Amusugut, State Attorney, Mr. Samuel Kananda, State Attorney and Mr. Raymond Nganzi State Attorney.
- [5] The parties' advocates adopted their written submissions, which had already been filed in Court, as their respective legal arguments.

Analysis

- [6] The sole issue for determination is whether the application discloses sufficient grounds for the admission of the applicants as amici curiae in Constitutional Petition No. 14 of 2023. The position of the law on Amicus Curiae in Uganda is provided for under the Judicature (Amicus Curiae) Rules S.I No. 54 of 2022.
- [7] Under the Rules (rule 4), "amicus curiae" is defined "**as a person or organization that is not a party to a suit but who participates in the litigation by providing the court with important information intended to assist the court in making an informed decision.**" Under rule 5 thereof, the court may admit a person or organization as amicus curiae who meets the following requirements —

- a. the person or organization is neutral and impartial;
- b. the court is satisfied that the submission of the person or organization will give assistance to the court that it would not otherwise have;
- c. the points of law or facts submitted by the person or organization are novel and will aid the development of jurisprudence;
- d. the interest of the person or organization constitutes fidelity to the law; (e) the submissions of the person or organization draw attention to relevant matters of law that are useful, focused and principled;
- e. the participation of the person or organization is in the public interest; and
- f. the person or organization has demonstrable expertise or knowledge in the area under dispute.

[8] Rule 8(1) of the Judicature (Amicus Curiae) Rules makes provision for objection by a party to the admission of any person or organization as amicus curiae. It provides that a party to a suit may object to the admission of a prospective amicus curiae where the party considers that —

- a. the applicant does not have sufficient expertise;
- b. the applicant is introducing new evidence;
- c. the applicant is not impartial or is biased or hostile towards one or more of the parties; or
- d. the applicant, through previous conduct, appears to be partisan on the issue before court.

[9] The above legal provisions are in consonance with the decision of the Supreme Court in ***Prof. Joe Oloka-Onyango & Others vs Amama Mbabazi & Others, SC Civil Application No. 2 of 2016*** where Court set out a range of accepted principles when determining admission of an amicus curiae.

[10] Whereas Rule 5 (a) of the Judicature (Amicus Curiae) Rules requires a party seeking admission as amicus curiae to establish that they are neutral and impartial, a cursory look at paragraph 108 of the brief attached to the Application before the Court reveals partiality and bias on the Applicants' part. They state; "*On the basis of the foregoing, the **amici curiae** respectfully submit that this court declare the AHA unconstitutional for contravening fundamental constitutional rights and international human rights instruments.*" This would

not be a statement expected from an impartial or neutral person or friend of the court but a clear demonstration that the Applicants are biased against the 8th Respondent.

[11] On the other hand, the Applicants claim that they are neutral and impartial over the subject matter in the main cause, their interest being pure fidelity to the law. Under rule 5(c) of the Judicature (***Amicus Curiae***) Rules, a person seeking admission as amicus curiae should establish that the points of law in respect of which he/ she/ it seeks to intervene are novel and would aid the development of jurisprudence. According to rule 4 of the Judicature (Amicus Curiae) Rules, the term “novel” means the quality of being new, original, unfamiliar, unusual or unique.

[12] However, in this case, the brief in support of the Application highlights legal issues that have been canvassed in the petitioners’ pleadings in considerable detail. There is therefore no additional point of law that they seek to address, nor do they raise novel points of law that are unfamiliar, unusual or unique.

Disposition

[13] In the premises, the Applicants have not satisfied the Court that they meet the requirements to warrant their admission as Amici Curiae in Constitutional Petition No. 14 of 2023. The application is accordingly disallowed; with orders that each party shall bear their own costs.

It is so ordered.

Signed, delivered and dated at Kampala this 13th day of December, 2023.


RICHARD BUTEERA
DEPUTY CHIEF JUSTICE


GEOFFREY KIRYABWIRE
JUSTICE OF THE CONSTITUTIONAL COURT


MUZAMIRU MUTANGULA KIBEEDI
JUSTICE OF THE CONSTITUTIONAL COURT


MONICA K. MUGENYI
JUSTICE OF THE CONSTITUTIONAL COURT


CHRISTOPHER GASHIRABAKE
JUSTICE OF THE CONSTITUTIONAL COURT