

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**MISCELLANEOUS CAUSE NO. 158 OF 2018**

**CANDIA EMMANUEL===== APPLICANT**  
**VERSUS**  
**ATTORNEY GENERAL ===== RESPONDENT**

**BEFORE: HON. MR. JUSTICE PHILLIP ODOKI**  
**RULING**

**Introduction**

[1] The Applicant bought this application, by Notice of Motion, under Article 50 of the Constitution of the Republic of Uganda, 1995; the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules, 2008; Section 98 of the Civil Procedure Act, Cap 71; and Order 52 Rule 1 & 2 of the Civil Procedure Rules SI 71 -1. The

[2] The Applicant sought for declarations that:

- (a) The acts of the Respondent in opening the High Court Circuit in Mukono on the 19<sup>th</sup> April 2018, hosted in a building without ramps, lifts, rails, standard toilets or other reasonable accommodation for persons with physical disabilities, especially those using calipers, crutches, wheelchairs and weak elderly persons unable to climb stairs, infringes on his rights to equality and freedom from discrimination and the right to practice his profession and carry on his lawful occupation as an advocate requiring him to appear in person to represent his clients in Courts of law under Article 21(1), (2) and Articles 40 (2) of the Constitution respectively.
- (b) The Respondent, by continuing to use inaccessible buildings like the High Court in Mukono and various other Courts, is in breach of its duty under Objective XVI of the National Objectives and Directive Principles of State Policy in the Constitution; and Article 35(1) of the Constitution of Uganda to protect the Applicant and such other vulnerable persons in society.

- (c) The building in which the High Court of Mukono is hosted falls short of the standards and requirements for accessibility provided for public places under Sections 19 and 20 of The Person with Disability Act, 2006
- (d) The buildings hosting various Courts, that is, the Supreme Court of Uganda, Main High Court Building, Family Division (Makindye), High Court Masaka, High Court Mbale, High Court Soroti, High Court Gulu, High Court Mbarara, High Court Arua, High Court Fort Portal, Chief Magistrate's Court of Mengo among many others fall short of the standard and requirements provided for Public Places under the Person's with Disability Act, 2006.
- (e) The continuous use or renting of the various Court premises stated in paragraph (d) above by the Respondent for long without ensuring proper provision of accessibility for Persons with Disabilities and elderly persons well aware of their existence and need to use the facilities is discriminatory.
- (f) The acts of the Respondent in continuing to use the various impugned Court buildings and renting buildings for Court purposes without considering their accessibility to persons with disabilities and or weak elderly persons unable to climb stairs, does not comply with and is in violation of the Respondent's duty and responsibility to provide for a suitable access to a public premise, buildings and public facilities under sections 19, 20 and 29(1) the Persons with Disabilities Act, 2006.

[3] The applicant further sought for;

- (a) A permanent injunction restraining the Respondent from continuing to use the impugned building in Mukono for conducting High Court hearings as it falls below the required standard provided for under the Persons with Disabilities Act and is in violation of the Applicant's rights under Articles 21(1), (2), and 40(2) of the Constitution.
- (b) An order directing the Respondent to take steps for provision of accessibility to all Court premises in Uganda that don't meet the accessibility requirements under the law and to periodically report to Court on the progress of the implementation of the proposed steps.

- (c) An order for General Damages for violation of the Applicant's right of accessibility and other fundamental human rights.
- (d) An order for Punitive damages for violation of the Applicant's right of Constitutional and other fundamental human rights.

### **The Applicant's case**

[4] The Applicant's case as deduced from the notice of motion, affidavit in support and affidavit in rejoinder is that, the Applicant is an Advocate practicing with Candia Advocates & Legal Consultants. He is also a person with disability using a wheelchair for mobility. In his legal practice, he has appeared in several Courts in Uganda, but he has faced considerable difficulties, stress and discrimination in accessing the various Court premises because most of them lack ramps, lifts, rails, standard toilets or other reasonable accommodation for persons with disabilities with physical disabilities, especially those using caliper, crutches, wheelchairs and elderly persons.

[5] He deponed that on the 15<sup>th</sup> May 2018, he went to Mukono High Court circuit which was opened on 19<sup>th</sup> April 2018, to appear in three Civil Suits but he found that the Court had been shifted to a two storied building which has no ramps, lifts, rails or even convenient packing for Persons with Disabilities. In order to be effectively served, the court clerk had to move and attend to him at the foot of the stairs as it would be dangerous to lift him through the narrow staircase of the building to the 2<sup>nd</sup> floor where he could meet the clerk.

[6] He Applicant cited in High Court in Gulu when he was lifted to the 2<sup>nd</sup> floor. His wheelchair broke in the process and he had to buy a new one. He cited another incidence at High Court in Kampala where a matter he was representing a client was fixed for 9:00am. When he requested for Court to move to the ground floor, his case was handled at 1:50pm after other matters had been handled. He further cited another incidence at Supreme Court when he failed to personally appear and had to request to file written submissions but he failed to clarify issues arising from his written submissions before the Court.

[7] The Applicant further deponed that in some instances, he briefs other advocates to appear on his behalf which offends his clients and some have ended up withdrawing their instructions from

him. He gave the example of a case before the criminal Division of the high court where his client withdrew instructions from him after he failed to appear in court because the Judge had one time during hearing declined to move Court to a more convenient Court room on the ground floor where he could personally appear.

[8] The Applicant contended that the impugned court buildings fall short of the standards and requirements of accessibility provided for public places under Section 19 and 30 of The Persons with Disabilities Act, 2006. The Applicant further contended that failure by the Respondent to put in place measures to make the courts accessible to persons with disabilities and elderly persons is a violation of their rights to equality and freedom from discrimination. In addition, the Applicant contended that the failure by the Respondent to put in place measures to make the courts accessible to persons with disabilities is a violation of his right to practice his profession and to carry on his occupation, trade and business as an advocate.

### **The Respondent's case**

[9] The Respondent opposed this application. It relied the affidavit in reply sworn by Dr. Christopher Ebal- the Commissioner Engineering and Technical Services in the Judiciary. Dr. Ebal deponed that the Government of Uganda has adopted laws and policies pertaining to people with disabilities including the right to access the Courts, and has implemented measures to enforce those laws. He deponed that the Judiciary created a High Court circuit in Mukono to take services nearer to the people. He further deponed that the Court is housed in a rented premise and the issue of ramps was brought to the attention of the landlord for improvement. According to Dr. Christopher Ebal, the Judiciary staff normally go to the ground floor to ensure that disabled persons and other affected persons access justice. He deponed that in the case of the Applicant, when he has a case scheduled in the High Court at Mukono, the same is heard in the Chief Magistrates Court of Mukono which has a ramp. He deponed that planning and approval of buildings is the mandate of the Municipal Authority and if Mukono High Court is closed, many people will be denied justice.

### **Issues:**

[10] The issues for the determination of the court are

1. Whether the Respondent has failed to put in place measures to make court premises accessible to persons with disabilities.
2. Whether the failure by the Respondent to put in place measures to make court premises accessible to persons with disabilities is a violation of their right to equality and freedom from discrimination.
3. Whether the failure by the Respondent to put in place measures to make court premises accessible to persons with disabilities is a violation of the Applicant's right to practice his profession.
4. What remedies are available to the parties.

**Legal representation:**

[11] At the hearing, the Applicant was represented by Mr. Aron Kiiza of Kiiza and Mugisha Advocates and Mr. Obonyo Job of Jingo, Sempijja & Co Advocates. The Respondent was represented by Ms. Adong Imelda, a State Attorney from the Attorney General's Chambers.

**Legal submissions:**

[12] On issue 1, counsel for the Applicant submitted that Section 10 of the Persons with Disability Act, 2019 places an obligation on owners or persons in charge of buildings to which the public is allowed access to comply with the laws on building standards and other relevant laws to provide access for persons with disabilities to the building. According to counsel, the obligation includes putting in place accessible and easy to find entrances which are connected to accessible pathways and parking areas; providing safe accessible toilets, urinal and bathrooms; providing safe and well dimensioned staircase with appropriate elevator; and where necessary providing ramps. Counsel argued that the impugned court structures fall short of the standard set out in the Persons with Disability Act.

[13] On issue 2, counsel for the Applicant submitted that the failure by the Respondent to put in place measures to make court premises accessible to persons with disabilities is a violation of their right to equality and freedom from discrimination. Counsel relied on Article 21 of the Constitution on equality and freedom from discrimination; the United Nations Convention of the Rights of Persons with Disabilities (UNCRPD); the Universal Declaration of Human Rights; the African

Charter on Human and People's Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.

[14] On issue 3, counsel submitted that the Applicant is an advocate of the High Court of Uganda with a duty to represent clients in all courts of law in Uganda and he is a person with disability. According to counsel, most court premises, including the High Court at Mukono, lack the facilities for easy access by persons with disability including advocates who use wheel chairs and clutches making it impossible to practice in such courts. Counsel submitted that the continued use of such court buildings is a violation his right to carry out and practice his lawful occupation enshrined in Article 40(2) of the Constitution.

[15] Counsel for the Respondent on the other hand submitted, on issue 1, that some of the Court buildings were constructed before the enactment of the Persons with Disability Act. According to counsel, implementation of the provision of the Persons with Disability Act has to be gradual because immediate implementation would lead to undesirable outcomes.

[16] On issue 2, counsel submitted that persons with disabilities are not discriminated as a result of the current structures of the courts. Counsel submitted that according to Dr. Christopher Ebal, whenever the Applicant has a case in the High Court at Mukono, the same is heard in the Chief Magistrate Court at Mukono which has a ramp. According to counsel, by taking those steps, the Respondent has made the court premises accessible.

[17] On issue 3, counsel submitted that the right to practice ones profession and carry on any lawful trade is not absolute. The rights of others have to be taken into account as well. Counsel submitted that the High Court at Mukono was put there in order to bring services closer to the people.

#### **Analysis and determination of the Court:**

[18] Before I consider the merits of this application, I wish to observe that at the time this application was filed, The Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules, 2008 was the applicable law. Those rules have since been revoked by the

Judicature (Fundamental and other Human Rights and Freedoms) (Enforcement Procedure) Rules, SI-31 of 2019. Similarly, at the time this application was filed, the Persons with Disabilities Act, 2006 was the applicable law. It has since been repealed by the Persons with Disabilities Act, 2020.

**Issue 1: Whether the Respondent has failed to put in place measures to make court premises accessible to persons with disabilities.**

[19] Section 20 of The Persons with Disability Act, 2006, which was the Applicable law at the time this application was filed, places a duty on any person who constructs a building to which the public is invited to ensure that persons with disabilities have access through Provision of, accessible and easy-to-find building entrances, connected by accessible pathways to accessible indoor or outdoor parking areas, local public transit stops and accessible elevators; safe and accessible urinal, bathrooms for the diverse disabilities; safe and well-dimensioned staircases for the comfort of persons with mobility problems; ramps wherever stairs obstruct the free passage of pedestrians, mainly wheel chair users and people with mobility problems; adequate railing around hazardous areas, stairs, ramps, accessible roofs, mezzanines, galleries, balconies and raised platforms; well-dimensioned elevators, (in the case of multi-storied buildings) that persons with disabilities can use conveniently. An accessible elevator should serve all floors normally reached by the public; have embossed numerals on the floor selector buttons to be easily identifiable by touch; signal arrival at each floor to alert sightless and hearing impaired passengers simultaneously Where it is difficult or unfeasible to install a ramp or an elevator to an existing building, the owner of the building is enjoined to provide platform lifts to provide accessibility.

[20] In addition, Article 9 of the **United Nations Convention on the Rights of Persons with Disabilities**, which Uganda ratified in 2008 mandates State Parties to take appropriate measures to ensure that persons with disability access, on an equal basis with others, all facilities and services open and provided to the public and to identify and eliminate obstacles and barriers to accessibility. The Convention further mandates State Parties to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public.

[21] In this case Dr. Christopher Ebal deponed that the High Court at Mukono was housed in a rented premise and the issue of ramps was brought to the attention of the landlord for improvement. He did not respond to the allegations concerning other court buildings mentioned by the Applicant. It is assumed that those allegations with regard to those courts are true. In addition, Dr. Christopher Ebal did not adduce any proof that he had engaged the owner of the building where the High Court at Mukono was housed to provide ramps. Counsel for the Respondent argued that some of the Court buildings were constructed before the enactment of the Persons with Disability Act, 2006.

[22] The duty which is placed on the Respondent by Article 9 of the *United Nations Convention on the Rights of Persons with Disabilities*, is to ensure that persons with disability access, on an equal basis with others, all facilities and services open and provided to the public and to identify and eliminate obstacles and barriers to accessibility and to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public. In my view, the evidence of the Applicant clearly shows that Respondent failed in its duty to put in place measures to make court premises accessible to persons with disabilities. The ad hoc measures put in place by the Respondent to ensure that they access the courts cannot be said to put persons with disabilities at an equal basis with others.

**Issue 2:** Whether the failure by the Respondent to put in place measures to make court premises accessible to persons with disabilities is a violation of their right to equality and freedom from discrimination.

[23] Article 35 (1) of the Constitution provides that persons with disabilities have a right to respect and human dignity, and the State and society is enjoined take appropriate measures to ensure that they realize their full mental and physical potential. In addition, Objective XVI of the National Objectives and Directive Principles of State Policy of the Constitution provides that society and the State shall recognize the right of persons with disabilities to respect and human dignity. Specifically, on the right not to be discriminated against, Article 21 of the Constitution provides that:



***“21. Equality and freedom from discrimination.***

- (1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.*
- (2) Without prejudice to clause (1) of this Article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.*
- (3) For the purposes of this Article, “discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability. Underlined for emphasis.*

[23] In addition, Article 4 the **United Nations Convention on the Rights of Persons with Disabilities** enjoins all State Parties to undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.

[24] As already stated, while resolving issue 1, the Respondent failed in its duty to put in place measures to make the impugned court premises accessible to persons with disabilities. The ad hoc measures put in place by the Respondent to ensure that they access the courts cannot be said to put persons with disabilities at an equal footing with others. I therefore find that the failure by the Respondent to put in place measures to make court premises accessible to persons with disabilities is a violation of their right to equality and freedom from discrimination.

**Issue 3: Whether the failure by the Respondent to put in place measures to make court premises accessible to persons with disabilities is a violation of the Applicant’s right to practice his profession.**

[25] Article 21 of the Constitution provides that every person in Uganda has the right to practice his or her profession and to carry on any lawful occupation, trade or business. In this case, the Applicant explained the hardships and inconveniences he suffers to access Courts to represent his clients, as a result of the failure by the Respondent to put in place measures to make court premises

accessible to persons with disabilities. In some instances, he has to be lifted by his clients which is not dignifying. Sometimes he has to wait for long to receive special attention of judicial officers to move to Courtrooms on the ground floor or brief another advocate to appear on his behalf. In some cases, his clients have withdrawn instructions from him. The ad hoc measures put in place at the High Court premises at Mukono does not in any way rebut the allegations by the Applicant with regard to the other courts. In my view, the Applicant has proved that the failure by the Respondent to put in place measures to make court premises accessible to persons with disabilities is a violation of the Applicant's right to practice his profession.

**Issue 4: What remedies are available to the parties.**

[26] Article 50(1) of the **Constitution of the Republic of Uganda, 1995** provides that any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation. Section 9 of the **Human Rights (Enforcement) Act, 2019** also provides that where the competent court determines that a fundamental right or freedom has been violated, unlawfully denied or should be enforced, the court may issue orders it considers appropriate, including an order for compensation. Section 13 (2) of the same Act provides that wherever the competent court finds that a specific right or freedom cannot be realized due to resource constraints, the competent court has to order the Government to take measurable steps for the progressive realization of that right or freedom.

[27] In this case, Dr. Christopher Ebal pointed out to resource constraint. He stated that because the Judiciary does not have its own building that is why it decided to rent. This is therefore a fit and proper case where an order that the Respondent takes measurable steps for the progressive realization of the rights of persons with disabilities in as far as access to court buildings is concerned.

[ ] In addition to the prayers for declarations, the Applicant prayed for damages. I however note that this matter was largely brought in public interest on behalf of other persons with disability. It would be inappropriate for the court to award any damages in this matter.

**Orders:**

[28] In the end, after carefully considering this application, the following orders are hereby made;

1. A declaration that the Respondent failed to put in place measures, at the impugned court premises, to make them accessible to persons with disabilities.
2. A declaration that the failure by the Respondent to put in place measures, at the impugned court premises, to make them accessible to persons with disabilities is violated and continue to violate their right to equality and freedom from discrimination.
3. A declaration that the failure by the Respondent to put in place measures, at the impugned court premises, to make them accessible to persons with disabilities violated the Applicant's right to practice his profession.
4. The Respondent is hereby ordered to take reasonable steps for the progressive realization of the rights of persons with disabilities in as far as access to justice is concerned and report to court within 3 years on the progress made in that regard.
5. No orders to costs are made since this application was largely in public interest.

I so order.

Dated and delivered by email this 18<sup>th</sup> day of January, 2024.

A handwritten signature in blue ink, appearing to read 'P. Odoki', with a long horizontal flourish extending to the right.

Phillip Odoki

**JUDGE**