

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
[Coram: Egonda-Ntende, Madrama, Kibeedi, Mugenyi & Gashirabake, JJCC]
Constitutional Application No. 26 of 2018
(Arising from Constitutional Petition No. 29 of 2018)

BETWEEN

Center for Health, Human Rights and Development (CEHURD)=====Applicant No.1

Namala Mary=====Applicant No.2

Kakeeto Simon=====Applicant No. 3

AND

Attorney General=====Respondent

RULING OF FREDRICK EGONDA-NTENDE, JCC

Introduction

- [1] The applicants are seeking an order of this court that the identity of 2 persons who intend to swear affidavits in support of the petition in which they will be sharing experiences of sexual violence be redacted from the affidavits and instead of their full names being shown on the said affidavits use should be made of their initials. This application is made by notice of motion and is supported by affidavit of Kwagala Primah, a program manager, in charge of strategic litigation in the service of applicant no.1.
- [2] This application is stated to be made under article 28 (1) of the Constitution; Rules 23 of the Constitutional Court (Petitions and References) 2005 and Order 52, rule 1 of the Civil Procedure Rules.

Legal Representation

- [3] Mr Ibrahim Nsereko and Ms Ruth Ajalo appeared for the applicants while the respondent was represented by Mr Mark Muwonge, State Attorney.

Analysis

- [4] The respondent did not oppose this application. This in itself does not relieve the applicants of the burden to establish both on the law and the facts that they ought to succeed. The sacred principle at stake is the question of open justice as provided for in article 28 (1) of the Constitution and in what circumstances can it be considered to be in the interests of justice to interfere with this right. Obviously under article 28 (2) of the Constitution allowance is provided for this right to be derogated from on the grounds of morality, public order or national security. However, the applicants are not seeking for this matter to be heard in camera. So article 28 (2) of the Constitution is not applicable.
- [5] As far as I can gather from the notice of motion the main ground of this application is that the proposed witnesses would suffer social stigma associated with sexual violence if their full names were disclosed or published in the public domain.
- [6] The supporting evidence is set out in the affidavit referred to above and I shall set it out *in extensio*. The proposed 2 affidavits intended to be adduced are also attached to that affidavit.

‘3. That the petitioners intend to adduce evidence from survivors of sexual violence in support of this Petition and it is in their best interest that their names are redacted from the Petition due to the stigma associated with sexual violence. (A copy of the affidavits to be filed is attached as annexure “B”)

4. That if the intended deponents’ real names are used in the Petition, their reputation in the community will be destroyed since women and girls who suffer violence are often viewed as morally loose and often blamed for the rape or defilement.

5. That I know court proceedings of a public interest can have negative consequences for survivors of sexual violence due to media exposure across the globe. These negative consequences from media exposure include name-calling, victim blaming, and revenge from relatives of perpetrators of sexual violence.
.....

6. That there is a high likelihood that the proceedings in this Petition will be in the public domain and the reputation of the intended deponents to evidence in support needs to be protected from the public.

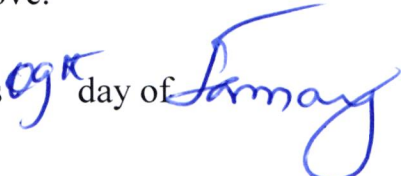

7. That the survivors of sexual violence suffer tremendous shame, humiliation and low esteem and the same would be propagated if their names directly become the point of reference for the Petition.'

- [7] It appears to me that simply substituting their names with their initials would fall short of achieving the intended purpose of anonymity for those 2 particular witnesses whose draft copies of intended affidavits have been attached to the supporting affidavit. It is clear to me that any person, if determined to find out the identity of the witnesses, given the particulars disclosed in the affidavits would easily find out who the intended deponents or deponents are. The names of their parents and villages on which they live or lived are disclosed. That information alone or together with the disclosed identity of alleged ravishers can easily lead to the identification of the said would be witnesses.
- [8] It would appear to me that if what the applicants seek is anonymity for the said 2 witnesses the order sought will not provide anonymity. A ban on publication in all media of the identity of the said witnesses or of any information that would lead to the discovery of their identity, such as their parents' names, the villages on which they live, the schools that they have been to, and so forth would achieve anonymity rather than the order sought. The other possible order is to seal those particular affidavits on the court record allowing access only to the parties in the matter and their counsel. And in addition ban the publication of the said affidavits from all media, print, broadcast, social or of whatever nature. However, those are not the remedies sought by the applicants.

- [9] It is possible to swear the affidavits in the ordinary way and the registrar of this court may redact the names by using a marker and substitute the names with initials and counter sign, quoting the order of this court as the authority for that action, with the affidavits still remaining in the public domain. However, a sealed copy in an envelope must be available to the court that will be hearing the matter.
- [10] The applicants' evidence before this court is that their witnesses would suffer social stigma if this application was not granted. This evidence is not controverted. The said witnesses need the protection of this court. Much as I am doubtful that what the applicants seek is the most effective way of achieving anonymity for the witnesses, I am inclined to allow their application, given that it does not encroach upon the constitutional principle of open justice.
- [11] This court is seized with power under section 98 of the Civil Procedure Act to make such orders as may be necessary for the ends of justice or to prevent abuse of its process. Exercising the said powers of this court I would allow this application and order as follows:
- (a) The affidavits of the said proposed witnesses be sworn in the ordinary way and filed in court.
 - (b) The registrar of this court will redact the names of the deponents with a dark marker and substitute it with the initials of the deponents for copies of the affidavits that will remain on the public court record.
 - (c) The registrar shall avail the members of the panel and counsel for the opposite party with an unredacted copy of the affidavits in question.
 - (d) the costs of this application will abide the outcome of the main petition.

Decision

- [12] As Madrama, Kibeedi, Mugenyi, Gashirabake, JJCC, agree this application is allowed with the orders proposed above.

Signed, dated and delivered at Kampala this  day of  2022



Fredrick Egonda-Ntende

Justice of the Constitutional Court

THE REPUBLIC OF UGANDA,
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
(CORAM; EGONDA NTENDE, MADRAMA, KIBEEDI, MUGENYI,
GASHIRABAKE, JJCC/JJCA)

CONSTITUTIONAL APPLICATION NO 29 OF 2018

(ARISING FROM CONSTITUTIONAL PETITION NO. 29 OF 2018)

1. CENTRE FOR HEALTH, HUMAN RIGHTS AND DEVELOPMENT
(CEHURD))
2. NAMALA MARY}
3. KAKEETO SIMON} PETITIONERS

VERSUS

ATTORNEY GENERAL} RESPONDENT

RULING OF JUSTICE CHRISTOPHER MADRAMA IZAMA, JCC

I have read in draft the ruling of my learned brother Hon. Mr. Justice Fredrick Egonda – Ntende JCC.

I concur with the ruling and agree that the application be allowed with the orders proposed.

Dated at Kampala the 09th day of January 2023


Christopher Madrama Izama

Justice Constitutional Court

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

Constitutional Application No. 26 of 2018

(Arising from Constitutional Petition No. 29 of 2018)

CENTER FOR HEALTH, HUMAN RIGHTS AND DEVELOPMENT

(CEHURD).....APPLICANT NO.1

NAMALA MARY.....APPLICANT NO.2

KAKEETO SIMON.....APPLICANT NO. 3

VERSUS

ATTORNEY GENERAL.....RESPONDENT

CORAM: HON. JUSTICE JUSTICE FREDERICK EGONDA-NTENDE, JA/ JCC

HON. JUSTICE CHRISTOPHER MADRAMA, JA/ JCC

HON. JUSTICE MUZAMIRU M. KIBEEDI, JA/ JCC

HON. JUSTICE MONICA MUGENYI, JA/JCC

HON. JUSTICE CHRISTOPHER GASHIRABAKE, JA/JCC

JUDGMENT OF MUZAMIRU MUTANGULA KIBEEDI, JCC

I have had the benefit of reading in draft the Ruling prepared by my learned brother, Egonda-Ntende, JCC. I concur.

Signed, dated and delivered at Kampala this 03rd day of January 2022



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MUZAMIRU MUTANGULA KIBEEDI
Justice of the Constitutional Court



THE REPUBLIC OF UGANDA

**THE CONSTITUTIONAL COURT OF UGANDA
AT KAMPALA**

(Coram: Egonda-Ntende, Musoke, Madrama, Mugenyi & Gashirabake, JJCC)

CONSTITUTIONAL APPLICATION NO. 26 OF 2018

1. CENTRE FOR HEALTH HUMAN RIGHTS
& DEVELOPMENT (CEHURD)
 2. NNAMALA MARY
 3. KAKEETO SIMON
- PETITIONERS

VERSUS

ATTORNEY GENERAL RESPONDENT

JUDGMENT OF MONICA K. MUGENYI, JCC

I have had the benefit of reading in draft the lead Ruling of my brother, Egonda-Ntende, JCC in this matter.

I agree with the findings and conclusions therein, as well as the final orders proposed, and have nothing useful to add.

Dated and delivered at Kampala this 09th day of January, 2022.



Monica K. Mugenyi

Justice of the Constitutional Court

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

[Coram: Egonda-Ntende, Madrama, Kibeedi, Mugenyi & Gashirabake, JJCC]

Constitutional Application No. 26 of 2018

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Centre for Health, Human Rights and Development (CEHURD):.....Applicant No.1
Namara Mary :.....Applicant No. 2
Kakeeto Simon:.....Applicant No. 3


AND

Attorney General:.....Respondent

RULING OF CHRISTOPHER GASHIRABAKE, JCC.

I have had the benefit of reading in draft the Ruling prepared by my learned brother, Egonda-Ntende, JCC. I concur with the ruling and have nothing useful to add.

Signed, dated and delivered at Kampala this Day of 2022.



Christopher Gashirabake
JUSTICE OF THE CONSTITUTIONAL COURT