



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-MC-0019-2022

5 **BWENGYE DEUSDEDIT** (In the interest of and for ----- **APPLICANT**
the benefit of thirteen (13) recognized universities
which are accredited to teach Law in Uganda, to wit:

1. Islamic University in Uganda (IUIU)
2. Nkumba University
- 10 3. International University of East Africa (IUEA)
4. Cavendish University
5. Kampala University
6. Uganda Pentecostal University (UPU)
7. St. Augustine International University
- 15 8. Uganda Christian University (UCU)
9. Busoga University
10. Gulu University
11. Victoria University
12. Bishop Stuart University (BSU)
- 20 13. Kampala International University (KIU),

Students, Staff and Alumni of the afore said Universities, and the general public)

VERSUS

ATTORNEY GENERAL ----- **RESPONDENT**

Before: Hon. Justice Nshimye Allan Paul M.

RULING

REPRESENTATION

The Applicant – Bwengye Deusdedit represented himself, while the Respondent was represented by Adv Fiona Asimwe Bamanaya from the Chambers of the Attorney General.

BACKGROUND

The Applicant commenced this Cause under: Articles 50(2)&(4), 38(1)&(2), 44(a) and 274(1)&(2) of the Constitution of the Republic of Uganda 1995; Sections 1(1), 2, 3(1),(2)(c), 4(1)(a) & (d), (2), 6(1), 9(1), (2)(c)(i), (iv),(vi),(3) of the Human Rights (Enforcement) Act 2019; Rules 3,4,5(1)(a)&(d), 2(a)&(b), 6(1)(d), 6(2)7(1),8,9 & 11(1),2(a)&(b) of the Judicature (Fundamental and Other Human

Rights and Freedoms) (Enforcement Procedure) Rules 2019; Section 33 of the Judicature Act Cap 13; Section 98 of the Civil Procedure Act Cap 71; Order 52 Rules 1,2&3 of the Civil Procedure Rules SI No.71-1 seeking orders that;

- a) A declaration that the aforesaid thirteen (13) universities, their students, staff and alumni have the constitutional right to be treated equally before and under the law in all spheres of life with Makerere University, her students, staff and alumni; not to be discriminated against by the Respondent on the basis of those Universities' belated attainment of corporate personality and accreditation of their Faculties of Law; to be treated by the Respondent with dignity and without degrading punishment as artificial and natural persons alike; and to participate in government affairs and in the making of and to influence government policies related to the practice, studying and teaching of the legal profession, as respectively guaranteed by Articles 21(1)&(2)&(3), 24&44(a), and 38(1)&(2) of the Constitution of the Republic of Uganda 1995.
- b) A declaration that Section 7(a)(ii) of the Law Development Centre Act Cap 132 which commenced on 21st August, 1970 is invalid to the extent that it conflicts with Articles 21(1) & (2) & (3), 24 & 44(a) and 38(1) & (2) of the Constitution of the Republic of Uganda 1995 to the extent that it favours Makerere University to be the only University represented on the Law Development Centre (LDC) Management Committee at the expense of and thereby unjustifiably discriminates against the aforesaid thirteen (13) universities which are equally accredited to teach Law in Uganda.
- c) A declaration that Section 2(1)(f) of the Advocates Act Cap 267 which commenced on 21st August, 1970 is invalid to the extent that it conflicts with Articles 21(1) & (2) & (3), 24 & 44(a) and 38(1) & (2) of the Constitution of the Republic of Uganda 1995 to the extent that it favours Makerere University to be the only University represented on the Law Council at the expense of and thereby unjustifiably discriminates against the aforesaid thirteen (13) universities which are equally accredited to teach Law in Uganda.
- d) A declaration that Section 68(1)(c) of the Advocates Act Cap 265 is invalid to the extent that it conflicts with Articles 21(1) & (2) & (3), 24 & 44(a) and 38(1) & (2) of the Constitution of the Republic of Uganda 1995 to the extent that it favours Makerere University to be the only University represented on the Committee on Legal Education and Training at the at the expense of and thereby unjustifiably discriminates against the aforesaid thirteen (13) universities which are equally accredited to teach Law in Uganda.
- e) A declaration that each of the aforesaid thirteen (13) universities has the Constitutional right to be represented by the Head of her Department or Faculty of Law on both the Law Council and the Committee on Legal Education and Training just like Makerere University is currently being represented on the same bodies by the head of her Faculty of Law and the Dean of her Faculty of Law respectively.
- f) A declaration that the statutory ring-fencing of the position of universities that are accredited to teach Law in Uganda on the membership of the Law Council, LDC Management Committee,

and the Committee on Legal Education and Training for only Makerere University based on the impugned provisions is invalid to the extent that it is an infringement of the human rights and freedoms guaranteed under Articles 21(1) & (2) & (3), 24 & 44(a) and 38(1) & (2) of the Constitution of the Republic of Uganda 1995.

- 5 g) A declaration that the current membership of the Law Council, LDC Management Committee, and the Committee on Legal Education and Training, is not at all representative of the diversity that is evident among the recognised universities that teach Law in Uganda which is not only unfair but irrational and unworthy of being tolerated in the free world envisaged under the Constitution.
- 10 h) A declaration that as a result of the impugned provisions, the aforesaid thirteen (13) universities, their students, staff and alumni (including LDC students) have suffered and continue to suffer a serious impairment of equal opportunities and a gross infringement of their constitutional right to equality before and under the law; to be treated with dignity and without degrading punishment; to be free from discrimination; and to participate in
- 15 government affairs and in the making of and to influence government policies related to the practice and teaching of the legal profession since they are hitherto not represented on the LDC Management Committee, the Law Council and the Committee on Legal Education and Training.
- 20 i) A declaration that the Head of Department or Faculty of Law of Makerere University is not a mutually agreed-upon representative or agent of the thirteen universities on the LDC Management Committee and therefore is incompetent to make decisions on their behalf concerning the trajectory of the practice, study and teaching of the legal profession in Uganda.
- 25 j) A declaration that the Dean of the Faculty of Law of Makerere University is not a mutually agreed-upon representative or agent of the thirteen universities on both the Law Council and the Committee on Legal Education and Training and therefore is incompetent to make decisions on their behalf concerning the trajectory of the practice, study and teaching of the legal profession in Uganda.
- 30 k) A declaration that currently, the thirteen universities, their students, staff and alumni (including LDC students) are not represented on the LDC Management Committee, the Law Council, and the Committee on Legal Education and Training.
- 35 l) A declaration that the non-representation and the absence of the thirteen universities, their students, staff and alumni (including LDC students), on the Law Council, LDC Management Committee, and the Committee on Legal Education and Training has made all of them victim of human rights violations and is such a serious miscarriage of justice on their part that it has the potential to determine whether the Law students of those universities are admitted at the Law Development Centre and in what proportion, whether they pass the Bar Course, and to their overall success in studying Law, teaching Law, and the legal practice compared to their counterparts from the preferentially treated Makerere University (Faculty of Law).

- 5 m) A declaration that the Respondent, by hitherto failing or refusing, or neglecting to amend the impugned provisions to the chagrin of the aforesaid artificial and natural persons, is liable for the aforesaid infringement of the right to equality, right to dignity and freedom from degrading treatment, and freedom from discrimination of those thirteen universities as stated above.
- 10 n) An order that Section 7(a)(ii) of the Law Development Centre Act Cap 132 and Sections 2(1)(f) and 6B(1)(c) of the Advocates Act Cap 267 being existing law under Article 274 of the Constitution of the Republic of Uganda 1995 be construed with such modifications, adaptations, qualifications and exceptions to mean that every recognised university accredited to teach Law in Uganda is a member of and is represented on the LDC Management Committee by the Head of her Department or Faculty of Law and by the Dean of her Faculty of Law on both the Law Council and the Committee on Legal Education and Training.
- 15 o) An injunction against the LDC Management Committee, Law Council, and the Committee on Legal Education and Training from performing any of their statutory duties and functions before the aforesaid universities are represented on the same bodies by the respective Heads of their Department or Faculty of Law and the Deans of their Faculty of Law.
- 20 p) An order that the Respondent immediately takes all the legal steps required to facilitate the meaningful attendance and participation of the aforesaid universities in the activities of the LDC Management Committee, the Law Council and the Committee on Legal Education and Training, including but not limited to giving allowances to the representative of each of the said university as is currently given to other members of the same.
- 25 q) An order that within six (6) months from the date of this Court's ruling in this Application, the Executive branch of Government generates a bill to amend the impugned provisions of the Law Development Centre Act Cap 132 and the Advocates Act Cap 267 to apply to all universities with accredited Faculties of Law, preferably from the Study Report on the Reform of the Law Development Act 2016.
- 30 r) An order that in the meantime before the Government amends the impugned provisions to make the LDC Management Committee, the Law Council and the Committee on Legal Education and Training all inclusive, the said provisions equally apply to the thirteen aforesaid universities and the Heads of their respective Departments or Faculties of Law should immediately take their positions on the LDC Management Committee without fear or hesitation whereas the Deas of their respective Faculties of Law should immediately take their positions on bot the Law Council and the Committee on Legal Education and Training without fear or hesitation.
- 35 s) An order that the Respondent compensates each of the aforesaid universities a total sum of at least Uganda Shillings Ten Million (UGX10,000,000/=) only per year for each year that each university has been unfairly discriminated against, treated without dignity and degradingly punished, and denied her civic rights by the Respondent not providing the appropriate legal

framework for these universities to be represented on the LDC Management Committee, Law Council and the Committee on Legal Education and Training and yet such university had an accredited Faculty of Law.

t) Any other reliefs as this honourable Court deems fit.

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The Application is supported by an affidavit deposed by the Applicant, while Ms. Lubowa Rachel, the Deputy Director of the Law Development Centre – Mbarara Campus, deposed an affidavit opposing the Application on behalf of the Respondent.

10 **GROUND**

No grounds were listed in the motion. I will address this later during the determination of this application.

SUBMISSIONS

15 Both parties proceeded by written submissions. The Applicant filed his submissions on 20th February, 2023 and the Respondent filed their submissions on 6th April, 2023. The Applicant filed submissions in rejoinder on 19th May, 2023.

Applicant's submissions

20 The Applicant framed the following issues;

1. Whether the Respondent has the locus standi to dispute the jurisdiction of this Honourable Court in this matter?
2. If issue (1) is answered in the affirmative, whether this Honourable Court has jurisdiction over this Application?

25 a) Whether this Honourable Court is competent to construe the impugned provisions 7(a)(ii) of the Law Development Centre Act Cap 132 and Sections 2(1)(f)&6B(1)(c) of the Advocates Act Cap 267 with Article 274 of the Constitution to bring them into conformity with Articles 2,21, 38, 44(a) & 126(1) of the Constitution so that they don't exist and are void?

30 b) Whether the Application involves any question for the interpretation of the Constitution such that it ought to have been filed as a Constitutional petition before the Constitutional Court?

c) Whether this matter being a public interest action ought to have been filed in the Constitutional Court

35 3. Whether Section 7(a)(ii) of the Law Development Centre Act Cap 132 and Sections 2(1)(f) & 6B(1)(c) of the Advocates Act Cap 267 are in conflict with Articles 2, 21, 38 & 44(a) & 126 of the Constitution?

4. Whether the Applicant is entitled to the remedies sought?

On the first issue, the Applicant argued that if the Respondent intended to dispute the jurisdiction of this Court, then they should file a formal application under Order 9 Rules 3(1)(g), 2, 5 & 6 of the Civil Procedure Rules SI 71-1. He relied on **SSENTAMU JOSEPH VS JIBU CORPORATE UGANDA LIMITED HCCS NO.51 OF 2021**. On issue 2(a), the Applicant submitted that the High Court, just like a Magistrate Grade II or the Supreme Court, is vested with jurisdiction to bring any law in force before the promulgation of the Constitution, in conformity with the Constitution. See **FOUNDATION FOR HUMAN RIGHTS INITIATIVE (FHRI) VS AG SC CONST APPEAL NO.03/2009**. For issue 2(b), the Applicant submitted that his Application does not seek to interpret any provision of the Constitution and therefore does not warrant a Constitutional petition. He relied on **MUGISHA ROBERT & BWENGYE DEUSDEDIT VS AG CONST PETITION NO.19/2017** for a description of how a constitutional petition arises.

Regarding issue 2(c), the Applicant submitted that whether an action for human rights enforcement is in the public or individual or group interest, for it to be filed in the Constitutional Court, it must involve a question as to the meaning or interpretation of the Constitution. For issue 3, he submitted that the challenged provisions have not changed despite after liberalisation of teaching of the Law discipline in Uganda hence infringing on the right to equality, and denies other universities the right to participate in the affairs of government. See **CHARLES ONYANGO OBBO AND ANOTHER VS AG CONST PETITION NO.2 OF 2002**. On the fourth issue, the Applicant pleaded that after construing the existing law with Article 274, Court should grant remedies under Article 50 of the Constitution. The Appellant prayed for the Application to be allowed.

Respondent's submissions

The Respondent raised three preliminary objections; the first being that the Applicant has no locus standi to bring this suit. That the Applicant brought this Application on behalf of the 13 universities, their students, staff and alumni, and the general public but availed no formal or written authorisation from the institutions allowing him to institute the Application on their behalf. The Respondent further argued that to sue for public interest under Article 50 of the Constitution, such person must have "sufficient interest" in the subject matter which is lacking in this situation. The Respondent further argued that the remedy of injunction against the LDC Management Committee, Law Council, and the Committee on Legal Education and Training sought by the Applicant, require those bodies to have entered appearance and defended themselves, otherwise it would be unjust to them.

The second objection concerns that the High Court does not have jurisdiction to grant the orders sought. Counsel contended that orders sought in remedies (b), (c), and (d) of the notice of motion can only be awarded by the Constitutional Court under Article 137 of the Constitution.

The third objection is that the orders sought in the notice of motion are illegal in the circumstances. Counsel submitted that if this Court grants the declarations sought for by the Applicant, it would be acting in contravention of Articles 137 (3) and (4) of the Constitution 1995, which would amount to an illegality as defined by the Black's Law Dictionary. See **BALIGOBYE AND 2 OTHERS VS AG AND OTHERS MISC CAUSE NO.376 OF 2019**. Counsel prayed for the Application to be dismissed with Costs.

Applicant's rejoinder

The Applicant contended that he has locus to commence this Application under Sections 2(x) and 19 of the Civil Procedure Act Cap 71. See **DIMA DOMINIC PORO VS INYANI GODFREY & ANOTHER HCCA NO.0017 OF 2016**. The Applicant argued that the Application is a public interest case since its not brought for the Applicant's gain but for the general public. Regarding the second objection, the Applicant maintained that his Application is a public interest action, not a representative action. For the third objection, the Applicant contended that this Court has jurisdiction and therefore its orders will be legal and on the notion that LDC should have been made a party to the suit, the Applicant argued that the Law Development Act which is being challenged, was not made or passed by LDC and therefore there was no basis for adding LDC as a party. The Applicant had the same argument for other challenged institution's laws which are not party to the suit.

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DETERMINATION

I will first address the form of the application filed by the applicant and then address the preliminary objection raised stating with the ones raised by the respondent.

Grounds

In principle an application by way of a motion brought under the **JUDICATURE (FUNDAMENTAL AND OTHER HUMAN RIGHTS AND FREEDOMS) (ENFORCEMENT PROCEDURE) RULES, SI NO.31 OF 2019** ought to itemise the grounds of the application as is provided in **RULE 8(1)(D) OF THE JUDICATURE (FUNDAMENTAL AND OTHER HUMAN RIGHTS AND FREEDOMS) (ENFORCEMENT PROCEDURE) RULES, SI NO.31 OF 2019**.

A perusal of the application shows that the Applicant indicated in the notice of motion that "the grounds of the Application are contained in the affidavit of Bwengye Deusdedit".

RULE 8(1) OF THE JUDICATURE (FUNDAMENTAL AND OTHER HUMAN RIGHTS AND FREEDOMS) (ENFORCEMENT PROCEDURE) RULES, SI NO.31 OF 2019. Provides;

"8. Details of motion

(1) A motion for an action under these Rules shall specify the following—

(a) the right infringed, or threatened to be infringed;

- (b) the provision of the Constitution violated, or threatened to be violated;
- (c) the category of persons affected;
- (d) the grounds for the application; and
- (e) the relief or reliefs sought."

5 It is my considered opinion that Rule 8 above is couched in mandatory words and Rule 8(1)(d) requires the application by motion to lay out the grounds. The affidavit in support is therefore just evidence to make the case for the grounds listed in the motion. I therefore conclude that the Motion as presented does not fulfil the requirements listed in **RULE 8(1) OF THE JUDICATURE**
10 **(FUNDAMENTAL AND OTHER HUMAN RIGHTS AND FREEDOMS) (ENFORCEMENT PROCEDURE) RULES, SI NO.31 OF 2019.**

Jurisdiction

15 One of the objections raised by the respondent relates to the jurisdiction of this court to grant the orders sought (**see paragraph 9 of the affidavit in reply**). The Respondent argued that orders sought in prayers (b), (c), and (d) of the notice of motion can only be awarded by the Constitutional Court under Article 137 of the Constitution. In response, the Applicant argued that the Applicant maintained that his Application is a public interest action, not a representative action. Prayers (b), (c), and (d) of the notice of motion seek the following orders;

- 20 b) A declaration that Section 7(a)(ii) of the Law Development Centre Act Cap 132 which commenced on 21st August, 1970 is invalid to the extent that it conflicts with Articles 21(1) & (2) & (3), 24 & 44(a) and 38(1) & (2) of the Constitution of the Republic of Uganda 1995 to the extent that it favours Makerere University to be the only University represented on the Law Development Centre (LDC) Management Committee at the expense of and thereby unjustifiably discriminates against the
25 aforesaid thirteen (13) universities which are equally accredited to teach Law in Uganda.
- c) A declaration that Section 2(1)(f) of the Advocates Act Cap 267 which commenced on 21st August, 1970 is invalid to the extent that it conflicts with Articles 21(1) & (2) & (3), 24 & 44(a) and 38(1) & (2) of the Constitution of the Republic of Uganda 1995 to the
30 extent that it favours Makerere University to be the only University represented on the Law Council at the expense of and thereby unjustifiably discriminates against the aforesaid thirteen (13) universities which are equally accredited to teach Law in Uganda.
- 35 d) A declaration that Section 68(1)(c) of the Advocates Act Cap 265 is invalid to the extent that it conflicts with Articles 21(1) & (2) & (3), 24 & 44(a) and 38(1) & (2) of the Constitution of the Republic of Uganda 1995 to the extent that it favours Makerere University to be the only University represented on the Committee on Legal Education and Training at the at the expense of and thereby unjustifiably discriminates against

the aforesaid thirteen (13) universities which are equally accredited to teach Law in Uganda." (emphasis mine).

The jurisdiction of this Court over matters concerning enforcement of human rights is espoused in **SECTION 4 OF THE HUMAN RIGHTS (ENFORCEMENT) ACT, 2019** which provides that The High Court shall hear and determine any application relating to the enforcement or violation of-

(a) non derogable rights and freedoms guaranteed in Article 44 of the Constitution; (b) other rights, duties, declarations and guarantees relating to fundamental and other human rights and freedoms envisaged in article 45 of the Constitution; (c) rights and freedoms restricted under a law made for purposes of a state of emergency; and (d) rights and freedoms which are preserved by this Act to be determined by a magistrate court, where the remedy sought by the applicant is beyond the pecuniary jurisdiction of that Court." (emphasis mine)

The cited provisions empower this Court to determine matters relating to "enforcement or violation" of rights stated thereunder. However, the Applicant's quest is to declare certain provisions of the Advocates Act Cap 265, Law Development Centre Act Cap 132 "invalid" under the cited prayers. This jurisdiction is a preserve of the Constitutional Court under Article 137 of the Constitution of the Republic of Uganda 1995 (as amended). The respondent's preliminary objection is therefore upheld.

Injunction against non-party

The Respondent also objected to orders sought under prayers (o) which seeks an injunction against the LDC Management Committee, Law Council and Committee on Legal Education and Training from performing their statutory duties. The Respondent's argument is that for such order to be made, the said institutions must be given opportunity to be heard first.

Prayer (o) reads as follows;

"(o) An injunction against the LDC Management Committee, Law Council, and the Committee on Legal Education and Training from performing any of their statutory duties and functions before the aforesaid universities are represented on the same bodies by the respective Heads of their Department or Faculty of Law and the Deans of their Faculty of Law."

I have perused the application and find that the bodies against whom the applicant seeks an injunction are not parties to the application. It is trite that an opposite party ought to be given notice of the application for an injunction. It is also trite that they ought to be heard. In this case the application was not served on the third parties the applicant seeks to affect by the injunction and even court did not see need to serve the application on the said third parties by its own motion because the application itself does not have any grounds and falls short of the requirements in **RULE 8(1)(d) OF THE JUDICATURE (FUNDAMENTAL AND OTHER HUMAN**

RIGHTS AND FREEDOMS) (ENFORCEMENT PROCEDURE) RULES, SI NO.31 OF 2019. The respondent's preliminary objection is therefore upheld.

5 In conclusion, I find it unnecessary to discuss the other objections raised by the parties since the points of law raised in the upheld preliminary objections bring the application to rest. Secondly, the motion was not drafted in accordance to the law in **RULE 8(1)(d) OF THE JUDICATURE (FUNDAMENTAL AND OTHER HUMAN RIGHTS AND FREEDOMS) (ENFORCEMENT PROCEDURE) RULES, SI NO.31 OF 2019** rendering the application frivolous and incompetent.

10 I therefore dismiss the application. No order as to costs is made.

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NSHIMYE ALLAN PAUL M.

JUDGE

20-12-2023