

5 **THE REPUBLIC OF UGANDA**

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

MISCELLANEOUS CAUSE NO. 13 OF 2022

10 **OPIYO JOSEPH OTITI.....APPLICANT**

VERSUS

15 **1. NYEKO JOSEPH**
2. TWESIGOMWE DORIS
20 **3. SHAFFI AMURU.....RESPONDENTS**

25 **BEFORE: HON. MR. JUSTICE GEORGE OKELLO**

RULING

30 **Introduction**

The Applicant commenced the present action by Notice of Motion against the Respondents, proceeding substantially under various provisions of the Human Rights (Enforcement) Act, 2019. The first Respondent (Mr. Nyeko Joseph) is a Principal State Attorney, the 2nd Respondent (Ms. Twesigomwe Doris) a State Attorney, while the third Respondent (Mr. Shaffi Amuru) is a Senior State Attorney, all working in the Attorney General's Chambers, Ministry of Justice and Constitutional Affairs, Gulu Regional Office.

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5 The Applicant alleges violation of his human rights by the Respondents.
The action stems from Mr. Nyeko's acting as counsel for a Judge of the
High Court (Hon. Lady Justice Margaret Muonyi) in a suit lodged against
the learned Judge for a judicial decision she took with which the Applicant
was unhappy. The learned Judge was thus sued *vide* Civil Suit No. 002 of
10 2019: *Opiyo Joseph Otiiti Vs. Margaret Mutonyi*. The 2nd Respondent is
sued for appearing as counsel for Gulu Municipal Council in Civil Suit No.
08 of 2019: *Opiyo Joseph Otiiti Vs. Gulu Municipal Council*. As against the
3rd Respondent, there is no specific allegation made but it is averred that
he associated with the first Respondent in his legal pursuits, so he is being
15 sued in a vicarious capacity. The 3rd Respondent is joined in this action
apparently because he also works in the same Chambers as Mr. Nyeko.

Grounds of the Application

The Applicant avers that; the Respondents are legally obliged to protect his
20 human rights as a citizen of Uganda. He claims the Respondents failed in
their duties as Government Attorneys. The Applicant asserts that the
Respondents are behind a Court order issued by Justice Ajiji Alex Mackay,
J., of the High Court of Uganda, on 17th May, 2019 in Civil Suit No.002 of
2019: *Opiyo Joseph Otiiti Vs. Margaret Mutonyi*. In that suit, the Applicant
25 sued the Lady Judge for reaching an adverse decision against him in Civil

W. Nyeko

5 Suit No. 46 of 2013: *Opiyo Joseph Otiiti Vs. Action Against Hunger*, a suit
the court decided on a preliminary point of law. In Civil Suit No. 002 of
2019, the Applicant also sues the learned Judge for allegedly not posting
her Ruling on the Judiciary website. As Counsel for the Learned Judge,
Mr. Nyeko appears to have applied to the High Court (Ajiji, J.) for an order
10 of stay of all suits lodged by the Applicant in all Courts. Mr. Nyeko also
appears to have sought for an order that the Applicant be mentally
examined. The application by Mr. Nyeko appears to have been premised
on the fact that, in his suit, the Applicant seeks for the hanging /
beheading of the Judge as he claimed the Judge committed acts of war
15 against the Republic of Uganda, by not posting her Ruling on the judiciary
website. Ajiji, J., granted Mr. Nyeko's prayers. As observed, Ajiji, J. stayed
all suits lodged by the Applicant in all Courts and ordered for his mental
examination, with a further directive that, lawyers for the Defendants in
other affected cases may take further steps and apply for appropriate
20 orders.

The Applicant contends that, because of the High Court order staying all
his suits, his rights have been violated by the Respondents. He also alleges
that, the High Court order is forged, and that, the Respondents have
25 criminally influenced a law firm (M. Oyet & Co. Advocates) and also
criminally influenced a High Court Judge (Mubiru, J.) to dismiss the
Applicant's two other suits against the Applicant's adversaries. The

5 Applicant also alleges that, the Respondents defamed him by purporting
that the Applicant is a person of unsound mind. The Applicant claims to
have lost a job due to the allegations of unsoundness of his mind. He
contends that, he has been denied a hearing by courts. The Applicant
concluded by speculating that, this Court is likely to be bribed to dismiss
10 the instant matter, which will be another affront to the Applicant's rights.
The Applicant swore a detailed affidavit in which he reiterates the claims
summarized herein above.

Responses

15 In their separate responses, the Respondents deny the allegations. The gist
of the responses are that: the allegations are grossly false and geared
towards scandalizing judicial officers who are persons of high integrity; the
Applicant puts without basis, the character of judicial officers for
malicious ends; the malicious motives are further directed at the
20 Respondents for no reason; the Respondents were merely performing their
professional duties as public servants and Lawyers for Government and
have been wrongly sued; the Respondents have no duty to protect the
Applicant's alleged rights; the applicant had better remedies to pursue if
at all he was aggrieved with the High Court order; suing lawyers who
25 represent or represented an adversary against the applicant is not an
available legal remedy; the Layers were merely enforcing Orders of the High
Court for which they cannot be blamed or sued; The Applicant should have

5 appealed the High Court order or sought to set it aside, options he did not
pursue; the High Court Order issued by Ajiji, J. is genuine and not forged;
the stay of other suits before courts were predicated on the High Court
Order by Justice Ajiji, given on 17th May, 2019; the 2nd and the 3rd
Respondents were not lawyers for Hon. Lady Justice Mutonyi but the 1st
10 Respondent was but he was merely performing his duty as State Counsel
for the learned Judge; Posting court decisions on Judiciary webpage as
Mubiru, J., did, is not defamatory of any one; the Applicant's affidavit is
speculative, argumentative, and defective; the Application should not be
determined because the Applicant's mental health status is yet to be
15 determined; The Respondents have never purported that the Applicant is
a person with mental illness, as the impugned Court Orders were issued
for the purposes of determining the Applicant's mental health; the
Application should be dismissed with costs; and the Applicant should be
restrained/ barred from suing the Respondents or any Government lawyer
20 and Advocates generally especially those who appear as counsel for
adversaries, in matters where the Applicant is a party.

Representation

During the hearing of this application, the parties represented themselves.
25 At the time this court was assigned the case file in July, 2023, the
Applicant had long filed his submission on 3rd April, 2023. This Court
notes that, in his letter dated 6th April, 2023, written three days after filing

5 the written submission, addressed to the Senior Resident Judge Gulu High
Court, and copied to several offices within and outside the Judiciary, the
Applicant requested that the instant application should not be allocated
to this court, to save it from 'wrongful dismissal of cases'. He also
insinuated that this Court connives with the Respondents, and would
10 delay to dispose of the matter, which would prompt the Applicant to file
cases to counter such threats.

Be that as it may, when the parties first appeared before this Court for
hearing on 12th July, 2023, nothing was raised regarding the Applicant's
15 letter. This Court discovered the letter much later after the parties had
appeared. During the further appearance on 12th September, 2023, this
court was not asked by the Applicant to recuse itself from adjudicating the
matter for any reason. The impugned letter was written even before this
court knew the case had been allocated to it. Apparently, the Applicant
20 had got wind of the allocation. This Court also notes that the Applicant,
by the said letter, insisted that the Senior Resident Judge hears all his
matters pending before the High Court, including the present matter, a
request the Senior Resident Judge flatly rejected.

25 The above notwithstanding, this court proceeds to consider the
application, guided by the law and evidence. This Court shall keep as it
has always done, to the judicial oath taken, and shall determine the matter

5 impartially, without fear or favour, affection or ill will, and will do right to
all litigants before it. I should add that, the Applicant's conduct showed he
wanted to pick his own Judge, a course not tenable at law. See: **Uganda**
Polybags Ltd Vs. Development Finance Bank Ltd, Misc. Application
No. 2 of 2000 (SCU); Tinyefuza Vs. AG, Const. Pet. No.1 of 1997 (SCU);
10 **G.M Combined Ltd Vs. AK Detergents (U) Ltd, Civil Appeal No. 9 of**
1998 (SCU).

Issues

1. Whether the Respondents violated any human rights of the
15 Applicant?
2. What remedies are available?

Arguments

The parties addressed court orally at the hearing of 12th September, 2023.
20 The Applicant adopted his oral submission but amplified and made fresh
arguments in supplemental. The Respondents also addressed court orally.
Court has considered all submissions, and is grateful.

Determination

25 The gravamen of the complaint is that, the Respondents infringed human
rights of the Applicant, especially the right to a fair hearing.

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5 The Constitution of Uganda, 1995 provides that, the right to a fair hearing provided in article 28 (1) is non- derogable under article 44 (c) of the Constitution. The right to fair hearing is, therefore, entrenched. This right is broad and the court attempts to expound on the right have always depended on the context, and the facts and circumstances of each case.

10 For example in **Soon Yeon Kim & another Vs. Attorney General, Const. Reference No. 6 of 2007** the Constitutional court considered the aspects of pretrial disclosure in criminal trials, holding, among others, that, the right to a fair hearing envisages equality between the contestants in litigation.

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In **Mwanga Francis & 2 others Vs. Uganda, Criminal Appeal No. 88 of 1999**, the Court of Appeal of Uganda considered article 28 (3) (d) and (e) of the Constitution with a focus on the right of an accused person to appear in court in person or by a lawyer of his or her choice, and at the accused's expense. The Court noted that, in cases that carry death sentence or imprisonment for life, an accused person has a right to legal representation at the expense of the State. The Court also considered the right of an accused to examine prosecution witnesses and to obtain the attendance of other witnesses. The Court adverted to the important principle that, an advocate appointed to defend an accused person has a duty to ensure that

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25 his client's case is presented and concluded with scrupulous fairness and integrity in accordance with the instructions and professional ethics.

As seen from the two cases, issues of a fair hearing are broad. Therefore, fairness is a variable concept and can never be reduced to a one-size fits all formula, as stated by Ssekaana Musa, J., in **Stephen Mukweli & 4 Others Vs. Bank of Uganda & Post Bank Uganda Ltd, Misc. Cause No.**

10 **210 of 2019.**

In the instant case, the Applicant has not clearly specified how the Respondent's acting for their own clients, that is, Hon. Lady Justice Mutonyi, in the case of the 1st Respondent, and Gulu Municipal Council, 15 in the case of the 2nd Respondent, infringed the Applicant's rights to a fair hearing. With respect, it seems to me the Applicant does not well appreciate the legal duty owed by the Respondents to their clients, especially in an adversarial system of litigation such as ours. It also appears the Applicant does not understand that the Respondents were and 20 are not his lawyers. The Respondents are deemed to have been instructed in the public context, to conduct their clients' cases with scrupulous fairness and integrity and in accord with professional ethics. Lady Justice Mutonyi, in this context, had to be represented by the Attorney General's Chambers because the suit against her is not lodged on account of a 25 private decision she made in a private capacity, but as a judicial officer who was performing her judicial duties. Regarding legal representation of Gulu Municipal, by the 2nd Respondent, I note that, as a Local

5 Government, the Council enjoys a right to legal representation by officers
of the Attorney General's Chambers, given the Attorney General under
whom the Respondents serve, is constitutionally mandated to represent
Government in Courts or in any other legal proceedings to which
Government is a party, under article 119 (4) of the Constitution, 1995.
10 This role is expansive and covers Local Governments especially those that
request to be so represented by officers from the Attorney General's
Chambers. Thus, as lawyers who were acting for their clients, the
Respondents owed the foremost duty to their clients and court, as officers
of court under section 16 of the Advocates Act Cap 267 (as amended). They
15 owed no duty to the Applicant save for the standard expectations such as
professional courtesy and sticking to ethical principles of advocacy. The
Applicant has never shown that he is an advocate and therefore, a
professional colleague of the Respondents who ought to have been treated
in some special manner. In this regard, I can do no better than to quote
20 from case law.

In **Rondel Vs. Worsely [1966] WLR 950**, at page 962, Lord Denning M.R
observed:

25 **"The advocate must do all he honourably can on behalf of his client.
I say so because his duty is not only to his client. He has a duty to**

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5 **the court which is paramount...an advocate owes allegiance to a
higher cause. It is the cause of truth and justice..."**

Regarding the duty of an advocate to his/her professional colleagues, the
same is opined by some Learned Authors. Thus according to **Francis A.**
10 **Wazarwahi Bwengye in his Book entitled "Legal Practice in Uganda,
2002**, at p.94, he states thus:

**"An advocate must be true to himself. Then the duty he owes to his
colleague will flow from it, for he must abide by his word and never
15 betray confidence. The community of advocates is a closely knit one
and occasions on which it is necessary or desirable for opponents to
speak to another in confidence are frequent. It is only because
counsel are able to place implicit trust in their professional brethren
both when they are in practice and when they sit on the bench that
20 the business of the courts can be smoothly conducted, that the
interests of their clients can be best served and the proceedings
carried out without the mistrust which causes the rancor and ill-will."**

See: Richard du Cann: The Art of the Advocate, Penguin Books, England,
25 1980, pp 44-45.

H.A.O.D.

5 In this case, the Applicant was not in the privileged position of an advocate
and thus should not have expected much from the Respondents, whatever
expectations he had in mind. As officers of court who were performing their
professional duties of representing their clients, the Respondents were of
course expected to stick to the professional standards and codes of
10 conduct. By so doing, their professional conduct would benefit the entire
administration of justice and the Public in general. To that extent, the
Applicant, as an adversary in litigation, would also stand to benefit. In this
case, it is not shown that the Respondents as officers of court were not
professional in their quintessential representation of their clients.

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It should be recalled that, appearing in court for conduct of a client's case
is one of the duties of an advocate under Regulation 5 of the Advocates
(Professional Conduct) Regulations, S.I 267-2. Thus scrupulous and
professional representation of a client cannot amount to infringement of
20 human rights of the client's adversary's. With respect, to claim that by so
doing, the adversary's right to a fair hearing is being infringed, defeats
common sense and logic. It is a misuse of words. If the Applicant wished
to enjoy equal status of legal representation as his adversaries, nothing
stopped him from obtaining services of counsel.

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This Court notes the Applicant's claim that, by the impugned order of the
High Court having been sought by the 1st Respondent, as per his client's

5 instructions, the latter thereby infringed the Applicant's rights. That
argument is flawed and not rooted on any law or common sense. In the
instant case, the 1st Respondent was simply performing his professional
duties as per his client's presumed instructions. If at all the Applicant felt
aggrieved with the impugned High Court Order, it was open to him to
10 appeal, or take such steps to have it reviewed or otherwise set aside. It was
not open to him to sue the Advocate instead. To accept the Applicant's
complaints and find fault with the Respondents' actions would be inimical
to the Respondents' rights to practice their profession as such, in the
Public Service and would be contrary to the provision of article 40 (2) of
15 the Constitution of Uganda, 1995, which provides,

**“Every person in Uganda has the right to practice his or her profession
and to carry on any lawful occupation, trade or business.”**

20 In the instant case, there was nothing wrong with Mr. Nyeko's professional
conduct of his client's case.

As against Ms. Twesigomwe (the 2nd Respondent), it is claimed she
informed the Deputy Registrar of Court, before whom a case involving the
25 Applicant and Gulu Municipal Council had come up, about the existence
of the High Court order. The Judicial officer is said to have adjourned the
case involving Gulu Municipal Council, on the basis of the High Court

5 order. In the circumstances, the 2nd Respondent cannot be blamed for acting professionally and drawing court's attention to a superior court order.

The Applicant argued that, the High Court order staying all his suits and
10 directing for his mental examination, is forged. I find no basis for this claim. This Court notes that, the Applicant had raised the issue with Ajiji, J., by a letter dated 6th June, 2022 (attached to his affidavit). There, he calls the order '*purported order of 17th May, 2019*' and proceeds to complain about how all his suits have been halted. The Applicant does not,
15 by the said letter, claim to the then trial Judge who issued the Order, that the court order is forged. Rather, he informed the learned Judge that, he would not be subjected to forceful mental examination as he has never been enrolled in any mental hospital. He asserted in his letter that, Mr. Nyeko is chasing '*tail of a ghost medical report which is nonexistent*'.

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During the hearing of this matter, Mr. Nyeko (1st Respondent) clarified that, he sued the Applicant in MC No. 26 of 2022, in the lower Court, pursuant to the Order of the High Court, which directed lawyers representing Defendants sued by the Applicant, to take further steps as
25 may be appropriate. Crucially, MC No. 26 of 2022 was allowed by His Worship Kwizera who ordered for mental examination of the Applicant. That Order, according to Mr. Nyeko, has not been appealed by the

5 Applicant. However, the Applicant appears to have refused to respect the Order of the Court. Similarly, according to Mr. Nyeko, the High Court Order on which his Misc. Cause No. 26 of 2022 is founded, has not been challenged by the Applicant.

10 In his earlier letter dated 28th February, 2022, the Applicant also wrote to the High Court Judge, referring to the impugned order, complaining that the High Court Order had lasted for more than two years, yet there is no proof that the Applicant is of unsound mind. There, the Applicant questions why his cases are halted by court yet court and some litigants
15 had been proceeding with some cases against him. In another letter dated 21st May, 2021, addressed to the learned Judge, the Applicant asked the Judge to clarify whether he issued the impugned order. He complained that, pursuant to the Order, other Judicial Officers stayed other cases from proceeding. The Applicant also had written to the Chief Registrar of the
20 Courts of Judicature and complained against a lady Magistrate Grade One who had adjourned a matter, pursuant to the impugned High Court Order. The Applicant further complained to the then Principal Judge (Bamwine, P.J) who advised the Applicant to appeal or seek for setting aside of the impugned High Court Order. Not satisfied, the Applicant complained to
25 the Minister of Justice and Constitutional Affairs by letter dated 19th December, 2019, which he copied to the Deputy Chief Justice, among others. There, the applicant claimed that the Hon. PJ's response to the

5 Applicant's letter was "a lazy and sick letter". The Applicant asserted that, the PJ's letter was arrived at on "a shallow few day's desk research geared toward concealing the truth of forgery" by Judges and other judicial officers. The Applicant, however, recognized in his aforesaid letter, that, the Hon. the PJ did not agree that the High Court order was forged.

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In light of foregoing analysis, I hold that the allegation of forgery of the High Court order is not proved by the Applicant against the Respondents. At any rate, such allegation does not come closer to the kind of matters that would constitute a human rights violation. All in all, the Applicant
15 appears to blame counsel for decisions of courts, which, as I will expound, is not justiciable in a court of law. Judicial officers enjoy immunity from suits under article 128 (4) of the Constitution, 1995, and section 46 (1) of the Judicature Act Cap. 13, for judicial decisions they make. See: **Misc. Cause No. 15 of 2022: Opiyo Joseph Otiiti Vs. Kwizera Vian.**

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In my view, advocates and State Attorneys by whatever name called, cannot be sued for decisions of judicial officers, simply because a party is aggrieved. This statement, however, does not cover clear suits in professional negligence by clients against their own lawyers. In this case,
25 the Respondents were not lawyers for the Applicant. To sue an officer of court in the circumstances such as the instant, would not only infringe the officers' right to practice their legal profession, but such a suit is also

5 bared under the principles of international law. According to The United
Nation Basic Principles on the Role of Lawyers, 1990, everyone should
have access to independent legal counsel. Under Principle 18, lawyers
shall not be identified with their clients or their client's causes as a result
of discharging their functions however popular or unpopular it may be.

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In the above regard, it has been opined that, advocates should not suffer,
or be threatened with suits, prosecution, or administrative, economic or
other sanctions for any action taken in accordance with recognized
professional duties, standards and ethics. Therefore, suing advocates is
15 an affront to their right to legal practice. And identifying Advocates with
their clients or client's causes amounts to intimidation and harassment.
This is at the heart of the rule of law. See: **Misc. Application No. 0671 of
2022: Simba Properties Investment Co. Ltd & Simba Telecom Ltd Vs.
Robert Kirunda, Noah Shamah Wasige & 2 Others (Stephen Mubiru,
20 J.)**

I should perhaps add that, vexatious suits against advocates whether they
be in Private Legal practice or Governmental service, or otherwise, would
cause breakdown in the rule of law and thus a recipe for disaster as these
25 learned friends fail to effectively discharge their professional duties, as
they would act in fear of suits or prosecution by their clients' adversaries.

Hudson

5 In my considered view, officers of court should be able to act for their clients without fear of reprisals in any form, by their client's adversaries.

In conclusion, I find on the evidence that the application lacks merit. No human rights of the Applicant have been infringed upon by the Respondents. The suit ought to fail. I dismiss it with costs payable to the Respondents.

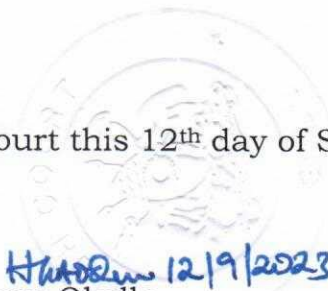
I also anxiously considered the prayer by Ms. Twesigomwe (the 2nd Respondent) that the Applicant should be barred from suing State Lawyers and all Advocates who represent or may represent parties against him. However, Ms. Twesigomwe did not lodge a cross action. But on this court's own motion, and having noted a trend in this and other courts, where the Applicant has and continues to sue lawyers/ Advocates and State Attorneys who have or are representing his adversaries, instead of appealing, or pursuing acceptable route for redress, this court, in the exercise of its inherent powers under section 98 of the Civil Procedure Act Cap 71, to avoid further blatant breaches of article 40 (2) of the Constitution of the Republic of Uganda, doth issue a permanent injunction restraining and barring the Applicant, Opiyo Joseph Otiiti from suing the Respondents or any officer of Court, not being the Applicant's counsel, for acting as counsel in cases where the Applicant may be a party.

It is so ordered.

H. A. O. O.

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Delivered, dated and signed in Court this 12th day of September, 2023.



Handwritten signature: H. Okello 12/9/2023

George Okello

JUDGE HIGH COURT

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Ruling read in Court

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2:30pm

12th September, 2023

20 **Attendance:**

Applicant - self representing.

The 1st, 2nd and the 3rd Respondents in court – self representing.

The 1st Respondent is absent.

Ms. Grace Avola, Court Clerk.

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Handwritten signature: H. Okello 12/9/2023

George Okello

JUDGE HIGH COURT

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