


CHEBROT FRED :: APPLICANT

UGANDA WILDLIFE AUTHORITY (UWA) ::::::::::::::::::::::::::::::: RESPONDENT

## 1. Background

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**7. Legal Representation**

8. Counsel Owori appeared for the Applicant while Counsel Keffa Ndeke and Ibrahim Abubaker appeared for the Respondent.

**9. Submissions:**

10. Both Counsel for the Appellant and Respondents made oral submissions to this court in support of their respective arguments which this court has considered in determining the preliminary objection raised.

**11. Submission by Counsel for the Respondent**

12. Counsel submitted that section 3 (2) of the Human Rights (Enforcement) Act provides that proceedings to enforce rights may be instituted by a person acting on behalf of another who can't act on his or her own, a member of a group to which the victim of violation belongs or acting in public interest for which the Applicant falls in neither of those categories.
13. Counsel added that upon death, the deceased person ceases to have a name through which another person can act on and the said acting on behalf of another doesn't mean acting on behalf of a deceased person, but the provision is meant to cover minors and persons suffering from mental illness who cannot represent themselves.
14. Counsel also submitted that it is strange, illegal and unlawful for the Applicant to adopt this procedure since the right procedure would have been under the Law Reform (Miscellaneous Provisions) Act Cap 79 which gives a right to family members of the deceased to file suits for compensation for unlawful death.

**15. Submission by Counsel for the Applicant**

16. Counsel submitted that from the reading of the long title of the Human Rights (Enforcement) Act, it is clear that it is meant to enforce all the rights enshrined in chapter 4 of the Constitution of Uganda inclusive of the Right to life for which the Applicant intends to enforce and therefore that his learned brother's interpretation of the said Act is mistaken since it is not supported by any authority.
17. Counsel added that the Applicant is a family member and also a member of the same indigenous society with the deceased which qualifies him under the provisions of section 3 of the Human Rights (Enforcement) Act and therefore choosing to proceed under the Human Rights (Enforcement) Act or under the Law Reform (Miscellaneous Provisions) Act is matter of choice.



**18. Submissions in rejoinder**

19. Counsel for the Respondent in rejoinder submitted that the right to life the Applicant seeks to enforce ceases since the victim is already dead and therefore can't be enforced and proving death requires a very high standard which cannot be properly adduced through notice of motion and affidavit.

**20. Analysis of Court**

21. **Section 1 (1) of the Human Rights (Enforcement) Act, 2019** provides-

*"This Act applies to the enforcement of human rights and freedoms guaranteed by Chapter Four of the Constitution."*

22. The term enforcement is defined by the **Black's Law Dictionary, 2<sup>nd</sup> Edition** to mean- *"making sure a rule or standard or court order or policy is properly followed"*.

23. In the circumstances, this will mean that the rights guaranteed by the Constitution can be enforced by way of making sure they are not violated, if they are already violated, then a stop to that violation is made or restoration of those that are breached like right to personal liberty, right to ownership among others but not a right to life for reason that once it is violated, it is not practical to enforce it since the victim of such violation would be already dead and cease to be human.

24. From the Notice of Motion, it is alleged that the deceased died by shooting. The Law Reform (Miscellaneous Provisions) Act Cap 79 provides for the procedure to be undertaken in cases of death caused by any wrongful act.

27. **Section 5 of the Law Reform (Miscellaneous Provisions) Act (supra)** provides-

*"If the death of any person is caused by any wrongful act, neglect or default of any person, and the act, neglect or default is such as would, if death had not ensued, have entitled the person injured by it to maintain an action and recover damages in respect of it, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to a felony."*

28. **Section 6 of the Law Reform (Miscellaneous Provisions) Act (supra)** provides-

*"(1) Every action brought under section 5 shall be for the benefit of the members of the family of the person whose death has been so caused, and shall be brought either by and in the name of the executor or administrator of the person deceased*

or by and in the name or names of all or any of the members (if more than one) of the family of the person deceased.

(2) *In every such action, the court may give such damages as it may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit the action is brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided among the parties in such shares as the court shall find and direct.*

(3) *Not more than one action shall lie for and in respect of the same subject matter of complaint; and every such action shall be commenced within twelve calendar months after the death of such deceased person."*

29. From the understanding of the above provisions, it is clear that where death is caused by a wrongful act, the beneficiaries or members of the family of the victim are entitled to sue the person who caused such unlawful death for damages.
30. It is apparent that where there is a law which specifically provides for a recourse or action to be taken, then the aggrieved person cannot resort to another law. In this case, what is clear from the pleadings is that there was death of the person and the father of the deceased filed this application seeking compensation for the death of his son.
31. In the case of **Edward Katumba V. Daniel Kiwalabye Musoke CA NO.2 OF 1998. (CA)**, it was stated that in order to determine whether a particular provision was intended to be mandatory;
- "...the court must consider the whole scope and purpose of the statute. Then to assess the importance of the impugned provision in relation to the general object intended to be achieved by the court must consider the protection of the provision in relation to the rights of the individual and the effect of the decision that the provision is mandatory"*
32. Accordingly, the Applicant being the father to the deceased victim, it totally makes him a person with locus under the provisions of the Law Reform (Miscellaneous Provisions) Act. Therefore, resorting to the Human Rights (Enforcement) Act was not tenable in the circumstances as the mandatory provision of the Law Reform (Miscellaneous Provisions) Act clearly provides for the mandatory procedure to be followed.
33. Having found that the Applicant ought to have brought his action under the Law Reform (Miscellaneous Provisions) Act, *section 8 of the same act requires that the plaintiff should deliver to the defendant, together with the plaint, full particulars of*

*the person or persons for whom and on whose behalf the action is brought, and of the nature of the claim in respect of which damages are sought to be recovered,* which therefore means he cannot proceed by way of Notice of Motion in a situation where it is a requirement of the law that he must proceed by way of a plaint.

34. In the foregoing, the preliminary objection by Counsel for the Respondent is hereby upheld in the following terms-
- (a) Miscellaneous Cause No.47 of 2022 is accordingly struck out.
  - (b) Each party shall bear its own costs.

**I so order**

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**LUBEGA FAROUQ**

**JUDGE**

**DATE: 22<sup>nd</sup> March 2024**