

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

MISC CAUSE NO. 146 OF 2011

LEGAL ACTION FOR PEOPLE WITH DISABILITIES ::::: APPLICANT

VERSUS

1. ATTORNEY GENERAL

2. KAMPALA CAPITAL CITY AUTHORITY

3. MAKERERE UNIVERSITY

} ::::: **RESPONDENT**

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING

Legal Action for Persons with Disabilities filed this Misc Cause by way of Notice of Motion under Articles 50(1), (2) & 32(1) of the 1995 Constitution of the Republic of Uganda, O. 48 r1 and O 52 rr 1, 2, 3 of the Civil Procedure Rules and the provisions of the Persons with Disabilities Act 2006. The respondents are Attorney General, Kampala Capital city Authority and Makerere University.

The applicant is represented by Ms Galisonga, Kasasa & Nassali Co. Advocates while the 2nd respondent is represented by its Legal Department. The 3rd respondent is represented by M/s Katera & Kagumire Advocates.

The orders sought by the applicants are as follows:

that:

- (a) A declaration be made that the failure by the respondents to make their premises and buildings easily accessible by Persons with Disabilities (PWD) violates the fundamental rights of persons with disability to have access to a barrier free physical environment.
- (b) An order that the respondents jointly and severally, promptly do enforce the provisions of the law on PWDs relating to access to a barrier free physical environment.
- (c) An order that the respondents do pay the applicants the costs of this application.

The detailed grounds of this application are set out in the affidavit in support deposed to by one Laura Kanushu and are that:

- (i) The Constitution of the Republic of Uganda guaranteed affirmative action in favour of marginalised groups including persons with disabilities (PWDs) as well as the right to respect human dignity and enjoins the government and society to take appropriate measures to ensure that persons with disabilities realise their mental and physical potential.
- (ii) The parliament of the Republic of Uganda enacted a law; The Persons with Disabilities Act 2006 to provide for a comprehensive legal protection for persons with Disabilities and to make provisions for elimination of all forms of discrimination against persons with disabilities towards equalisation of opportunities and for related matters.
- (iii) The said Act was intended *inter alia* to provide for easy access and exit by PWDs to and from the premises, public transport and public and private buildings and enjoined all public or private individuals and institutions to provide easy access to such buildings and to provide suitable facilities to PWDs.
- (iv) Despite the requirements of the above stated law, several owners of private and public buildings including the respondents have not complied with the provisions of the Act and the 2nd respondent has continued to approve of buildings plans for new buildings within Kampala City that violate the disabled persons right to easy access to buildings of public use.

- (v) Government bodies and departments such as the Ministry of Gender Labour and Social Development, the High Court of Uganda at Kampala are operating in premises that cannot be easily accessed by PWDs or that do not have suitable facilities for PWDs thus depriving them access to such premises and buildings within Kampala City that violate the disabled persons right to easy access to buildings of public use.
- (vi) As a result, PWDs still do not enjoy their full rights as guaranteed under the constitution of Uganda and have not realised their full mental and physical potential due to inaccessibility to such public and private buildings, places, public transport and other services that require physical movement.
- (vii) The Government of Uganda is responsible for the predicament of the persons with disabilities in as far as it has failed to enforce the Persons with Disabilities Act but also has left some of its departments such as the Ministry of Labour Gender and Social Development to operate in a building which does not have suitable facilities for PWDs.

Another three supplementary affidavits were deponed by one Kwesiga Phyllis, Angela T. Baraba and Buwembo Mulshid respectively. The two affidavits of Angella Baraba and Buwembo echoed the main affidavit in support.

Angell T. Baraba deponed that she got a contractual job with the Faculty of Veterinary Medicine Makerere University as a project assistant but faced challenges in terms of physical accessibility to her office because of rooms and toilets which were inaccessible. That during her studies at Kyambogo University she faces a lot of difficulties to access lecture rooms. That most University buildings had steep steps. That as a PWD she has experienced a lot of difficulties in movement because most buildings have no ramps or lifts to ease movement.

In his supplementary affidavit Buwembo Mulshid reiterated the shortcomings outlined in the affidavit in support emphasising that he has experienced a lot of difficulties in movement. During his University education he reallocated to Makerere University from Mbarara University

of Science and Technology because of inaccessible buildings but found the situation not any better. That because of this he performed poorly because he used to arrive late for lectures. That the main building at Makerere has narrow steps with no bars to cling on thus making it difficult to access.

In general, the deponent avers that PWDs do not enjoy their full rights as guaranteed under the constitution of Uganda and have not realised their full mental and physical potential due to inaccessibility to public and private buildings places, public transport and other services that require physical movement.

Kwesiga Phyllis an architect and CEO of KK consulting Architects who was instructed by the applicants to make a report on how buildings in KCCA and other areas can be modified for ease of accessibility to PWDs swore a supplementary affidavit saying modification is possible to those old buildings. According to him the following alterations can be made.

- (a) Introduction of exterior gently inclined access ramp along the building side leading to the front entry/exit as at parliament.
- (b) Provision of designated parking slots for the less able in close proximity to such an access.
- (c) Provision of landings along that ramp at a maximum of 10 metres as specified in the standards set by (UNADP?)
- (d) Provision of tactile markings at the start and end of each staircase and landing both with colour and texture alteration.
- (e) Provision of tactile markings close to any entry or exit major (for use by the blind).
- (f) Provision of appropriate hand rails along inclined ingress or egress points but suited to use by both adults and children.
- (g) Provision of appropriate grab bars floor textures, and specially set aside washroom, inclusive of appropriate location of light fittings, mirrors, wash hand basins to suit for example someone crawling or in a wheel chair.
- (h) Adjustment of doorways into major use areas to allow for wheel chairs.

That the above alterations should take into account cost implications, technical expertise and strength of the building structure that is being altered.

In his affidavit in reply deponed by one Joseph Buwembo, the Ag. Director of Physical Planning KCCA, the 2nd respondent denied the existence of Kampala City Council Authority because he is director of Kampala Capital City Authority. That the reason KCCA was established was to give Kampala City a special status and involve the Central Government in the day to day management of the city and to redress the short comings of its predecessor Kampala City Council (KCC).

That because of the mismanagement of affairs at KCCA physical planning laws among others were not strictly complied with which led to the construction of certain buildings in flagrant breach of physical planning standards and building regulations. However, with the establishment of KCCA, physical planning laws and regulations are being enforced and in case of any breach of the laws and regulations the authority has taken action against persons in breach. Without elaborating the deponent swore that this application is bad in law and he is advised accordingly.

The University Secretary of the 3rd respondent Muhwezi Kahundha David swore the affidavit in reply on its behalf. He deponed that the 3rd respondent has limited revenue to utilize to accommodate a multitude of students seeking for Education facilities and restructuring the existing buildings to accommodate the disabled students in compliance with the said Act. That nevertheless, despite the limited resources, the 3rd respondent has implemented and carried out measures to enforce the provisions of the constitution and the Act by:-

- a) Setting up an adhoc committee of council to address issues relating to students and staff who are disabled and to design a policy on people with disabilities.
- b) Employing student guides and helpers to assist people with disabilities to have access to a barrier free physical environment at the University premises.
- c) That the 3rd respondent pays the student guides a monthly salary of 70,000= plus meals, accommodation and medical care.

- d) The disabled students are allowed to choose their preferred halls of residence which may be nearest to their respective colleges where they study.
- e) The 3rd respondent allocates disabled male students rooms situated on the ground floor of Mitchell Hall Block D for easy accessibility. These rooms are closer to the bathrooms and toilets.
- f) Disabled students have specially designed facilities for their welfare. They have special teaching material methods and materials in the Main Library such as special computers used by the blind persons.
- g) The Main Library also has ramps and special rooms designed for disabled students.

The 3rd respondent's Secretary further deponed that upon admission of the disabled persons, the 3rd respondent has made alternative provision to the persons with disabilities who may not be able to attend lectures or examinations on a given day and time of the week by:-

- a) Offering transport facilities from the main gate to their respective destinations inside the 3rd respondent's premises.
- b) Examining and certifying them.
- c) Affirmative action where as admission policy, people with disabilities who score two Principles Passes are admitted on Government sponsorship.
- d) Offering an opportunity at a time of admission to change to any course suitable for them.
- e) Adjusting unfavourable examination time tables.

The Secretary further depones that the office of the Dean of students of the 3rd respondent has been shifted to the senate building on the first level which is easily accessible by disabled persons. That all new buildings constructed have to adopt a policy in conformity with the provisions of People with Disabilities Act. Several new buildings are now compliant including:-

1. The senate building.
2. The School of Computing and Information Technology.
3. School of Engineering

4. The Gender Studies Department.
5. The Main Library
6. The School of Food and Science Technology.

According to the deponent despite limited resources, the 3rd respondent is in the process of adjusting existing buildings prior to commencement of the Act. That although taxis and motor cycles are prohibited from operating within the University, disabled students are allowed to use motor cycles. The policy is intended to safe guard the 3rd respondent's community and maintain a safe and secure environment conducive to the 3rd respondent's staff and students' progress.

Finally that the 3rd respondent has accorded preferential treatment to disabled persons by issuing clearance letters to enable them use public transport on the 3rd respondent's premises.

At the scheduling conference, the following issue were agreed upon:-

1. Whether the respondents are violating the fundamental rights of persons with disabilities to have access to a barrier free physical environment.
2. What remedies are available.

Each of the respective counsel were allowed to file written submissions in support of their respective cases. Conspicuously the Attorney General neither filed an affidavit in reply nor written submissions.

I will start with resolving issue one.

In its submissions, the applicant says that sufficient evidence has been adduced to show that the respondent is jointly and severely violating the rights of people with disabilities to a Barrier free Physical Environment under Articles 32(1), 35(1) and Section 19 and 20 of the Persons with Disabilities Act 2006.

Learned counsel for the second respondent attributed failure to comply with the law to the mismanagement by the predecessor Kampala City Council.

That physical planning laws were not strictly complied with which led to the construction of certain buildings in flagrant breach of physical planning standards and building regulations. However, remedial measures have been instituted to ensure that all structures in the Capital City Area conform to the physical planning laws. That affirmative action which is enshrined in the 1995 Constitution and the PWD Act should be implemented gradually because immediate implementation of the mandatory provisions of the said law would lead to undesirable outcomes and disruption of activity and access to the buildings complained of.

In their submissions, learned counsel for the 3rd respondent maintained that the latter has not violated the fundamental rights of persons with disability as enshrined in the constitution.

After a careful consideration of this application and the affidavit evidence as well as the submissions by respective counsel, all parties hereto acknowledge that prior to the promulgation of the 1995 Constitution and enactment of Persons with Disabilities Act, several structures were put in place without due regard to the needs of people with disabilities. Both the 2nd and 3rd respondents have however provided evidence to show that steps are being taken to remedy the situation by gradually implementing the Act and restructuring accessibility to their respective structures/premises. For example, KCCA has vowed to strictly enforce the law and ensure that all structures in the Capital City area conform to the planning laws through regulations and in the worst scenario by demolishing of offending structures. The 3rd respondent has also demonstrated in its evidence that she has taken steps to comply with the constitution and the PWD Act. The actions taken are enumerated in the affidavit in support. I will single out a requirement that all new buildings constructed on the 3rd respondent's premises should adopt a policy in conformity with the provisions of the Act. (See list above). This is in compliance with S. 19 which provides for access to premises to persons with disabilities and S. 20 of the Act which provides for duty to provide access to buildings.

I am in agreement with learned counsel for the 3rd respondent that by taking the above steps the 2nd and 3rd respondents have promoted and upheld the rights of people with disabilities as provided under Article 35(1) as well as promoting affirmative action in favour of marginalized group as provided under Article 32 of the Constitution.

As correctly pointed out by learned counsel for the 3rd respondent, it has a duty to consider and weigh the competing provisions of the constitutional rights i. e the right to education and the national objectives and directive principles of state policy against the rights of persons with disabilities and affirmative action in favour of marginalized groups.

Evidence of competing interest is clearly brought out in the 3rd respondent's affidavit in reply that is to say affording all persons with fundamental rights to education and equal opportunity to attain the highest educational standards possible.

I will take particular note that both the 2nd and 3rd respondents have limited resources to immediately provide what is required by the applicants. Therefore restructuring the existing buildings to accommodate the disabled people or students requires a lot of funds which is not readily available. For the 3rd respondent, utilizing its scarce resources on the existing structures may substantially increase the cost of education making it impossible for all citizens to attain the highest educational standards. Many poor students will be prejudiced.

Whereas people with disabilities go through numerous challenges, while attending the 3rd respondent and or working in Kampala, this should be attributed to the old structures which never made sufficient provisions for such people. These structures came into existence before the promulgation of 1995 Constitution and enactment of the Persons with Disabilities Act, a time when affirmative action was not a policy of government. Both the disabled and none disabled citizens must equally enjoy their rights. But relying on the accommodation principle, even where the fundamental human right in question is not absolute, the respondent has a duty to

demonstrate that it has put in place reasonable measures to enable the complainants enjoy their constitutional rights. Any limitations to the enjoyment of fundamental rights should be none substantial. It should be acceptable and demonstrably justified in a free and democratic society.

See: **Demanche Sharon and 2 others Vs Makarere University S C Constitutional Appeal No.2 of 2004.**

Just like it was held by Katureebe JSC in that case, in the instant case the applicants seem to imply that their own right must be enjoyed irrespective of the negative effects that it may have on public interest, the costs to the respondents and the overall costs to other (students) or people. The applicants ought to know that the enjoyment of their rights is not absolute. It has to take in to account the rights of others as well as public interest.

In the instant case the 2nd and 3rd respondents have taken measures to accommodate the applicants' special concerns. Therefore the adverse effects on the rights and freedoms of the applicants were reduced. The applicants' rights and freedoms were affected by the poor policies of the people in charge long before. Remedying these failures must take in to account the interests of others. Further to this, the respondents have put in place the numerated measures as indicated in their respective evidence to accommodate the applicants and make access to some buildings and make the University education accessible to them. These measures include:

- Setting up an adhoc committee of counsel to address all issues relating to students and staff who are disabled and design policy on persons with disabilities.
- Employing student guides and helpers to assist the disabled persons access free physical environment at the 3rd respondent's premises. These people are paid 70,000= pm and are fed, accommodated and given medical care.
- Allowing disabled students to choose their preferred halls of residence which may be nearest to their respective colleges where they study.

- Allocating ground floor rooms on block D Mitchell Hall for easy accessibility and closeness to bathroom/toilets to shorten the distance to the facilities.
- Designing facilities for the disabled students' welfare such as special teaching methods and material in the library including computers used by the blind persons.
- Erecting ramps and special rooms for disabled students.
- Shifting the office of Dean of Students to the Senate building on the first level which is easily accessible by the disabled persons.

There is evidence on record that the 3rd respondent has extended reasonable accommodation to students with disabilities by:-

- Offering transport from the main gate to their respective destinations in the University.
- Examining and certifying the disabled.
- As an admission policy, persons with disabilities who score two principle passes are admitted on government sponsorship.
- The disabled students are offered an opportunity at the time of admission to change to any course which is suitable for them.
- If unable to sit for an examination, the disabled are encouraged to inform the relevant authorities to adjust and reallocate them to the examination room convenient and easily accessible.

These averments by the respondents were not controverted implying that even Buwembo Mulshid is or was entitled to the said services.

As regards the 2nd respondent, it is putting in place control measures to ensure that building in the city is compliant. Given that most buildings complained of were constructed in 50^s through to the late 80^s. Therefore as recommended by Kwesiga Phyllis the architect, alteration should consider facts like the cost implications, technical expertise and strength of building structures that are to be altered. Therefore the alteration has to be gradual.

I am therefore satisfied that the respondents but especially the 3rd respondent are alive to the concerns of the students with disabilities and did not fail or refuse to respect, uphold or promote the rights of those students. There is evidence that the 3rd respondent is an equal opportunity institution for all persons. It has not violated the fundamental rights of the applicants to have access to a barrier free physical environment. Any limitations imposed upon the rights of persons with disabilities are justifiable in the existing circumstances. The respondents will be encouraged to continue complying with the requirements of the Act and ensure continued modification of the old buildings and ensure that plans for new buildings take into account the right to easy access to them before they are approved.

Regarding remedies, I am unable to grant a declaration sought because the respondents have taken steps to make their premises and buildings accessible by people with disabilities.

Court cannot order prompt enforcement of the provisions of the law because of the hardship it involves, but shall encourage whoever is responsible and the respondents in particular to ensure continued compliance with the law as required.

I will consequently dismiss the application with no order as to costs.

Stephen Musota

J U D G E

20.05.2014