



JUDICIAL DECISIONS RELATING TO PERSONS WITH DISABILITIES IN UGANDA: A CASE DIGEST

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ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CEHURD	Centre for Health, Human Rights and Development
CERD	Convention on the Elimination of all forms of Racial Discrimination
CRPD	Convention on Rights of Persons with Disabilities
CSO	Civil Society Organizations
DPOs	Disabled Persons Organizations
ICCPR	International Convention on Civil and Political Rights
JLOS	Justice Law and Order Sector
LAPD	Legal Action for Persons with Disabilities
MCA	Magistrate's Court Act
NETPIL	Network of Public Interest Lawyers
NUDIPU	National Union of Persons with Disabilities – Uganda
OAU	Organization of African Unity
PCA	Penal Code Act
PIL	Public Interest Litigation
PILAC	Public Interest Law Clinic
PWD	Person's with Disabilities
TIA	Trial on Indictment Act
UDHR	Universal Declaration of Human Rights
UN	United Nations

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EXECUTIVE SUMMARY

The Network of Public Interest Lawyers (NETPIL) is an umbrella organisation that brings together individuals, law firms and non-governmental organisations with a commitment to engage in public interest litigation to achieve social justice. NETPIL was established with the aim of promoting public interest lawyering and the pro bono spirit in Uganda; as well as fostering greater engagement of lawyers in public interest litigation and advocacy towards achieving social justice and greater protection of fundamental rights for all. NETPIL has, as one of its thematic area of focus, disability rights. It has taken some initiatives in research and advocacy to underscore the rights of PWDs through consolidating efforts and building partnerships with institutions and individuals interested in the area of disability rights.

In order to have an informed and research based approach to Public Interest Litigation (PIL) that is strategic enough to cause the required changes in policy and legislation and in shifting societal mindsets on PWDs, it has required an in-depth research to assess the level and nature of litigation relating to PWD issues and rights and to develop a case digest for all PWD related cases ever handled in courts of record in Uganda.

Through a qualitative research process rooted in desk reviews and focused discussions on the issues, 14 judicial decisions were considered, with issues such as how PWDs are handled through the criminal justice system; how parliamentary representatives of PWDs should be elected; the constitutionality of derogatory words like ‘imbecile’ ‘lunatics’ or ‘idiots’ in relation to persons with mental disabilities; whether failure to provide accessibility to some public structures violated the right to freedom of a barrier free environment; how estates of persons of unsound mind may be managed among others are discussed.

The decisions are reflective of the societal and judicial mindset especially regarding accessibility concerns where courts have exhibited a ‘forgiving attitude that gives public entities freedom to take their time to implement the legal provisions that guarantee the right to a barrier free and accessible environment.

These decisions are categorized and arranged in a format setting out the caption, relevant facts, the legal issues, the judgment or ruling in the case and comments on the cases especially on the key decisions or directives arising from the cases. The issues arising are linked to existing work being done in the area by various stakeholders in Uganda; Key policy, legislative and advocacy directions are also deciphered, identified and presented for follow up and further action.

The study makes some key findings that emphasize the need to rethink PIL cases around issues of accessibility; engaging in further research and strategic litigation in some areas of concerns; developing guidelines on how Persons with Mental disabilities should be dealt with in courts of judicature; cleaning up various legislation in a bid to align them to the judicial decisions, the constitution and other international instruments that Uganda has

already ratified; implementing some other recommendations in the decisions that call for immediate release of Persons with Mental Disabilities from illegal detention; and aggressive and systematic sensitization on PWD related matters among others.

1. INTRODUCTION AND BACKGROUND

1.0 Introduction and Background

Persons with disabilities in Uganda form about 12.5% of the population¹ and are among the poorest of the poor with social and environmental conditions largely tilted against their favor.

Uganda ratified the Convention on Rights of Persons with Disabilities (CRPD) and its optional protocol on the 25th of September 2008.² Prior to this monumental development, Uganda promulgated the 1995 Constitution, which recognized and guaranteed the rights of persons with disabilities. Various enabling legislation and policies including the Persons with Disabilities Act, National Council for Persons with Disabilities Act, Equal Opportunities Act among others have been enacted and a National Policy on Persons with Disabilities put in place as an exhibition of its commitment to protection of the rights of persons with disability and to ensure that persons with disabilities fully realize their potentials and enjoy their

A baseline survey commissioned by National Union of Disabled Persons of Uganda (NUDIPU) in 2013 on access to justice observed that 54% of PWDs do not report violations of their rights to any authority largely due to lack of awareness of their rights to access justice. It further observed that there were few Public Interest cases on disability issues and that non-implementation of the existing laws and policies is a key reason for violation of these rights.

In exercise of and the enforcement of the rights and freedoms enshrined in the Constitution and other legislation, various stakeholders ranging from the state, individuals or groups of persons and civil society actors have taken legal action against various violators of the rights of PWD's. The few legal actions have yielded judicial decisions that have exposed the underlying sentiments and attitudes in the advancement of the rights of PWDs through litigation and perhaps helped to unearth critical challenges faced by PWDs in accessing to justice and broadly advocating for their rights in Uganda.

These few judicial decisions, without a doubt have the force of law, are instructive, informative and buttressed in well researched legal opinion that is valuable for informing policy, legislative and advocacy directions though they have remained scattered and some hard to find owing to the lack of well-developed law reports in which these cases could be developed. A case digest that assembles such decisions is thus called for.

1 National Census 2014, Final Results. See also <http://www.ubos.org/2016/03/24/census-2014-final-results/> extracted on July 19, 16

2 Ngirabakunzi Edson, Latest development on Human Rights and Disability in Uganda, Disability Rights in Uganda - Research Blog, http://disability-uganda.blogspot.ug/2012_02_01_archive.html extracted on July 19, 16

1.2 Problem Statement

Litigation has been one the means through which aggrieved persons can enforce their rights using courts of judicature. The state, individuals, groups of individuals and the civil society organizations (CSOs) including Disabled Persons Organizations (DPOs) have over the years vehemently protected, enforced and advocated for the rights of PWDs through litigation in various courts of judicature. The record of the number of cases has been unascertained and they have been scattered in the various court achieves, most of them not reported in the existing law reports and thus are hard to find. The cases have dealt with different legal issues of concern to the stakeholders of the disability movement in Uganda however, what these issues are and how effectively they have been resolved has remained mystical.

The desire to continually and effectively gain milestones in the disability movement demands for a more organized and strategic mechanism in which litigation and advocacy is conducted from a more informed position requiring knowledge as with scientific precision of the depth of litigation of PWD related cases; issues that have already been litigated on; compilation of existing judicial decisions to ease legal research in furthering public interest litigation; and the need to implement existing decisions that can advance the disability movement through devising strategies and plans to achieve such progress.

These challenges and opportunities augmented by the desire to inform and direct policy and legislation, strategic Public Interest Litigation and advocacy in PWD related issues calls for this paper and a case digest.³

1.3 Scope of the Study

This paper attempts to analyze and digest all judicial decisions touching PWD related issues in all courts of record in Uganda.

1.3.1 Geographical and other Jurisdiction

The decisions gathered and analyzed are Ugandan judicial decisions arising from all courts of record⁴ in Uganda. This means they are drawn from all divisions and circuits of the High Court, the Court of Appeal, the Constitutional Court and the Supreme Court of Uganda.

3 A case digest is a major means of accessing case law by topic. It is both a subject index and a topical outline of case law. With rare exceptions, court reports are issued in chronological order. It not only lists the cases dealing with a specific subject, it also briefly summarizes or “digests” the opinions reported in those cases. See <http://lawlibguides.byu.edu/c.php?g=315332&p=2106925> visited July 20, 16

4 The Constitution of Uganda sets out the Supreme Court, the Court of Appeal and the High Court of Uganda are the superior courts of record and shall each have all the powers of such a court. (See Articles 129(2) of the Constitution of the Republic of Uganda, 1995.) See Also The Hierarchy, composition and function of courts in Uganda, extracted from <http://lawschoolguide.blogspot ug/2011/03/heirachy-composition-and-function-of.html> on July 20, 16

1.3.2 Time Scope

The decisions considered herein are not limited in terms of time as the range from the most recent decisions to the oldest of decisions as can be found.

1.4 Objective of the Case Digest

The general objective of the case digest is to ascertain key legal issues that have been litigated on in Uganda and to guide future strategic Public Interest Litigation and advocacy drives in the disability movement in Uganda.

1.4.1 Specific Objectives

The specific objectives of the case digest are: -

- i) To assess what issues have been litigated on or not in the various cases related to PWDs in Uganda;
- ii) To assess and inform the actions that can be taken to implement directives, and decisions in the existing court decisions;
- iii) To inform policy and legislative direction and continued civic sensitization on PWD related issues;
- iv) To ensure ease in legal research on PWD rights in Uganda;
- v) To assemble and Compile into one well referenced document/digest, all cases that have been decided about PWD related issues in Uganda that are scattered in the various courts within the Country; and
- ix) To guide in the choice of Public Interest Litigation (PIL) cases the Network can consider so that –it is more strategic with the cases it undertakes to pursue.

1.5 Research Methodology

The methodology for this study is largely qualitative basing on desk review of all judicial decisions in Ugandan courts of record that relate to and focus on PWD issues. The existing judicial decisions were sought through review of online resources, various law reports, visiting court registries and employing services of court staff to source the cases. Before embarking on the research process, a concept note was developed and approved by the thematic group to define the scope of the research and development of the case digest. Focused discussions were held by the research team to discuss the context, language, format and the scope of the case digest.

1.5.1 Data Management and Analysis

The data gathered from the desk review was organized based on key thematic areas like

criminal, elections, constitutional petitions, and civil cases among others. They were then reviewed and organized into a tabular format containing the key aspects of citation, date, parties, judge or Coram, court, facts, issues, decision, and obiter dictum among others.

1.5.2 Study Limitation

The major limitations in conducting this research anchored on the difficulty to find the judicial authorities. Various cases relating to PWDs except a few that had been recently decided and involved key stakeholders were scattered and unreported. It thus took time to locate and review within a limited time bound.

1.6 Format of the Case Digest

The Case Digest provides a written summary of all PWD related cases; Identifies all legal issues dealt with in each of the cases; the various arguments articulated before courts; the decision of the courts on all legal issues raised; any appeals from the decisions; dissenting judgments if any; instructive obiter dictum.

The case Digest takes the following format

- a) **Caption:** This includes the title of the case, the parties to the case, the date it was decided, the Coram or Judge, and citation.
- b) **Facts:** All the relevant facts of the case specifically relating to PWDs are considered. These facts are relevant facts to the subject matter.
- c) **Issues:** This includes legal issues framed for court to resolve.
- d) **Judgment/Ruling:** This focuses on the decision of the courts in respect to the issues raised for resolution by the courts.
- e) **Concurring or dissenting opinions:** This part applies only where they exist. This helps to distinguish and offer alternative arguments or issues that should be looked into regarding the subject.
- f) **Obiter dictum:** Where it is instructive or informative on the subject matter. This will help give deeper understanding and knowledge of issues that may have arisen during the trial which are of relevance to legal practice and on the subject.

1.7 Structure of this paper

The structure of this paper has four parts. Part One is the introduction and background of the study, the problem statement, and the objectives, scope of the study and the format of the study. Part Two reviews various literatures at international, regional and national

levels regarding litigating the rights of PWDs through courts of law and its impact in advancing their rights. At international level, various international instruments are reviewed especially the CRPD among others; at regional level Charters, Treaties and other instruments; and at the national level, key legislation is considered. Part Three examines each of the judicial decisions relating to PWDs from courts of record in Uganda. Part Four makes conclusions and recommendations from the findings drawn from the decisions.

2. LEGAL AND POLICY FRAMEWORK

Introduction

Various regulatory and policy framework exists to address the rights of PWDs globally, regionally and even nationally. Uganda has ratified various international and regional human rights instruments that promote the rights of persons with disabilities. The ratification of these international and regional instruments places an obligation on Uganda to conform to the standards of human rights envisaged in the instruments. This part explores the various international, regional and national legal and policy framework that addresses the right to access to justice by PWDs. It focuses on the issues that have been addressed by these grounds.

2.1 International Instruments

2.1.1 The UN Convention on the Rights of Persons with Disabilities (UNCRPD)

This Convention was adopted in 2006 and came into force in 2008. It is both a development and human rights instrument as it promotes the full and effective participation and inclusion of persons with disabilities within society. The convention also marks the so-called paradigmatic change from attitudes and approaches where persons with disabilities were considered objects of charity, social protection and medical treatment to subjects of human rights, able to make decisions on their own behalf, claim their rights and capable of being active members of society. While disability is understood as an evolving concept, the Preamble of the UNCRPD acknowledges “disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”⁵

The UNCRPD expands upon the issues addressed in earlier human rights documents and helps to clarify how States can respect, protect, and fulfill the enjoyment of access to justice by people with disabilities.

Article 4 of the UNCRPD sets out the obligations on states parties. In particular article 4 (3) calls upon state parties to consult and involve persons with disabilities: “In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.” (UNCRPD, 2006)

5 UN CRPD, Preamble (e), 2006

Under Article 12, there is to be equal recognition before the law and that state parties should reaffirm and recognize everywhere the right of persons before the law to ensure PWDs enjoy legal capacity on an equal basis with others in all aspects of life and to devise appropriate measures to provide access by PWDs to the support they may require in exercising their legal capacity. To achieve this, state parties are enjoined to take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects. They must ensure that there is in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.⁶

Article 13 of the UNCRPD guarantees the right of people with disabilities:

- To effective access to justice on an equal basis with others;
- To effective access to justice at all phases of the administration of justice, including at preliminary stages, such as initial investigations;
- To be both direct and indirect participants, including being witnesses;
- To receive procedural and age-appropriate accommodations to facilitate their access to justice.

It specifically provides that States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages; In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.⁷

Article 13 also requires States to provide training to those working in the administration of justice in order to help ensure effective access to justice by people with disabilities. States must respect the right to access to justice by ensuring that State actors (e.g., police, judges, and prison staff) do not interfere with the exercise and enjoyment of access to justice by people with disabilities. States must also protect the right by ensuring that non-State actors (e.g., private attorneys, families) do not interfere with the exercise and enjoyment of the right. Furthermore, States have an obligation to fulfill the right, by taking action to ensure that people with disabilities are able to exercise the right. The provision of disability-related training to those working in the administration of justice is just one example of the type of action required of States by Article 13 to fulfill the right to access to justice.

6 Article 16, id

7 Article 13(1) and (2), UN CRPD

2.1.2 Other International Instruments

The right to access to justice has its foundation in provisions in international law that address the equality of people before the law, their right to equal protection under the law, and their right to be treated fairly by a tribunal or court. These rights are addressed in Articles 6 through 11 in the **Universal Declaration of Human Rights** (UDHR) and are addressed in more detail in Articles 14 – 16 of the **International Covenant on Civil and Political Rights** (ICCPR).

Other treaties address the need to ensure that specific groups are able to enjoy these rights on an equal basis with others. The **International Convention on the Elimination of All Forms of Racial Discrimination** (CERD) and the **Convention on the Elimination of All Forms of Discrimination Against Women** (CEDAW) *are particularly relevant for people with disabilities who may be subject to multiple discrimination, such as women with disabilities and ethnic minorities with disabilities*. For example, Article 5(a) of CERD requires that States “eliminate racial discrimination in all its forms,” and guarantee the right of everyone “to equal treatment before the tribunals and all other organs administering justice.” Article 15 of CEDAW addresses these issues as they relate to women, and requires that States treat women “equally in all stages of procedure in courts and tribunals.”

Although the 1993 UN **Standard Rules on the Equalization of Opportunities for Persons with Disabilities** (Standard Rules) does not expressly address the issue of access to justice, it does address a number of issues that can impact the enjoyment of access to justice by people with disabilities and these include;

- Awareness-raising of the rights, needs, potential and contributions of people with disabilities in society (Rule 1)
- Support services to promote independence and facilitate the exercise of rights by people with disabilities (Rule 4)
- Accessibility to the physical environment, access to information and communication (Rule 5)
- Equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities through provision of adequate accessibility and support services, special attention (Rule 6)
- Employment opportunities through laws and regulations in the employment field that must not discriminate (Rule 7)
- Income maintenance and social security (rule 8); family life and personal integrity (rule 9); culture, recreation and sports and religion (rules 10, 11 and 12)

The rules provide a basis for technical and economic cooperation among states, the United Nations and other International Organizations. The purpose is to ensure that persons with disabilities exercise the same rights and obligations as others within their communities.

2.2 Regional Instruments

2.2.1 The African Charter On Human And People's Rights

Article 2 is to the effect that 'Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.' Article 3 provides for equality before the law and equal protection of the law for every one. The Charter further guarantees the right of every individual to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.⁸

In general terms, it provides for the right to have his/her cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal. No one may be condemned for an act or omission, which did not constitute a legally punishable offence at the time it, was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.⁹

2.2.2 Draft protocol to the African Charter on Human And Peoples' rights on the rights of persons with Disabilities in Africa

Article 1 of the Protocol defines "*Persons with disabilities*" to include those who have physical, mental, intellectual, developmental or sensory impairments which in interaction with environmental, attitudinal or other barriers hinder their full and effective participation in society on an equal basis with others. It provides for equality and non-discrimination on the basis of disability and guarantees equal and effective legal protection against discrimination on all grounds.¹⁰

Article 8 guarantees equal recognition before the law treating persons with disabilities as enjoying legal capacity on all aspects of life and such right should not be violated. PWDs are also guaranteed the support they may require in enjoying their legal capacity, and that such support respects the rights, will and preferences of persons with disabilities and does not

8 Article 5 of the African Charter on Human and Peoples Rights

9 Article 7, id

10 Article 3 of the Draft Protocol to the Convention on Human and People's Rights on the Right of Persons with Disabilities in Africa

amount to substituted decision-making; that safeguards are put in place to protect persons with disabilities from abuses that may result from measures that relate to the enjoyment of their legal capacity; and policies and laws which have the purpose or effect of limiting or restricting the enjoyment of legal capacity by persons with disabilities are reviewed or repealed; the equal right to own or inherit property and are not arbitrarily dispossessed of their property; and to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit among others.

With regard to access to Justice, state parties are enjoined to take all appropriate and effective measures to ensure that persons with disabilities have access to justice on an equal basis with others, including through the provision of procedural, and age and gender-appropriate accommodations, in order to facilitate their effective roles as participants in all legal proceedings.

They should further ensure that traditional forms of justice shall not be used to deny persons with disabilities their right to access appropriate and effective justice. All law enforcement and justice personnel shall be trained at all levels to effectively engage with and ensure the rights of persons with disabilities are recognized and implemented without discrimination and that legal assistance including legal aid to persons with disabilities is provided.¹¹

2.2.3 The African Charter on the rights and welfare of the child

The 26th OAU Assembly of Heads of State and Government in 1990 adopted this Charter on the rights and welfare of the child. Under **Article XIII**, calls for special Care and assistance to mentally and physically disabled children with a view to ensuring their dignity, promoting their self-reliance and active participation in the community.

2.3 The East African Community

Under the guiding principles of the East African Community Disability Policy, all persons with disability are entitled to:

1. Accessibility. The provisions of this policy call for consideration of accessibility as a cross cutting concern. Accessibility should remain an underlying consideration in the built environment, public transport, and communication and information services. This includes access to justice.

2. Dignity and Respect. Their families and service providers irrespective of their sex, age, and social-cultural and economic status shall treat PWD's with dignity and respect.

11 Article 9, *supra* note 11

2.4 Legislation and Policy in Uganda

In Uganda, the following provisions of the **Persons with Disability Act, 2006** relate to the issue of access to justice and dignity for persons with disabilities. The fundamental rights and freedoms enshrined in Chapter Four of the Constitution shall be respected, upheld and promoted by all organs and agencies of government and by all persons in respect to persons with disabilities.¹² It further provides that affirmative action in favor of persons with Disabilities for the purpose of redressing imbalances, which exist against them, should be pursued by government.¹³

Specifically, it is provided under Article 35 of the Constitution that PWDs have a right to respect and human dignity, and the State and society shall take appropriate measures to ensure that they realize their full mental and physical potential. Parliament is enjoined to enact appropriate laws for the protection of PWDs.

In fulfillment of its obligations under the Constitution, the Parliament of Uganda enacted the Persons with Disabilities Act, 2006.

12 Section 32, Persons with Disabilities Act, 2006

13 S.33, id

CASE DIGEST

ITEMS	DETAILS
3.1 Bushoborozi Eric v. Uganda	
CITATION	HCT-01-CV-MC-0011 OF 2015
PARTIES	BUSHOBOROZI ERIC VERSUS UGANDA
COURT	HIGH COURT OF UGANDA AT FORT PORTAL
JUDGE	HON. JUSTICE BATEMA N.D.A

FACTS

The application was brought under section 33, 39 of the Judicature Act and Article 139 of the Constitution of the Republic of Uganda. The applicant had been detained at Katojo Government Prison, Fort Portal in 2002 for the murder of his child whose head he cut off from the neck claiming he was killing a snake.

Trial court found that he was insane and returned a special finding of not guilty by virtue of section 48(1) of the TIA. He was then remanded pending minister's orders as to whether he could be taken for a mental treatment or otherwise dealt with.

It was submitted that for a long a time the minister had never made any orders in respect of the applicant and other previous applicants.

Several applications were also made to the chief justice and principle judge but nothing had been done.

Much as the applicant had been treated and there was proof that he gained mental stability, no order was made for his release.

That there is no specific provision in any law or procedure to apply for the release of prisoners pending the Minister's order. That when the minister fails to issue his/her orders the prison remains stuck with the prisoner and the prisoner cannot lawfully regain his freedom.

ISSUES

Whether the minister is the most proper person to issue judicial orders. Whether the detention of Bushoborozi was a violation of his rights.

JUDGEMENT

There is no procedure provided for returning the prisoner to court for appropriate orders where the Minister has failed or ignored to issue the necessary orders. But s.39 (2) of the Judicature Act provides where in any case no procedure is laid down for the High Court by any written law or by practice, the court may, in its discretion, adopt a procedure justifiable by the circumstances of the case.

Suing the Attorney General for orders of Mandamus will unnecessarily

increase litigation costs when the court can actually still act on the same criminal case file.

The law on Minister's orders under s.48 of the Trial on Indictment Act is such a law that should be construed with modification, adaptations, qualifications and exceptions to bring it in conformity with the Constitutional provisions on judicial powers and the right to a fair and speedy trial before an independent and impartial court established by law.

This is a case, which calls for judicial activism on the part of judicial officers to breathe life into the law in articles 126, 128 and 274 of our constitution.

Under international law, including the UN principles on the protection of persons with mental illness, such individuals as the applicant, are legally entitled to an impartial and expeditious resolution of their cases and appropriate psychological assistance.

Dumping persons with mental illness in prison for years without resolution of their cases is cruel, inhuman and degrading treatment contrary to article 24 of our Constitution.

It is unjustified for the Minister to fail to issue a discharge order for a prisoner who was acquitted of charges of Murder by reason of his or her insanity and more so where, after treatment, he is declared to be no longer insane.

The main purpose for the minister's orders would be for ensuring proper medical and other treatment of the criminal lunatic.

A judge of the High Court can ably and legally exercise inherent powers of the court to order for the proper medical and other treatment of the criminal lunatic.

The High Court, instead of the Minister, can receive and act upon periodic reports from the prison or mental hospital keeping and treating the prisoner and act upon them.

The provisions of the law that gave the Minister such powers can safely and constitutionally be construed to be the powers of court under article 126 and 274 of the Constitution.

The trial court retains the power to issue special orders for the confinement, discharge, and treatment or otherwise deal with the prisoner that is insane or has ceased to be insane.

The criminal file remains open pending the judge's special orders. It is not done with until all is done with the prisoner.

The orders to be given after the trial of a prisoner, must be judicial orders relating to the execution of the treatment, continued detention of the person with mental disability or discharge of that prisoner.

Any court waiting for the minister's orders is giving away the independence of the judiciary and is in one way or another accepting to be ordered around by the Minister who, as experience has shown, is too busy to issue the orders.

Courts should not allow any law or practice that ousts the jurisdiction of court or hold the courts at ransom in judicial matters.

The following procedures are recommended: -

Where the trial court makes a special finding that the criminal lunatic is not guilty by reason of being insane, the judge must make special orders as to the discharge or continued incarceration of the prisoner in an appropriate place;

The trial court must order, in line with subsection (4) of section 48 of the T.I.A that the superintendent of the mental hospital, prison or other place detaining the prisoner makes periodic reports to the court which may issue appropriate special orders for the discharge of the criminal lunatic or otherwise deal with him or her;

The Registrar of the Court shall periodically, and in any case not later than three years from the date the last court order or report from the institution keeping the prisoner, make a production warrant for the prisoner and present the case file before the High Court or other court of competent jurisdiction for appropriate special orders;

The registrar may appoint Counsel on state briefs to assist court in revisiting the cases pending the judge's special orders.

Law reform in the laws relating to criminal lunatics remanded pending the Minister's orders is called for.

The Deputy Registrar at Fort Portal is directed to serve a copy of the ruling to the Rules Committee and the Principle Judge with a view of prompting the development of some rules and or practice directions along the recommendations set in the Judgment.

The applicant having been kept on remand for an unjustified period of 14 years in clear violation of his human rights and should be set free forthwith unconditionally.

KEY POINTS TO NOTE AND COMMENTS

For future applications regarding production of persons with mental disabilities in courts of law, an order for Mandamus will unnecessarily increase litigation costs. Applications by way of Miscellaneous Causes using Notices of Motion are most appropriate.

The Minister does not enjoy judicial power to discharge or place anyone under detention.

The power to detain or release a person under trial is a judicial, which

constitutionally belongs to the courts of law.

The High Court, instead of the Minister, can order for proper medical and other treatment, receive and act upon periodic reports from the prison or mental hospital regarding a person with mental disability.

ITEMS	DETAILS
3.2 CEHURD and another v. Attorney General	
CITATION	CONSTITUTIONAL PETITION NO. 64 OF 2011
PARTIES	CENTRE FOR HEALTH, HUMAN RIGHTS AND DEVELOPMENT (CEHURD) AND IGA DANIEL VERSUS THE ATTORNEY GENERAL
COURT	CONSTITUTIONAL COURT OF UGANDA
CORAM	JJCC REMMY KASSULE; ELDAD MWANGUSYA; FAITH MWONDHA; RICHARD BUTEERA; SOLOMY BALUNGI BOSSA

FACTS

The petition was filed to contest the constitutionality of laws, practice and usage towards persons with mental disabilities in criminal justice system embodied in provisions of s.45 (5) and 86(2) of the Trial on Indictments Act Cap 23 and section 130 of the Penal Code Ac cap 120.

The petitioners allege that Uganda has ratified a wide range of international and regional human rights treaties relating to the protection of rights of persons with mental disabilities.

That the impugned sections regarding procedure in case of insanity or other incapacity of an accused person or the victim use derogatory language which are unconstitutional in as far as they run contrary and against Article 20, 21(1), (2) and (3), 23, 24, 28 and 35 of the Constitution of Uganda.

Specifically that section 82(6) of the TIA is discriminatory in so far as it provides that if an accused is acquitted, he or she shall be immediately discharged from custody unless he or she is acquitted by reason of insanity thereby setting different treatment between other people and persons with mental disabilities contrary to Article 21 of the Constitution.

S.45 (5) of the TIA adjudges a person who is not proven guilty as a criminal by referring to him as a criminal lunatic contrary to Article 28(3) of the Constitution.

S.130 of the PCA is unconstitutional so far as it refers to persons with mental disabilities as idiots and imbeciles as the same discriminates on the ground of disability contrary to Article 21 of the Constitution.

S.130 of the PCA is unconstitutional in so far as it refers to persons

with mental disabilities as idiots and imbeciles and as such subjecting them to inhuman and degrading treatment contrary to Article 24 and 35 of the Constitution among other claims.

ISSUES

Whether S.45 (5), 82(6) of the TIA contravene the right to liberty and freedom from discrimination of the persons with mental disabilities guaranteed under Article 23 and 21 of the Constitution

Whether s.130 of the PCA contravenes the right to dignity of persons with mental disabilities guaranteed under Article 24 of the Constitution

Whether s.130 of the PCA contravenes the right to freedom from non-discrimination guaranteed under Article 21 of the Constitution.

JUDGMENT

In preliminary observations court observed that the impugned provisions of the law simply prescribe detention of mentally disabled persons for long and indefinite periods without subjecting such detention to due process.

They also denigrate the personal integrity and dignity of mentally disabled persons by referring to them as ‘idiots’ and ‘imbeciles’ thereby contravening the constitution.

Regarding inquiry as to the insanity of an accused person court noted that: ‘This in our view requires medical evidence, preferably from a psychiatrist, regarding the status of the mind of the accused. The accused on his/her part, if he/she is able, should also be given an opportunity to be heard.’

Before any decision is made that affects a fundamental right or freedom of any person, such person must be given an opportunity to be heard.

We consider that the language s.45 (5) of the TIA poses a problem in this regard. The import of subsections 2, 3, 4 of section 45 of the TIA is that the court is given latitude to postpone the inquiry until anytime up to the opening of the case for the defense, if it is expedient to do so and it is in the interests of the accused persons. If the accused person is acquitted at that stage, the court need not go ahead with the inquiry.

After inquiry, if the court is of the opinion that the accused is not capable of making his or defense, the court is obliged to postpone the trial and order that he/she should be detained in safe custody in a designated place.

The phrase ‘criminal lunatic’ is unfortunate for various reasons. First that mental illness/impairment is a disability.

The potential of persons living with disability cannot be realized if their dignity is not secured.

The language used in all statutes must respect the dignity of such persons, and indeed of all individuals. It must uphold their equality with other persons.

We observe that under Article 35 of the Constitution, the state and society are obliged to take appropriate measures to realize the full mental and physical potential of persons living with disability; and that s.32 of the Persons with Disability Act obliges all organs and agencies of government and all persons to respect, uphold and promote the constitutional rights and freedoms of persons with disabilities enshrined in Chapter four of the Constitution.

We find that the language of s.45 (5) of the TIA is derogatory and thus contravenes Article 24 of the Constitution that provides for respect for human dignity and protection from inhuman treatment. It strips mentally disabled/impaired persons of dignity.

Section 45(5) of the TIA gives different treatment to persons with mental illness/impairment from other people with or without disabilities in that it imputes criminality on the person of the mentally ill/impaired who has not been adjudged a criminal. This is discriminatory.

Uganda, being a signatory to both the UNCRPD and the African Charter should have taken and ought to take steps to align section 45(5) of the Trial on Indictments Act with the Constitution and with its international obligation.

Our judgment is that the presumption of innocence should apply to all without discrimination.

The term 'criminal lunatic' imputes to the mind of the accused guilt for an offence for which he/she may not have been fully tried. This contravenes the constitutional principle of the presumption of innocence embodied in article 28(3) of the Constitution.

The process of determining whether or not an accused person should be detained should be left to the trial court only. Such detention should be strictly for medical treatment. It is the court that should also determine when the accused is ready to stand trial or be released to the community based on concrete medical evidence provided by a psychiatrist.

The entire procedure to declare a person unfit for trial, the duration and place of his detention, and the time when he/she should be released should be determined by the court, after full inquiry based on medical evidence, in full compliance with due process.

We therefore conclude that the Minister is procedurally and substantively not a competent person to certify the deprivation of the liberty of the alleged mentally ill accused person without first seeking medical advice and without according the affected person a hearing.

The consequence of the current procedure is that it contains great potential for injustice as it may deprive an accused person of personal liberty for an indefinite period of time. There is a very real risk of mentally disabled persons disappearing in the criminal justice system without proper standards being set for involuntary confinement and procedures for review.

We find that section 45(5) of the TIA contravenes Article 20, 21(1), (2) and (3), 23, 24, 28 and 35 of the Constitution.

Regarding s.82 (6) –we consider that the reason such a person is detained is because he/she is found to have committed the act that would amount to an offence if he/she was of sound mind, but is only acquitted because he/she is deemed not to have known what he/she was doing or that it was wrong.

It is therefore not discrimination to detain such a person, as the purpose for the detention is not punishment for any offense but it is for the person's security, safety and health care as well as the security of the community.

What needs to be put in place is a process of review of the detention of such a person so that he/she is not detained indefinitely.

We accordingly modify s.82 (6) to cater for the purpose of the detention, the duration of the detention, and for the place of the detention.

The objective of s.130 is to safeguard women and girls who are mentally handicapped from being sexually abused. However, the language 'idiot' and 'imbecile' used to describe women and girls who are mentally handicapped is dehumanizing of these people.

The words 'idiots' and 'imbeciles' are derogatory and detract from the dignity that should be accorded to all disabled persons under Article 24.

We find that striking out the section would leave mentally handicapped/disabled women and girls unprotected.

Section 45(5) of the TIA is unconstitutional in as far as it adjudges a person who is not proven guilty as a criminal by referring to him/her as a criminal lunatic contrary to article 28(3)(a) of the Constitution.

Section 82(6) of the TIA is modified in accordance with article 274 of the Constitution to read as follows:

a) The trial Court is to order for the detention of such a person for a specific period, for purposes of care or treatment of that person by a qualified psychiatrist or other qualified medical officer, in accordance with article 23(1) of the Constitution.

b) The period of detention is to be specified in the order of detention and is to be periodically reviewed by court to ascertain the mental status of the detained person based on medical evidence from psychiatrist or other qualified medical officer.

c) When the court is satisfied that such a detained person is mentally fit, and is no longer a danger to him/herself and /or to the community, it may order for his/her release.

The words ‘idiot’ and ‘imbecile’ that appear in s.130 of the PCA are declared to contravene articles 20, 21(1), (2), and (3), 23, 24, and 35 of the constitution by reason of their being derogatory, dehumanizing and degrading. They are accordingly struck out from section 130 of the PCA.

Section 130 is modified in accordance with Article 274 of the constitution to read as follows:

‘Any person who knowing a woman or girl to be mentally ill or mentally impaired, has or attempts to have unlawful carnal knowledge of her under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offense that the woman or girl was mentally disabled or mentally handicapped, commits a felony and is liable to imprisonment for fourteen years.

S.130 of the PCA does not violate the right to freedom from discrimination under Article 21 of the Constitution.

The state is directed as a matter of urgency:

a. To review the status of persons with mental disability so that they are removed from jails and prisons and are instead taken for care and treatment in appropriate places.

b. To review and amend the TIA and the PCA with a view to providing clarity on how people with mental disabilities amounting to insanity should be handled through the criminal justice system, in accordance with and in compliance with the constitution and this judgment.

There are no orders as to costs.

KEY POINTS TO NOTE AND COMMENTS

The legal provisions dealing with persons with mental disabilities in the criminal justice system simply prescribe detention of the mentally disabled persons for long and indefinite periods without subjecting such detentions to due process.

The provisions denigrate the personal integrity and dignity of mentally disabled persons by referring to them as ‘idiots’ and ‘imbeciles’, which contravenes the constitution.

Inquiry into the insanity of an accused person requires medical evidence, preferably from a psychiatrist, regarding the status of the mind of the accused. The accused person, if he/she is able, should be given an opportunity to be heard. (This is a significant decision as most often, persons with mental disability are ignored in a blanket manner without their views being sought.)

Besides the psychiatrist, a psycho-social counselor should be involved to assess whether the accused can be treated or socially integrated into the community and be granted bail to ensure that the accused's right to bail is not denied simply on account of his/her mental disability.

Before a decision is made that affects a fundamental right or freedom of any person, such person must be given an opportunity to be heard. The difficulty expressed by courts is where the accused is incapable of making that decision; they lose that right at that moment. But requiring regular reporting to court by the medical and prison officials on the progress of treatment or other psychosocial counseling should be used to give a fair and balanced decision.

The language used in all statutes must respect the dignity of persons with mental disabilities. The current language used is derogatory, and strips mentally disabled/impaired persons of dignity. The language should be amended but much more there are other areas of the law that must be reviewed and amended.

The law as is gives different treatment to persons with mental disability from other persons without disabilities in that it imputes criminality on persons with mental disability who have not been adjudged a criminal –it is discriminatory. The presumption of innocence should apply to all without discrimination.

The decision emphasizes the central role that trial courts should play in detaining persons. This decision technically erodes the Minister's role in ordering the detention of persons with mental disability. In fact, the Minister is procedurally and substantively not a competent person to certify the deprivation of the liberty of the alleged mentally ill accused person without first seeking medical advice and without according the affected person a hearing. The provisions of Ministerial orders are now struck down; these need to be followed with amendment of the statutes to reflect this decision.

However, it is note worthy, reading through the judgments, that medical treatment of persons with mental disability is emphasized as against other interventions. It reveals the rather hostile attitude of the society and laws towards PWDs in general that needs to be changed through sensitization over and above the legal process.

The proposed provision in s.130 of the PCA doesn't seem to recognize the rights of Persons with mental disability to explore and express their

own sexuality. At what point can a person with mental illness be said to be freely exploring or expressing their own sexuality without their partner being held criminally liable? In light of Articles 21 and 24 of the Constitution, aren't persons with mental disabilities being treated unequally and discriminatively when it comes to them exploring and expressing their sexuality?

Protectionism is depicted in the decision. There is need to strike a balance between protecting people with disabilities from exploitation and them exploiting their opportunities in expressions of themselves. How can persons with disabilities be protected without their rights being taken away from them?

ITEMS	DETAILS
3.3 Crane Bank Ltd v. Commissioner General Uganda Revenue Authority	
CITATION	HCT-00-CC-CS-0106/2009
PARTIES	CRANE BANK LTD VERSUS COMMISSIONER GENERAL UGANDA REVENUE AUTHORITY
COURT	HIGH COURT OF UGANDA (COMMERCIAL DIVISION)
JUDGE	HON. MR. JUSTICE MASALU W. MUSENE

FACTS

The Plaintiff, a company carrying on the business of providing banking services, and has a year of income running from the 1st day of January to 31st December every year. Between 17th day of November 2008 and the 12th day of January 2009, the plaintiff hired/employed 12 persons with disabilities.

It was contented for the plaintiff that the Persons with Disabilities Act 2006 applied to all private employers employing 10 or more persons at the time it was subsisting. That the law did not provide for a minimum time for which the persons with disabilities should be employed. That persons with disability Act applied to all businesses and persons in Uganda irrespective of what any other law provided and the Act became relevant to the Plaintiff from the time the plaintiff employed 10 people.

Thus on the 9.12.2008, the plaintiff wrote to the Defendant and claimed a 15% tax deduction under section 17 of the persons with disabilities Act, 2006 and section 22 (i) of the Income tax Amendment Act.

The defendant by a letter dated 28th January 2009 rejected the claim on the ground that the Plaintiff is not entitled to the tax deduction since their year of income commenced on 1st January 2009 and not on or after July 2008. The defendant further argued that the PWD Act doesn't apply to the Plaintiff's claim as s.17 of the Act had been repealed under the Income Tax (Amendment) Act (No.2) of 2008. The plaintiff sued

the defendant. At the scheduling conference, the following issues of relevance to PWDs were raised.

ISSUES

Whether the persons with Disabilities Act, 2006 is applicable to the plaintiffs claim for a tax deduction.

What remedies are available in the circumstances?

JUDGMENT

The court observed as follows:

The main purpose of the law (PWD Act) was to address the affirmative action with regard to persons with disabilities.

The following grounds had to be satisfied before the 15% deduction is considered these are: such employees' are people with disabilities; they should either be regular, apprentice or learner employees; they should be on full time basis; and the claim for tax deduction should first be presented to URA for proof.

That by the time the plaintiff wrote to the defendant claiming a 15% Tax deduction, the Act No.2 of 2008, which repealed section 17 of People with Disabilities Act, was already in force.

I am therefore obliged to agree with the submissions of counsel for the Defendant that section 17 of the People with Disabilities was repealed by section 5(f) of the Income Tax Amendment Act, No. 2 of 2008, and is therefore not applicable to the claim by the plaintiff. I accordingly find the 1st issue in the negative.

KEY POINTS TO NOTE AND COMMENTS

This law was rightly challenged on grounds that parameters for the quality of employment and standard of employment was not specified leaving PWDs prone to abuse by companies seeking to profit from tax reductions.

The Plaintiff attempted to use a provision that allowed tax rebates for employers who employs over 10 PWDs. This law was rightly repealed, as it was going to turn PWDs as objects or rather means for profitability for profit making companies without exactly looking at their rights and constitutional guarantees for equality before the law and freedom from discrimination on grounds of disability among others.

Any such prospects in the future should consider the level of employment; have some minimal tax rebates besides having in place clear regulations to enforce such pro- PWD laws.

ITEMS	DETAILS
3.4 Kasozi Robinson v. Attorney General; LAPD v. Attorney General; Moses Mauku and Another v. Attorney General	
CITATION	CONSTITUTIONAL PETITION NO. 37/2010; 40/2010; 48/210
PARTIES	KASOZI ROBINSON VERSUS THE ATTORNEY GENERAL, LEGAL ACTION FOR PERSONS WITH DISABILITY VERSUS THE ATTORNEY GENERAL, MOSES MAUKU & ANOTHER VERSUS THE ATTORNEY GENERAL
COURT	THE CONSTITUTIONAL COURT OF UGANDA
CORUM	JJA: A NSHIMYE, R KASULE, R OPIO, R BUTEERA & F. EGON-DA-NTENDE

FACTS

All the three petitions were filed in 2010 challenging the constitutionality of different aspects of the law relating to the election of special interest groups to Parliament. The various applications were not disposed of in time as required by the Constitution, which it referred to as a 'regrettable lapse' and is simply not acceptable.

Under Petition No. 37 of 2010 it is alleged among others that sections 8 (4) (b), (c), (d) and (e) of the Parliamentary Elections Act; SI No. 31 as amended by SI No. 6 of 2011; National Council for Disability (Amendment) Act 2013 and the National Youth Council (Amendment) Act are inconsistent with and contravene Article 78 (4) of the Constitution. It is further contended that the Parliamentary Elections (Special Interest Groups) Regulations SI 31 of 2001 as amended by SI 6 of 2011 is inconsistent with Articles 29(d), (e); 38(1); 61(a); 67(1) and 1(4) of the Constitution.

The 2011 general elections in respect of the workers, youth and persons with disabilities as special interest groups are contended to be inconsistent with and to have contravened Article 29(d) and (e) of the Constitution.

The National Council for Disability (Amendment) Act 2013 and the National Youth Council (Amendment) Act 2010 are challenged for being inconsistent with Articles 29(e) and 38(1) of the Constitution.

That the constitution requires parliament to enact law prescribing the procedure for elections of parliamentary representatives for the army, youth, workers and persons with disabilities.

That instead of prescribing the procedure parliament made law delegating its authority to the minister.

That in respect of person with disabilities the minister prescribed the

procedure to elect members of Parliament in one sentence. The “procedure” does not amount to a procedure intended by Article 78 (4) of the Constitution.

The respondent responded denying the allegations that none of the cited provisions of neither the law nor the actions that have taken place were inconsistent or contravened the provisions of the constitution.

Under Petition No. 40 of 2010 it was alleged among others that,

Section 8(4) of the Parliamentary Elections Act provides for procedures of elections of Members of Parliament representing PWDs which are different from those of other special interest groups including women and youth elected there under and therefore discriminatory.

While members of Parliament representing women are under section 8(4) (a) of the Parliamentary Elections Act, read together with section 6(1) of the National Women’s Council Act, Chapter 318 (as Amended by the National Women’s Council (Amendment) Act, No. 10 of 2010 are elected by secret ballot by all women qualified and registered to vote under a voter’s register maintained by the Electoral Commission. In contrast and in a discriminatory manner, members of Parliament representing PWDs in 2011 were elected under section 8(4) (e) of the Parliamentary Elections Act, read together with Regulation 10 of the Parliamentary Elections (Special Interest Groups) Regulations, 2001 by an unelected Electoral College of National Union of Disabled People (NUDIPU) and without a voter’s register maintained by the Electoral Commission.

Additionally, unlike women and the youth who solicit for voters only in their designated geographical constituencies, contestants for the position of member of Parliament for persons who contested to represent PWDs during the 2011 elections were forced to traverse the whole country soliciting for voters since they were to be elected by all members of the Electoral College referred to in the Regulations of the Parliamentary Elections (Special Interest Groups), drawn from each district from organized associations and groups under the structures of NUDIPU and those contestants who could not afford were disadvantaged. Section 31A(1) read together with Schedule A of the National Council for Disability Act (as amended) has not cured this constitutional anomaly.

Regulation 10 in effect forced any PWD who in 2011 wished to be a member of the Electoral college referred to hereinabove to be a member of an association or group that is affiliated to the NUDIPU, which was contrary to and against Article 29(1)(e) of the Constitution and excluding PWDs who were not members of association or groups affiliated to the NUDIPU violated their right to vote and be voted and was against Articles 50(1) and 38(1) of the Constitution.

In 2011, NUDIPU neither operated in all nor had affiliates in all districts in Uganda, which excluded PWDs in districts not covered by NUDIPU or its affiliates, thereby infringing on the rights to vote and participate in the affairs of Government under Articles 38(1) and 59(1) of the Constitution of PWDs outside the covered districts.

The election of members of Parliament through an Electoral College not based on demarcated constituencies but on the basis of the structures of the NUDIPU and its affiliates is contrary to and against the provisions of Article 63 of the Constitution.

The conduct of elections through an Electoral College, which was convened in Kampala, required that the PWDs be transported to Kampala, which not only excluded those who were unable to travel, but also greatly inconvenienced those who travelled owing to their disabilities thereby infringing on their right to respect and human dignity guaranteed by Article 35(1) of the Constitution.

Placing election matters in the hands of a non- governmental organization which is not a statutory body but functions under its own constitution as was done in 2011 is an abrogation by Government of its Article 59 (3) constitutional obligation to take all necessary measures to ensure that all citizens qualified to vote register and exercise their right to vote.'

ISSUES

The major issue for determination is whether section 8(4) (b) (c) (d) and (e) of the Parliamentary Election Act is inconsistent with and contravenes Articles 29(e) and 78 (4) of the Constitution.

Whether section 8(4) (e) of the Parliamentary Elections Act, 2005 and Regulation 10 of the Parliamentary Elections (Special Interest Groups) Regulations 2001 as used to hold elections in 2011 violated and were in contravention of Articles 20(2); 21(1) (2) & (3); 24; 29(1) (e); 35(1) and (2); 45; 59(1); 61; 62 and 63(1), (3) & (4) of the Constitution, rendering the whole electoral process for persons representing PWDs in Parliament unconstitutional

Whether section 31A of the National Council for Disability Act, 2003 (as amended) read together with Schedule A of the same Act is in contravention of Articles 20(2); 21(1), (2) & (3); 24; 29(1) (e); 35(1) and (2); 45; 59(1); 61; 62 and 63(1), (3) & (4) of the Constitution

Whether a permanent injunction should issue directing the first and second respondents not to conduct elections or engage in any electoral process for PWDs under the provisions of the National Council for Disability Act, 2003

JUDGMENT

Prior to the enactment of The National Council for Disability (Amendment) Act, Act 6 of 2013 the election of representatives of this partic-

ular special interest group were governed by section 8(4) (e) of the Act 17 of 2005, SI No. 30 of 2001 as amended by SI No. 6 of 2011

Parliament complied partly with its duty and partly delegated the rest of its duty to the Minister. It defined that elections will be by way of electoral colleges which it had authority to do. However, in delegating to the Minister the authority to determine composition of the Electoral College, Parliament exceeded its authority.

Guidance as to the extent of the duty of Parliament can be derived from Article 78(3) of the Constitution where the Constitution itself determines the procedure for the election of members of Parliament provided under Article 78(1) (a).

In the impugned provision it is left to the Minister to determine who will vote or participate in the election of members of the Electoral College. This duty did not belong to the Minister. It was conferred upon Parliament and Parliament was to do so by law. It could not delegate the same.

We would therefore find that the impugned provisions were unconstitutional.

Parliament promulgated Act 6 of 2013, which introduces ‘Part VA’ dealing with the election to Parliament of representatives for persons with disabilities. The provisions are compliant with the right to freely associate in relation to political parties. Elections shall be by way of electoral colleges, which are clearly defined. The Electoral Commission manages the elections. We do not see how these provisions contravene Articles 29(1) (e); 38(1) or 78(4) of the Constitution in anyway.

The 2011 elections for persons with disabilities were conducted in accordance with the structures of a voluntary non-governmental organization as directed by the Minister. This organization is the third respondent. Clearly, in substance, the elections were restricted to members of this voluntary organization. If one did not belong to this organization, it was not possible to participate in this election. In effect people with disabilities that were not members of this organization were unconstitutionally disenfranchised contrary to Article 59 of the Constitution.

The Constitution required Parliament to enact law that would provide the procedure for electing representatives of people with disabilities. The law in force in 2011 provided for a voluntary non-governmental organization to form the Electoral College and elect its members to represent people with disabilities. In doing so, non-members of NUDIPU who are people living with disabilities, had no opportunity to participate in this election unless they opted for membership of this private organization. This would certainly infringe the right to freely associate under Article 29 (1) (e) of the Constitution.

It was open to Parliament to prescribe different procedures for each special interest groups as long as those procedures conform to the Constitution. The mere fact that procedures for each group may be different in certain respects is not necessarily evidence of discrimination. This depends on other considerations possibly including the population of the special interest group in question.

Court did not agree that the impugned provisions in so far as they constituted one national Electoral College with representatives from the whole country was contrary to Article 24 and amounted to inhuman and degrading treatment for some of the intending candidates as they had to traverse the whole country to campaign. It may be inconvenient or expensive for some intending candidates. This does not render the same inhuman and degrading treatment. It also does not infringe the right to respect and human dignity for disabled people provided for under Article 35(1) and (2) of the Constitution.

There is no emerging right articulated that is missing from Chapter 4 which is purported to have been infringed by the impugned provisions.

In so far as they disenfranchised people with disabilities that did not belong to NUDIPU for the election of 2011 the said provisions were contrary to Article 59 (1), (2) and (3).

A voter, whether under universal adult suffrage, or under any other mechanism or procedure set up by Parliament may have to be registered on that voters' register. There is no requirement for separate registers for each special interest group, though of course, there are qualifications necessary to belong to each special interest group, which are the sine qua non for participation of such persons in the elections of representatives for each special interest group. This information would presumably have to be captured in the voters register maintained by the Electoral Commission under this Article, where such persons presumably qualify to be on the voters' register. The impugned provisions did not infringe article 61(e) of the Constitution.

Article 63 read as a whole, deals with constituencies for election of directly elected members of Parliament ... and is not applicable to constituencies for special interest groups. It is not applicable to special groups and could not have been contravened.

The National Council for Disability Act creates a statutory body that is open to all disabled people. If one wishes to participate in elections for persons with disabilities one has to comply with what is set out in the law, which Parliament has set in place for the purposes of electing representatives of people living with disabilities. This law does not contravene Article 29(1) (e) merely because an individual chooses to exercise his / her right not to participate in such statutory organization. For as long as he / she is not compelled to participate, Article 29(1) (e)

is not infringed. The law is compliant with Article 29 (1) (e) for, as long it does not compel the individual to participate.

Where the Parliament has determined that the structures of such statutory organization (National Council for Disability) provide the most practical avenue for choosing the Electoral College that will elect the representatives of the people with disabilities, it is important that such structures be open to the voluntary participation of all people with disabilities. Once the structures are open to all members of the special interest group, there can be no question of disenfranchisement under Article 59 of the Constitution.

No case has been established upon which a permanent injunction could issue against the respondents in relation to the holding of the elections of representatives for people living with disabilities in relation to the law now in force.

KEY POINTS TO NOTE AND COMMENTS

In substance, the elections of representatives of PWDs were restricted to NUDIPU, a voluntary organization. If one did not belong to this organization, it was not possible to participate in the elections. PWDs that were not members of NUDIPU were unconstitutionally disenfranchised.

It is not clear if the recently conducted election was not influenced largely by persons who were closely linked to the organization.

ITEMS	DETAILS
3.5 Kawooya Ronny v. Uganda	
CITATION	CRIMINAL APPEAL NO. 23 OF 2013 (ARISING FROM MAK/1768 /2011)
PARTIES	KAWOOYA RONNY VERSUS UGANDA
COURT	THE HIGH COURT OF UGANDA AT KAMPALA
JUDGE	HON. MR. JUSTICE LAMECK N. MUKASA

FACTS

Appellant was charged and convicted of assault occasioning actual bodily harm contrary to section 236 of the Penal Code Act Cap 120 and sentenced to four years of imprisonment.

Before hearing started, the defense counsel informed court that the accused had been examined by a Psychiatrist Consultant at Butabika Hospital and was found to have had a mental illness since 2009.

On 22nd May 2012 the accused was unrepresented and the State Prosecutor addressed court that the accused person had been mad one time but that the medical report doesn't show that on 30th November 2011, when the accused committed this crime he was insane and incapable of understanding when he was committing the offense. That no evidence had been led in court, that when this matter is going to be heard, the accused person cannot understand because of that problem. The state Attorney thus prayed that section 113 to 117 of the MCA do not apply and that court should proceed to hear the case. That in the alternative if the accused purports that he is not able to understand what is taking place in Court, he is remanded under section 118 of the MCA till such a time when he is able to understand the proceedings.

On 27th July 2012 the case came up for hearing, the accused was unrepresented and court proceeded to hear evidence of three prosecution witnesses.

On 24th October 2012 the Accused was absent and his father, his surety reported that the Accused had disappeared from home for three days. The State Prosecutor applied to proceed to give evidence in the absence of the accused or his lawyer. On 6th November 2012, the accused appeared in court on a warrant of arrest and was remanded. The prosecution on 6th December 2012 proceeded with the evidence of the fifth witness with the accused unrepresented. On 18th December 2012 the accused was represented and court ruled that the accused be taken to Butabika Hospital for mental examination and treatment. On 1st March 2013 the prosecution noted that upon perusal of communication from prisons, they find that the court may not proceed on grounds the accused is mentally not stable, and prayed that the accused be taken to mental institution for treatment and not to go back to the community in that state. The court ruled to stay proceedings against the accused and referred him to Butabika Mental hospital for examination and treatment.

The trial Magistrate ruled that the offense was committed on the 30/11/2011 long after treatment and recovery. She found the accused was of sound mind when he committed the offense and thus overruled the defense of insanity and the accused was required to give his defense. The accused opted for silence.

The Accused appealed against conviction and sentence.

ISSUES

The grounds of appeal are:

The trial magistrate erred in law and fact when she failed to ascertain that the accused was of unsound mind before trial and yet it had been brought to her attention.

The trial magistrate erred in fact and law when she allowed the trial to

proceed in the absence of the accused thereby denying him a chance to be cross examine one of the witnesses.

The magistrate failed to properly evaluate the evidence (medical report on mental disability) on record hence coming to a wrong conclusion.

JUDGMENT

An accused person has a right to a fair trial, he must be able to understand and follow the proceedings. See Article 28 of the Constitution of the Republic of Uganda.

Section 113 of the Magistrates Court Act requires the magistrate to inquire in the unsoundness of the accused and if it's found to be true further proceedings will be postponed. However, section 116 MCA states that if the accused is of sound mind at the time of the trial the proceedings will continue despite the fact that at the time the offence was committed the accused was not of sound mind.

The accused's mental status as at the hearing of the case and his ability to understand and follow the proceedings is of relevance.

The medical report presented earlier as evidence that the accused had improved was not enough to prove the state of mind of the accused at the moment.

The magistrate erred when she did not ascertain whether the accused was of sound mind at the time of the trial since it is required for anyone with a mental disability.

KEY POINTS TO NOTE AND COMMENTS

When a person with mental disability is found not to be able to understand the proceedings against him, he is referred to a mental institution for treatment and not to go back to the community in that state. Proceedings may be stayed against the accused pending such treatment.

The laws and procedures followed in the trial of Persons with Mental Disabilities suppose they are already guilty.

The practice of institutionalizing and considering medical treatment as the only way in which persons with mental disabilities should be dealt with when they can not understand proceedings against themselves in the criminal justice system subjects them to an abuse of other rights such as the right to bail.

Magistrate's courts and prosecutors seem not to fully appreciate the procedure of dealing with cases involving persons with mental disabilities hence often occasioning injustice to them.

A medical report is not enough to prove the state of mind of the accused at the moment of trial. An inquiry must be made into soundness of the accused's mind.

It must uphold their equality with other persons.

The Law Reform Commission and other stakeholders like Parliament must be engaged to follow through with court directives to clean and overhaul and align the language in all statutes with this judgment and the constitution.

ITEMS	DETAILS
3.6 LAPD v. Attorney General and 2 Others	
CITATION	MISC CAUSE NO. 146 OF 2011
PARTIES	LEGAL ACTION FOR PEOPLE WITH DISABILITIES VS. ATTORNEY GENERAL; KAMPALA CAPITAL CITY AUTHORITY AND MAKERERE UNIVERSITY
COURT	THE HIGH COURT OF UGANDA AT KAMPALA
JUDGE	HON. JUSTICE STEPHN MUSOTA

FACTS

Legal Action for Persons with Disabilities filed this Miscellaneous 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 seeking orders that the 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.; 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; and that the respondents do pay the applicants the costs of this application.

The facts deponed to by Norah Kanusu are that the Constitution guarantees affirmative action in favor of marginalized groups including PWDs as well as the right to respect human dignity and enjoins the government and society to take appropriate measures to ensure that PWDs release their mental and physical potential; The PWDs Act 2006 provides for a comprehensive legal protection for PWDs and makes provision for elimination of all forms of discrimination against persons with disabilities towards equalization of opportunities and for related matters 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.

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.

Government bodies and departments such as the Ministry of Gender Labor 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.

As a result, PWDs still do not enjoy their full rights as guaranteed under the constitution of Uganda and have not realized 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.

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 Labor Gender and Social Development to operate in a building which does not have suitable facilities for PWDs.

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.

Buwembo Mulshid further deponed in a supplementary affidavit 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 their reply, the 2nd Respondent's Director of Physical Planning KCCA, stated that because of the mismanagement of affairs at KCCA, physical

planning laws were not strictly complied with which led to the construction of certain buildings in breach of physical planning standards and building regulations; that the Authority has taken actions against persons in breach of the laws and regulations.

The 3rd Respondent's Secretary deponed that it had limited revenue to utilize to accommodate a multitude of students seeking for education facilities and restricting the existing buildings to accommodate the disabled students in accordance with the Act. That it had implemented and carried out measures to enforce the provisions of the Constitution and the Act. That certain offices had been shifted to places easily accessible to PWDs and lastly that it accorded preferential treatment to PWDs by issuing clearance letters to enable them use public transport on the respondent's premises.

ISSUES

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

What remedies are available?

JUDGMENT

Prior to the promulgation of the 1995 Constitution and enactment of PWDs Act, several structures were put in place without due regard to the needs of PWDs.

Both the 2nd and 3rd respondents have provided evidence to show states are being taken to remedy the situation by gradually implementing the Act and restructuring accessibility to their respective structures.

The requirement that all new structures constructed on the 3rd Respondent's premises should adopt a policy in conformity with the provisions of the Act and it is in compliance with S.19 that provides for access to premises to PWDs and S.20 of the Act, which provides for duty to provide access to buildings.

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 favor of marginalized group as provided under Article 32 of the Constitution.

The 3rd respondent has a duty to consider and weigh the competing provisions of the constitutional rights i.e. the right to education and national objectives and directive principles of state policy against the right of PWDs and affirmative action in favor of marginalized groups.

Evidence of competing interest is clearly brought out in the 3rd respondent's affidavit.

The 2nd and 3rd respondents have limited resources to immediately provide what the applicants require. Restructuring the existing build-

ings to accommodate the disabled people or students requires a lot of funds, which is not readily available.

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.

The numerous challenges gone through by PWDs while attending the 3rd Respondent and or working in Kampala 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 PWDs Act, a time when affirmative action was not a policy of government.

Both the disabled and none disabled citizens must equally enjoy their rights.

To rely 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 limitation to the enjoyment of fundamental rights should be none substantial. It should be acceptable and demonstrably justified in a free and democratic society.

The applicants seem to imply that their own rights 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 into account the rights of others as well as public interest.

The measures taken to accommodate the applicants' special concerns reduced the adverse effects on the rights and freedoms of the applicants.

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.

The 3rd Respondent has extended reasonable accommodation to students with disabilities by taking the measures it has taken.

Given that most of the buildings complained of were constructed in 50s through to the late 80s, 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.

The respondents, 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.

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.

Respondents are encouraged to continue and ensure that plans for new buildings take into account the right to easy access to them before they are approved.

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.

Application dismissed with no order as to costs.

KEY POINTS TO NOTE AND COMMENTS

The case reveals the rather hostile attitude of the courts and society at large in prioritizing accessibility issues i.e. accessibility must be considered in light of other 'competing rights' and thus balanced by the activists.

The case reveals the need to prepare Public Interest Litigation cases so that evidence laid on record must be controverted and challenged and not allowed to pass as such can lead to decisions that give a chilling effect on PIL.

ITEMS	DETAILS
3.5 Kawooya Ronny v. Uganda	
CITATION	CRIMINAL APPEAL NO.71 OF 2006
PARTIES	MAGEZI ROBERT VERSUS UGANDA
COURT	COURT OF APPEAL (COURT OF APPEAL OF UGANDA)
CORAM	HON.JUSTICE TWINOMUJUNI, JA, HON.JUSTICE S.B. K KAVUMA, JC, AND HON.JUSTICE M.S. ARACH AMOKO, JA

FACTS

The victim went to cut her hair when the accused/appellant who had a recurring mental problem (at the time of committing the offence as proved by the medical evidence was quite normal as he had finished undergoing treatment.)

The counsel for the appellant prayed that the court take into account the age of the appellant (25yrs) and reduce the sentence to 18yrs

JUDGMENT

Court held that the fact that the appellant was 25years of age was not a mitigating factor as he could tell between what was right and wrong (absence of mental disability at the time of committing the crime)

Despite the fact that his mental state was not clear during the trial, court dismissed the appeal and upheld the sentence on grounds that crimes against children had become a menace.

By upholding his sentence, court was sending a message to the public. Appeal dismissed.

KEY POINTS TO NOTE AND COMMENTS

The fact that the accused's mental state surfaced at the time of trial, court ignored it during sentencing on account of the prevalence of the offense of defilement.

Despite the fact that his mental state was not clear during the trial, court wanted to consider it but decided to dismiss the appeal and uphold the sentence on reasons that crimes against children had become a menace.

ITEMS	DETAILS
3.8 Nyeko Okello and Another v. Centenary Rural Development Bank Ltd	
CITATION	CIVIL SUIT NO. 23/2008
PARTIES	NYEKO OKELLO & SANTO DWOKA VERSUS CENTENARY RURAL DEVELOPMENT BANK LIMITED
COURT	HIGH COURT OF UGANDA AT GULU
JUDGE	JUSTICE REMMY KASULE (AS HE THEN WAS)

FACTS

The plaintiffs, both persons with disabilities and customers of Centenary Rural Development Bank (CERUDEB), sued CERUDEB on the grounds that the bank, including access to the main banking hall, was inaccessible for persons with disabilities. Prior to the suit the plaintiffs had notified CERUDEB about the lack of ramps to facilitate their access to the bank but to no fruition. The plaintiffs sued.

The bank afraid of costs arising from loss of the suit, eventually constructed the ramps.

JUDGMENT

Since the breach had been remedied the judge advised the plaintiffs to settle the matter out of court. A consent judgment was later entered into between the parties with costs being awarded to the plaintiffs however the court awarded no damages.

KEY POINTS TO NOTE AND COMMENTS

Litigation has a positive impact in bringing about change and advancing the cause of PWDs. The litigants however need to be aware of their rights and responsibilities to be able to achieve the desired end of litigation.

ITEMS	DETAILS
3.9 Re: John Edward Kimera (unsound mind)	
CITATION	FC NO.142-2010
PARTIES	RE: JOHN EDWARD KIMERA (UNSOUND MIND)
COURT	HIGH COURT OF UGANDA AT KAMPALA
JUDGE	HON. LADY JUSTICE MARGARET C. OGULI OUMA

FACTS

The application is brought under section 45 of the Mental Treatment Act, cap 279 among other enabling laws. The Applicant sought to be appointed the legal guardian of John Edward Kimera on grounds that she is the biological sister of John Edward Kimera (who was referred to as ‘the sick person’); that the sick person had been a client of TASO since 2006 and as a result of the sickness, HIV/AIDS, he got a mental illness which he has lived with to date (of making this decision) –making him wonder everywhere. That as a result of the mental disability he has not been able to operate his account with DFCU Bank and that the applicant had been operating the account, taking custody of the ATM since the sick person got a mental disorder.

RULING

The High Court has unlimited jurisdiction in matters of lunacy, provided for under s.45 of the Mental Treatment Act, cap. 279

In the exercise of its jurisdiction, the High Court has powers to grant such remedies as are necessary to prevent the abuse of court process.

In view of the fact that the applicant is a biological sister to the sick person and she is the one taking care of him and his 3 children, it will be in best interest and welfare of the sick person is granted to the applicant, so that she legally runs his affairs.

The application is allowed in the following terms: The applicant is appointed the legal guardian of John Edward Kimera. The applicant is

permitted to operate the account number for the benefit of the sick person.

KEY POINTS TO NOTE AND COMMENTS

The case brought under the Mental Treatment Act, 279 reveals the fact that persons with mental illness are continuously deprived of the legal capacity to make decisions regarding their property, family or the control of their finances. In this case, court seemed to rely on reports without the involvement of the person in whose favor the application was brought.

The court absolved itself from exercising a supervisory role in the management of the affairs of the person of unsound mind by not requiring periodic reports on the management of the affairs of the person with mental illness.

The Judge got sucked into the classification of the John Edward as a 'sick person' presupposing that all they required and needed was medical treatment as opposed to taking a human rights approach to the case.

What is the proper law under which an estate of a person with mental disability can be administered? Should that application be made under Mental Treatment Act, Cap 279 or under Administration of Estates of Persons with Unsound Mind Act, Cap 155? Do these legal regimes comply with the constitutional dispensation in which Uganda now operates?

What kind of guardian must be appointed by court? Guardian ad litem' and Next Friend –what roles do they have? (Are they not more pro-litigation?) Exploring these questions and more may be more instructive in the advocacy and PIL strategy adopted and pursued.

ITEMS	DETAILS
3.10 Re: Rhona Kibuka Musoke	
CITATION	HCT-00-FD-MC-0001-2009
PARTIES	RE: RHONA KIBUKA MUSOKE, A PERSON OF UNSOUND MIND
COURT	HIGH COURT OF UGANDA AT KAMPALA
JUDGE	HON. JUSTICE FMS EGONDA-NTENDE

FACTS

Rhona Kibuka Musoke is a single woman 78 years old and is now living and being cared for by one Kamugisha at Namungona near Kampala. She is the daughter of the late Festus Kibuka Musoke and the late Elsie

Nansubuga Kibuka Musoke. The applicants are her relatives. This application is supported by affidavits of Norah Lwanga and Dr. Tom Onen.

Dr. Tom Onen provides medical evidence relating to the unsoundness of Rhona's mind in his affidavit. Dr. Onen is a Senior Consultant Psychiatrist working with Mirembe Specialist Clinic in Kampala. He deposes that he examined Rhona and found her to be a person of unsound mind.

The application is brought by relatives being 2 sisters and a niece seeking to manage Rhona's estate on account of the unsoundness of her mind.

ISSUES

Who qualifies to manage the estate of a person of unsound mind?

The role of court in determining the management of such estate and property

JUDGMENT

The law applicable to the facts of this case is the Administration of Estates of Persons of Unsound Mind Act Cap 155. Section 2 thereof states that court may appoint, among several classes of people, a relative of a person of unsound mind to be the manager of the estate of such person. Court found the applicants on the face of the application qualify either individually or jointly as managers of the estate of Rhona.

The applicants are jointly appointed managers of the estate of Rhona Kibuka Musoke, but shall not without special permission of this court mortgage, charge, or transfer by sale, gift, surrender, exchange or otherwise, any immovable property of which the estate may consist of; lease any such property for a term exceeding 5 years or invest in any securities other than those authorized by the Trustees Act.

The managers shall not invest any funds belonging to the estate of which they are managers in any company or undertaking in which they or any one of them has an interest. Nor may the managers herein appointed purchase immovable property, without the prior consent of the court.

The managers to file in court within 6 months from the day of ruling an inventory of the property belonging to Rhona and of all such sums of money, goods, and effects as they shall receive on account of the estate together with a statement of all the debts due to Rhona. They are to annually furnish the court with an account showing the sums received and disbursed on account of the estate and the balance remaining in their hands.

KEY POINTS TO NOTE AND COMMENTS

The case reveals the unfortunate situation of the law that denies a person deemed to be of unsound mind the opportunity to make decisions

on how their properties may be dealt with. Much as the law seems protective of their right to own property and to protect that property from being misused by third parties, the law seems to suggest they can not make any decision on their estate or properties and vests that power with third parties and court.

Raises the question, what role does a person with mental disability play in the management of their property? How does this law conflict with the constitutional provision regarding the right to own property? Are there exceptions to this law that deprives persons with mental disability from having a say on and in the management of their property?

ITEMS	DETAILS
3.11 Uganda v. Ayebare Banye Moses	
CITATION	HCT-11-CSC-122 OF 2011
PARTIES	UGANDA VERSUS AYEBARE BANYE MOSES
COURT	HIGH COURT OF UGANDA AT KABALE

FACTS

Indicted for aggravated defilement of a 15year old mentally retarded girl where he pleaded not guilty.

Evidence given by the mother of the victim/child that the victim was born on 12th February 1993 making her 15 years of age in 2009 when she was defiled, further evidence by the mother was that the girl had dropped out of school due to mental disability backed by evidence from the psychiatric officer of Kisoro Hospital.

The prosecution had to prove the following elements beyond reasonable doubt;

ISSUES

Whether the victim was a girl below the age of 18yrs.

Whether the girl was mentally retarded.

Whether the sexual act was performed on the victim.

Whether the accused victim committed the offence or the sexual act.

JUDGMENT

The victim was mentally retarded, under aged and that accused lived in the same compound with the victim and knew her condition. Thus the accused was found guilty as charged and convicted.

KEY POINTS TO NOTE AND COMMENTS

The Court considered the mental state of the victim in determining the sentence of the accused.

ITEMS	DETAILS
3.12 Uganda v. Iyapete David	
CITATION	HCT-04-CR-SC-0053-200
PARTIES	UGANDA VERSUS IYAPETE DAVID
COURT	HIGH COURT OF UGANDA AT MBALE
JUDGE	HON. MR. JUSTICE E. K. MUHANGUZI

FACTS The accused was indicted on the offence of defilement contrary to section 130 of the PC on allegations that at Opadoi village in Pallisa district had unlawful sexual intercourse with Isukali Sarah who is an imbecile under the age of 18 years. The accused denied the indictment and after prosecution case was presented, court had to make a ruling on whether a prima facie case had been made against the accused under s.73 of the TIA.

ISSUES Whether a sexual act was performed
The victim is below 18 years of age or there are other aggravating condition in case of aggravated defilement
The accused person performed the unlawful sexual act

RULING Careful examination of the evidence by court proved that the victim was 13 years of age, had signs of sexual intercourse having taken place thus the first and second ingredients were proved though imbecility of the victim was not proved.
The victim was not called to testify though she was able to communicate sufficiently to the mother.
There were several contradictions in the prosecution case.
Court finds prosecution evidence not sufficient that the accused committed the offense, in terms of s.73 of the TIA and found him not guilty, acquitted him and set him free forthwith.

KEY POINTS TO NOTE AND COMMENTS

The victim was acquitted on grounds that the prosecution didn't effectively prove its case especially that the victim indeed was an 'imbecile'. Though she had a disability, she was able to communicate intelligibly with the mother and her half brother. Failure to produce the victim in court coupled with contradictions in the evidence brought by the prosecution led to the accused being acquitted.

In cases where the victims of a crime are persons with disability, their

presence in courts of law and participation in the trial process is key and should be emphasized and encouraged especially where they can be assisted to tell their story. Prosecution processes should be more victim focused.

ITEMS	DETAILS
3.13 Uganda v. Maasa Simon	
CITATION	CRIMINAL CASE NO. HCT-04-CR-SC-0012/2009
PARTIES	UGANDA VERSUS MAASA SIMON ALIAS WEMESA
COURT	HIGH COURT OF UGANDA AT MBALE
JUDGE	HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA

FACTS The accused was indicted for aggravated defilement contrary to S.129 (3) and (4) of the Penal Code Act. The accused on 24th November 2008 in Mbale had unlawful sexual intercourse with Apio Ojoyi a person with disability (an imbecile) aged 15 years.

ISSUES Whether the victim Apio Ojoyi is a person with disability
Whether the victim Apio Ojoyi experienced sexual intercourse
Whether the accused was responsible for the sexual act

JUDGMENT During evidence, the Doctor who examined her stated she is an ‘imbecile’, retarded, cannot speak and confused. Her mother also testified that she does not talk, but if something happens to the girl she can cry if someone beats her. During medical examination, the victim’s mother told the doctor that she is ‘abnormal’. When the victims mother was answering questions put to her by the Court, she answered ‘my daughter is fifteen years old, she was born a normal child. She developed an abnormality, she is a twin and the other twin is normal.

Court found the prosecution had proved beyond reasonable doubt that the victim was a person with disability.

The victim was found to have experienced sexual intercourse.

The prosecution managed to prove beyond reasonable doubt that it is the accused who committed the offense of aggravated defilement and was found guilty as charged and sentenced.

SENTENCING Court took note of the gravity of the offense; the period spent on remand, the remorsefulness of the accused, and considered the young age of the victim and her mental inclination and sentenced the accused to life imprisonment.

KEY POINTS TO NOTE AND COMMENTS

The accused was found guilty of unlawfully performing an act sexual intercourse with an imbecile of 15 years. The case brings out the fact that court relies on the disability of the victim to determine the sentences.

It further reveals how courts do not take evidence of a victim deemed an imbecile seriously, especially, attempting to investigate if they can actually communicate intelligibly and tell their story.

Opportunity is not often granted to the victims or they are not assisted to tell their story when possible. Much as the testimony of a victim may not be necessary to sustain a case, their involvement adds value to the case. It also reveals how the society and courts have used derogatory language in reference to PWDs. Courts and society need continuous sensitization on rights of PWDs and how to treat them with dignity.

ITEMS	DETAILS
3.14 Uganda v. Tesimana Rosemary	
CITATION	CRIMINAL REVISINAL CAUSE NO. MSK.00-CR-CV-0013/1999 ARISING FROM ORIGINAL KALISIZO CRIMINAL CASE NO.30/1991
PARTIES	UGANDA VERSUS TESIMANA ROSEMARY
COURT	HIGH COURT OF UGANDA AT MASAKA
JUDGE	HON. JUSTICE FMS EGONDA-NTENDE

FACTS

The accused was admitted in Kalisizo Prison on charges of murder MMA Kalisizo 45/91 and had got lost in the systems for 9 years until her case was brought to the attention of court through a letter dated 8th June 1999.

Since the accused's admission in prison on the 3rd April 1991 she showed some signs of mentally unsound person and the O/C then requested her medical examination through the Chief Magistrate. The accused was then transferred to Butabika Mental Hospital for treatment and since been in Butabika until 1999 when she was produced before court.

The accused was charged with murder of Gataro Paul, who was the accused's husband. She was arraigned before a Magistrate's court on the 1st March 1991 on which day the court noted that the accused further remanded to 15th March 1991 and looks to be of unsound mind. The Magistrate further ordered that she be taken to hospital for examination.

Despite the order, the accused remained in custody in Kalisizo until May 1991 when prosecution started reporting she was sick.

The matter kept being mentioned every two weeks, till the production warrant for the accused was issued but never executed or complied with the Prison authorities without any explanation provided. On 30th November 1994, the file was shelved away pending production of the accused. When the file resurfaced four years later in 1999, the Magistrate referred it to the DPP for action. The accused then resurfaced through the above referenced letter.

The file was placed before the Judge under s.19 of the Judicature Statute (now Act) for exercise of the High Court's supervisory powers over proceedings of the Magistrates Courts.

At the hearing, the State Attorney observed that the matter took long because no information was passed back to prosecution from prisons. That at the time the accused is alleged to have committed the offence she was mentally unsound, and had a history of an unsound mind. He applied for adjournment to enable him initiate a withdrawal of the charges against the accused.

The accused being unrepresented when asked if she should be released, she responded 'I forgot where I came from' asked what the court should do for her, she replied 'I don't know.' Based on this the court stayed prosecution of charges against her, dismissed the charges against her and discharged her forthwith.

ISSUES

Whether the court properly dealt with the accused on realization that she was a person of unsound mind.

JUDGMENT Court noted that the accused appeared to be a person of unsound mind. It ordered that she be taken to hospital for examination. She was subsequently taken and did not return until eight years later, albeit without a report.

A magistrate's court has authority under s.111 of the Magistrate's Court Act as amended (Now s.113 of the MCA) to inquire into cases of insanity or other incapacity of the accused, which are undergoing trial in its court only. It is no longer authorized to inquire in the same in respect of preliminary proceedings.

It would mean that an accused who appears in a magistrates court on a charge that can not be tried by the magistrates court, can have this condition only inquired into after committal to the High Court, and presumably, only after the hearing of the charges against him has started.

The resultant injustice of being lost in the criminal justice system demonstrates that there is a lacuna in the written law.

This lacuna may be addressed by legislative action by way of law reform.

A magistrate court faced with the same situation of a person of unsound mind being arraigned before it, can inquire into the soundness of the mind or other incapacity if there is reason to believe that the accused is of an unsound mind.

Perhaps principles of justice, equity and good conscience would require that an order for provision of medical treatment should have been made.

In terms of the principles of justice, equity and good conscience, that it was important to establish as soon as possible whether the accused was a person of unsound mind or not to determine the best course of action to be taken by the Director of Public Prosecutions as envisaged originally in matters under trial or preliminary proceedings before a magistrates court under Section 111(2), (3), (4) & (5). And in cases before the High Court, the procedure is set out in sections 43 to 45 of the Trial on Indictments Decree. (Now s.45 to 47 of the Trial on Indictments Act cap 23)

The procedure before the High Court and the magistrate's courts is virtually the same. The court inquires if the accused is of unsound mind. If it forms the opinion that the accused is of unsound mind it may either release the accused on bail, if it is seized with the authority to do so. In case it is not, it then remands the accused in a safe custody and shall transmit the record or a certified copy thereof to the Minister.

The Minister is authorized to order the detention of the accused in a mental hospital or such other suitable place. The Medical Officer in Charge of such institution is required to certify to the Director of Public Prosecutions as to whether the accused is capable of making his defense or not. On receipt of that certificate, the Director of Public Prosecutions makes up his mind whether to prosecute or not and informs court accordingly. Thereafter the original criminal proceedings may resume or the investigation into unsoundness of mind may continue.

The foregoing procedure ensures that the court does not lose sight of the accused and the proceedings against him. At the same time it seeks to secure the rights of an accused for a fair trial.

Magistrates faced with similar situation as the present one, ought to follow the procedure set out in sections 111, 112 and 113 (now 113, 114 and 115 of the Magistrates Court Act, as a necessity, biased on the principles of justice, equity and good conscience, in absence of any other prescribed procedure.

In considering the reasons for the delay this will include, inherent time requirements of the case, the actions of the accused, the actions of the

state, limits on institutional resources or systematic delays and any other possible for reasons for the delay.

In an ordinary case triable by the High Court, the Platt Report suggested that five months and at the most six months was sufficient time in which the state ought to have committed the accused for trial to the High Court.

The inherent time requirements necessary to process the case from the arrest of an accused person, arraignment before a magistrate, completion of investigations, seeking opinion of Director of Public Prosecutions, and committal to High Court would, in an ordinary case, require no more than six months.

In considering actions of the state it should include omissions of the state in moving the case forward. It is the duty of the state to ensure that the trial of an accused progresses speedily without delay. This is in order to ensure that accused persons charged with offences are tried and dealt with promptly according to law. Those found guilty would receive a just dessert and those innocent would be cleared of the charges against them. This is in the public interest. Society expects it to be so in light of the values and aspirations in our Constitution. At the same time the accused is entitled to be tried speedily in accordance with Article 28(1) of the Constitution.

The delay in bringing the charges against the accused to trial in this case was so oppressive as to amount to an abuse of court process. At the same time it was a clear case of an infringement of the accused's right to a fair and speedy hearing.

KEY POINTS TO NOTE AND COMMENTS

It reveals a lacuna in the MCA where a person who appears before a Magistrates Court on a charge that can not be tried by the magistrates court, can only have their condition inquired into after committal to the High Court, and presumably, only after the hearing of the charges against him has started.

CONCLUSIONS AND RECOMMENDATIONS

4.0 Conclusions and Recommendations

Some of the decisions are revealing on the issues that need to be addressed. These arise from recommendations of court and deductions from reviewing the judicial decisions. Some of the recommendations are from general observations to help advance the disability movement in Uganda. These include: -

The legal provisions and the judicial interpretations given in the various decisions examined largely adopt a protectionist approach. They treat people with disabilities with protection from the society hence excluding them from the said society. Continuous advocacy is called for to change mindsets and review of the approach in legislation, policy and in interpretations.

Taking a Public Interest Litigation (PIL) case for a constitutional interpretation on whether taking away the right of a person of unsound mind to decide on the management of their estate does not violate their right to property? Whether the enjoyment of the right to property doesn't entail the right to decide how the property can and may be used or administered. Research to determine what role does a person with mental disability play in the management of their property? How does the Administration of Estates of Persons of Unsound Mind Act Cap 155 conflict with the constitutional provision regarding the right to own property? Are there exceptions to this legal provision allowing persons with mental disability to have a say on and in the management of their property?

There is need to review the status and numbers of persons with mental disability under custody in prisons so that they are set free from jails and prisons and are instead taken for care and treatment in appropriate places. –This requires ascertainment of those who qualify to be released from prisons and taken for appropriate care.

The laws are skewed in favor of and are consistently being interpreted in light of the medical model, suggesting that all persons with mental disabilities have a medical problem that must be addressed through medical care. Instead of only considering institutionalized psychiatric treatment for persons with mental disabilities, community-based services should be highly considered and recommended.

Developing a national policy for community-based services for persons with mental health challenges must be prioritized with courts of law and even the laws being amended subsequently to reflect the need for psycho-social counseling, and introducing the role of social workers in determining whether persons with mental disabilities should be detained or not. An all round approach should be adopted as opposed to just medical treatment.

To review and amend the TIA, PCA and even the MCA with a view of providing clarity on how people with mental disabilities amounting to insanity should be handled through the

criminal justice system, in accordance with and in compliance with the constitution, various judgments and international instruments. Specifically: -

- i) The trial Court is to order for the detention of such a person for a specific period, for purposes of care or treatment of that person by a qualified psychiatrist or other qualified medical officer, in accordance with article 23(1) of the Constitution.
- ii) The period of detention is to be specified in the order of detention and is to be periodically reviewed by court to ascertain the mental status of the detained person based on medical evidence from psychiatrist or other qualified medical officer.
- iii) When the court is satisfied that such a detained person is mentally fit, and is no longer a danger to him/herself and /or to the community, it may order for his/her release.
- iv) The language in various statutes like s.45 (5), 82 (6) of the TIA and Section 130 of the PCA should be amended to reflect the

The High Court, instead of the Minister, can receive and act upon periodic reports from the prison or mental hospital keeping and treating the prisoner and act upon them. The Minister does not exercise judicial powers as envisaged under article 126 and 274 of the Constitution. The trial court retains the power to issue special orders for the confinement, discharge, and treatment or otherwise deal with the prisoner that is insane or has ceased to be insane. The criminal files should remain open pending the judge's special orders. It is not done with until all is done with the prisoner.

Clear guidelines on the processes and procedures to adopt to ensure persons with mental disabilities get justice in a fair due process that recognizes their challenges and protects their other rights and ensures they are not lost in the criminal justice system should be comprehensively developed.

A research and even possible constitutional interpretation in light of the LADP case to determine the question “*does the state have a duty to consider and weigh the competing provisions of the constitutional rights i.e. the right to education and national objectives and directive principles of state policy against the right of PWDs and affirmative action in favor of marginalized groups?*”

There is need to assess how participatory, free and fair elections of PWD representatives after the **Kasozi Robinson versus AG, LAPD vs. AG and Moses Mauku & Anor versus AG**. Efforts must be made to ensure that the political space is freed from and continues to be open to allow PWDs of all shades of opinion to participate in credible, free and fair elections of their representatives.

The proposed provision in s.130 of the PCA doesn't seem to recognize the rights of Persons with mental disability to explore and express their own sexuality. Research, advocacy and

PIL case to determine at what point can a person with mental illness be said to be freely exploring or expressing their own sexuality without their partner being held criminally liable be considered. In light of Articles 21 and 24 of the Constitution, research or a constitutional PIL case to test whether persons with mental disabilities are being treated unequally and discriminatively when it comes to them exploring and expressing their sexuality.

There is an ardent need to carefully prepare PIL cases so that evidence laid on record is uncontroverted and or challenged and not allowed to pass as such can lead to decisions that give a chilling effect on PIL.

There is need to sensitize all the stakeholders of JLOS like the police, the prisons, the judiciary –especially the lower bench on the proper procedure to follow in order to protect the rights of PWDs.

On matters of PWDs, judicial activism is called to be breathe life into the laws as they exist and more advocacy and sensitization on disability rights and issues be accelerated through partnerships and involvement of various stakeholders.

Future court proceedings seeking the release of persons still detained pending Minister's orders owing to their mental disabilities in courts of law can best be brought by way of Miscellaneous Causes using Notices of Motion.

In cases where the victims of a crime are persons with disability, their presence in courts of law and participation in the trial process is key and should be emphasized and encouraged. Victims who are PWDs should often be granted opportunity or be assisted to tell their story when possible. Much as the testimony of a victim may not be necessary to sustain a case, their involvement adds value to the case. Provisions should be made to secure their testimony or evidence to be considered.

In cases where the victims of a crime are persons with disability, their presence in courts of law and participation in the trial process is key and should be emphasized and encouraged. Victims who are PWDs should often be granted opportunity or be assisted to tell their story when possible. Reasonable accommodation Much as the testimony of a victim may not be necessary to sustain a case, their involvement adds value to the case. Provisions should be made to secure their testimony or evidence to be considered.

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