

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**MISCELLANEOUS CAUSE NO.367 of 2018**

**1. ABONEKA MICHEAL**  
**2. CENTRE FOR CONSTITUTIONAL GOVERNANCE----- APPLICANTS**

**VERSUS**

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

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

The Applicant filed an application for enforcement of rights under Article 50 and Section 98 of the Civil Procedure Act for the following Orders;

*That the Ministry of Internal Affairs is hereby restrained from recalling Ugandan Passports and subsequently issuing the East African Passports to the citizens of Uganda without legal basis in the Ugandan Domain.*

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavits in support of the applicant but generally and briefly state that;

- 1) This matter is a matter of public interest.
- 2) That the Ministry of Internal Affairs is in the process of recalling all Ugandan Passports without premising the recall on any clear law in Uganda.
- 3) Therefore the same Ministry is therefore planning to issue the East African Passports to the Ugandan citizens illegally.

- 4) That the same Ministry recalling Ugandan Passports by 2021 regardless of their expiry date , the same is breach of contract with the people of Uganda.
- 5) The same Ministry has not sensitized the Ugandan citizens on the new venture leaving citizens to the Mercy of God.
- 6) That there is therefore no clear law under which the Ministry is proceedings to recall Ugandan Passports and issue out the East African Passports to Ugandan citizens.
- 7) That the East African Protocol and decisions of Council and Heads of State are only confined within the laws of Establishment of the EAC and do not replace the domestic laws of the country unless proper procedure of domestication is followed.
- 8) That the east African council's decision to recall Ugandan Passports and issue East African Passports is not only irregular in terms of application but has not been domesticated by relevant laws and thus offends the Constitution and jeopardises the Citizenship of Ugandans.

The respondents opposed this application and filed an affidavit in reply through the Assistant Commissioner Citizenship and Immigration Control Board as follows;

1. That the application is misconceived, frivolous, devoid of any merit and amounts to an abuse of court process.
2. That the passports and other travel documents are the property of the Government of Uganda which is vested with powers to issue, recall, revoke, withhold and recover passports and other travel documents as the case requires.

3. The law mandates the national Citizenship and immigration Board to issue passports and other travel documents to the citizens of Uganda and the recalling and issuance of the e-passport is in compliance with the law.
4. That Uganda is a signatory to various International Charters such as the Treaty for the Establishment of the East African Community and Annex 9 of the Convention on International Civil Aviation (Chicago Convention) which create legally binding obligations upon Uganda as a member state.
5. That the 35<sup>th</sup> East African Community Council of Ministers Meeting held in April 2017 directed member states to start issuing the e-passport by January 2018.
6. That the issuance of the e-passport is in fulfilment of one of the East African Community mandates which is to integrate members of the region in line with the requirements of the East African Common Market Protocol (EACMP) which includes the free movement of goods, persons and labour to accelerate economic growth and development.
7. That since January 2018 other EAC countries to wit; Burundi, Rwanda, Kenya and Tanzania have started issuing the e-passports to their citizens and halted issuance of the old machine readable passports in compliance with the directive.
8. That the issuance of the e-passport is in compliance with the recommendations of the International Civil Aviation Organisations (ICAO) vide Annex 9 of the Convention on International Civil Aviation (Chicago Convention) that travel documents must have special biometric features which specifically identify the passport with its holder.
9. That the e-passport is a modern travel document with modern security features like an embedded chip containing biometric information of the

holder which will avert the risk of forgery and duplication of Ugandan travel documents.

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and consider in the determination of this application.

The parties generated a joint scheduling memorandum and therein agreed to the following issues for court's resolution;

1. *Whether the instant application is properly before the court?*
2. *Whether the recall of the old machine readable passports and issuance of the new East African e-passports to Ugandan citizens is in accordance with the law.*
3. *Whether the exclusive use of the national identity Card for the identification purposes as a requirement for acquisition of the East African passport is legal.*
4. *Whether the Issuance of the EAC passports violates the principle of sovereignty and amounts to a breach of contract with the people of Uganda.*
5. *Whether the respondent exercised due care to provide mass sensitization of the public on the issuance of EAC passports, complete with guidelines to process and obtain the said passports.*
6. *Whether the applicant is entitled to any of the prayers sought?*
7. *What remedies are available to the parties?*

The applicant was represented by *Mr Gawaya Teggule* whereas the respondent was represented by *Mr Allan Mukama*.

***Whether the instant application is properly before the court?***

The respondent's counsel submitted that according the notice of motion this application was brought under Articles 50 of the constitution and that the said Article is couched in mandatory terms. This implies that for a claim to fall under this Article, there must be an infringement or threat or freedom of a person.

It was the respondent's case that the applicants' have not demonstrated that the fundamental rights of any person have been infringed and thus cannot avail themselves the facility of Article 50.

The Applicants' case as can be deduced from the pleadings is that the decision of the Government of Uganda to recall the old machine readable passport and replace them with the EAC e-passport is irregular and illegal. They therefore want court to halt the issuance of the EAC e-passport.

The Respondent's contention is that the recall and issuance of the new EAC e-passport is in accordance with the law. The Applicants have not laid before court any proof that this act itself, amounts to a violation of rights of Ugandans.

The respondent's counsel submitted further that, according to Article 29 (2) (c) of the Constitution, every citizen has a right to a passport or other travel document. The passport is a National Security Document meant to facilitate citizens to travel to other countries under the umbrella of the issuing government. It is essentially a document that enables the government to vouch for its citizens' identity. Consequently, a citizen is the bearer of the document and not the owner. That is why all passports issued have a caution on page 48 that reads;

***"This passport remains the property of the government of Uganda and may be withdrawn at any time"***

It was the respondent's contention that the citizen's only right with regard to a passport is the right of possession and which right has neither been fettered nor violated by the Respondent. The Applicants have themselves pleaded that the government of Uganda is recalling the old machine readable passports and issuing out new ones, which goes to show that Ugandan citizens still enjoy their right to possess a passport or other travel documents as enshrined under the Constitution of the Republic of Uganda, and with it, their freedom of movement.

Furthermore, a perusal of the applicants' numerous pleadings before court does not reveal a single constitutional right or freedom which is alleged to have been violated by the Respondents.

The Applicants have not proved that the Respondents have infringed any fundamental or other right or freedom of Ugandan citizens and hence the instant suit is improperly before court and ought to be dismissed with costs.

The applicants' counsel submitted that the Constitution recognizes, protects and guarantees the fundamental rights and Freedoms of the individual. Article 50 provides a right to seek legal redress in case of abuse of these Fundamental rights and freedoms and enforce them.

The applicants contend that they bring this application "as a matter of public interest to avoid wastage of citizen's money, inconveniences and safeguarding the citizenship of Ugandans". To counsel there is nothing wrong with bringing such an application before court; when a citizen contends that the government is indulging in an illegal act whose effect will be an infringement on the rights of Ugandans.

The summation of all the actions that the applicants contend are without the backing of legal framework is that they will have the effect of infringement of the rights and freedoms of the people of Uganda. If a citizen is seeking to protect the money of Ugandans, avoid inconvenience to them and safeguard their citizenship, then it is clear he feels the citizens right to their money and citizenship, as well as their right to avoid undue inconvenience by the actions of the government needs to be protected. This in his view falls within the purview of Article 50(1).

The applicants counsel submitted that the National Objectives and Directive Principles of State policy, provides the role of the people in development and obliges the state to take all necessary steps to involve the people in the formulation and implementation of development plans and programmes. This is one of the supporting pillars of both the right to development and participatory democracy. If the people have a say in an activity being undertaken by the state,

then the court has a duty to entertain the matter and make a ruling thereupon. The matter is therefore before this court.

The applicants' counsel further contended that the application raises very important matters of national and regional interest.

### **Determination**

This application is brought as Public interest litigation under *Article 50* which provides for enforcement of rights and freedoms.

*Black's Law Dictionary 8<sup>th</sup> Edition* defines Public Interest Litigation as "*the general welfare of the public that warrants recognition and protection*"

It is also defined as something in which the public as a whole has a stake. Campbell C.J in ***R v Bedfordshire 24 L.J.G.B 84*** said a matter of Public or General Interest;

*"...does not mean that which is interesting as gratifying curiosity or love of information or amusement; but that in which a class of community have a pecuniary interest, or some interest by which their rights or liabilities are affected."*

A matter under Public Interest Litigation must require a legal remedy and be a public interest, which means it must;

- Affect a significant number of people not just the individual or;
- Raise matters of broad public concern or;
- Impact on disadvantaged or marginalised groups, and;
- It must be a legal matter which requires addressing *pro bono publico* (for the common good)

The courts should restrict the free flow of cases in the name of public interest litigation since it is time consuming and mainly indulges courts in taking administrative and executive functions instead of dispensing with justice which is their primary role. It is only when there is gross violation of fundamental rights by a group or a class action or where basic human rights are invaded or there are

complaints of such acts which shock judicial conscience then only such matters can be heard and the Court should extend its jurisdiction for remedying the hardships and miseries of the needy, the underdog and the needy.

Public interest litigation should not be used for personal or political gains or for mere publicity or for other oblique reasons. Such public interest matters should be done by persons having expert knowledge in the field after making proper research especially if it is concerned with issues of constitutional law.

It is true that public interest litigation has been abused and is increasingly used by advocates for publicity and or seeking prominence in the legal profession and it is now 'Publicity Litigation'. It is supposed to be a special type of litigation which is essentially meant to protect basic human rights of the weak and disadvantaged who on account of poverty, helplessness, or social and economic disabilities could not approach the court for relief or for upholding the rule of law and constitutionalism or where a matter of grave public concern is involved.

The courts should be circumspect in recognising public interest standing and the judicial officer must determine whether the applicant is a genuine public interest litigant and is not acting *malafide* for personal gain, private profit or for political or other oblique considerations.

The factors relevant to a determination of whether an applicant who claims to act in the public interest is doing so genuinely, will include, but not limited, to an assessment of the following;

- Whether there is another reasonable and effective manner in which the challenge can be brought;
- The nature of the relief sought and extent to which it is of general and prospective application;
- The range of persons or groups who may be directly or indirectly affected by any order made by the court; and
- The opportunity that those persons or groups have had to present evidence and argument to the court. See *Ferreira v Levin*; *NO*; *Vryenhoek v Powell 1996 (1) BCLR 1; 1996 (1) SA 984 (CC), para 233-234. Lawyers for Human*



*Rights vs Minister of Home Affairs 2004 (7) BCLR 775(CC); 2004 (4) SA 125(CC), para 18*

The applicants brought this application under **Article 50 (1) & (2) of the Constitution** which provides;

***“Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.***

***Any person or organisation may bring an action against the violation of another person’s or group’s human rights”***

This court has perused the entire application before this court and has not come across any right or freedom which the applicant alleges was violated or was threatened to be violated.

In order to proceed or bring actions under Article 50 of the Constitution, the matter must relate directly to fundamental rights and freedoms guaranteed under the constitution.

The closest the applicants have submitted on the infringement of rights and freedoms was as follows;

*“The summation of all the actions that the applicants contend is without the backing of legal framework is that they will have the effect of infringement of the rights and freedoms of the people of Uganda. If a citizen is seeking to protect the money of Ugandans, avoid inconvenience to them and safeguard their citizenship, then it is clear he feels the citizens right to their money and citizenship, as well as their right to avoid undue inconvenience by the actions of the government needs to be protected.”*

This court has found the applicants submissions very confused and unpolished on what they seek from this court as an infringement of rights and freedoms. Once they brought themselves under the purview of infringement of rights and freedoms, then they had a duty to clearly state in the pleadings and affidavits the exact rights they are challenging in court for infringement.

The applicants seem to bring this application as a matter of public interest to avoid wastage of citizens' money, inconveniences and safeguarding the citizenship of Ugandans. It seems the applicants counsel wants to impute some rights that would be affected by implication without necessarily setting out any such specific rights that are being infringed.

In the case of ***Pastor Martin Sempa vs Attorney general High Court Miscellaneous Application No. 71 of 2002***, an action was brought to object to new electricity tariffs that had been imposed without giving the members of the public a hearing and accordingly the applicant's right to fair treatment under Article 42 of the Constitution had been infringed. The learned trial judge struck out the action on ground that it does not disclose violation of a constitutional right. He rules

*"It is not enough to assert the existence of a right. The facts set out in the pleadings must bear out the existence of such a right and its breach would give rise to relief."*

Similarly, in another case of ***Ogago Brian Abangi vs Uganda Communications Commission High Court Miscellaneous Application No. 267 of 2013***; The Court held that the applicant did not cite any Articles of the Constitution which had been violated to assist the court come to a conclusion that the applicant seeks enforcement of constitutional rights. See also ***Human Rights Network for Journalists & Another vs Uganda Communications Commission Miscellaneous cause No. 219 of 2013***

The applicant in this matter has not cited any infringement of any right or freedom guaranteed under the Constitution as the basis of filing this application. The applicant should have filed an application for judicial review challenging that decision of the Minister of Internal affairs or the National Citizenship and immigration Board rather than filing an application for enforcement of rights where no single right is mentioned or Article of the Constitution is cited.

On this preliminary objection, the application is incompetently before this court and is struck out.

The application is struck out with costs to the respondent.

**SSEKAANA MUSA**

**JUDGE**

**16<sup>th</sup> /08/2019**