

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO. 0079 OF 2023
IN THE MATTER OF THE UGANDA COMMUNICATIONS ACT 2013
AND
IN THE MATTER OF UGANDA COMMUNICATIONS COMMISSION
AND
IN THE MATTER OF AN APPLICATION FOR DESTRUCTION OF COMMUNICATIONS
EQUIPMENT AND APPARATUS CONFISCATED FROM ILLEGAL PROVIDERS OF
COMMUNICATION SERVICES FROM VARIOUS PARTS OF UGANDA BETWEEN 1ST
JANUARY 2017 TO 30TH DECEMBER 2022

BEFORE: HON. JUSTICE MUSA SSEKAANA

RULING

The Applicant brought this application by way of Notice of Motion under Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act and Section 5(1), 6(2), 27, 78, & 82 of the Uganda Communications Act 2013 and Order 52 r 1&2 of the Civil Procedure Rules, for orders that;

1. An ORDER authorising the applicant, her representatives, agents and/or contractors to **DESTROY** communications equipment (*Listed in Annexure 'A' of the affidavit in support of this application*) that were confiscated from known and unknown illegal operators across Uganda between January 2017 and 30th December 2022 by the applicants officers in accordance with section 6 of the Uganda Communications Act.
2. Any other order(s) or reliefs that this Honourable court may deem fit.

The grounds in support of this application are set out in the affidavits of Victoria Sekandi the Applicant's Manager in Charge of Compliance and Enforcement which shall be read and relied on at the hearing of the application but briefly they are;

1. That the applicant is a statutory body established under Section 4 of the Uganda Communications Act 2013 with the Mandate to monitor, inspect, license, supervise, control and regulate communications services in Uganda.
2. That in execution of its mandate under the Uganda Communications Act, the applicant classifies licence categories, receives, evaluates licence applications, and grants Licences and Authorisations for the provision of Communications services in Uganda and operation of communications/broadcasting equipment.
3. That in order to enforce compliance with Uganda Communications Act, 2013, the Regulations, Sector Guidelines and Standards, the applicant routinely conducts enforcement exercises across the country during which it among other actions, disconnects and confiscates illegally possessed, installed, connected or operated communications equipment or apparatus in accordance with Section 6(2) of the Uganda Communications Act 2013.
4. That the applicant confiscated items listed and attached to the affidavit in support from both known and unknown owners from across the country since in most cases, during the enforcement exercises, illegal operators run away and abandon their illegally possessed, installed, connected or operated apparatus for fear of arrest by the enforcement team thereby making it impossible to identify the true/actual owners of some of the equipment.
5. That over the years between 2017 to 2022, the applicant has confiscated several illegally possessed, installed, connected or operated apparatus and the owners/persons from whom apparatuses have been confiscated have

neither appealed such confiscation to the relevant authorities, tribunal or court, nor formally claimed the same in anyway.

6. The most of the confiscated items are not only illegal under the Uganda Communications Act of 2013 but their unauthorised use is also not permitted under the National Environment Act 2019 and Uganda national Bureau of Standards.
7. That whilst section 6(2) of the Uganda Communications Act 2013 empowers the applicant to confiscate such illegally possessed, installed, connected or operated apparatus, the law is silent on the actions that the applicant may take in respect of such confiscated apparatus.
8. That the applicant's stores in which the said confiscated apparatus are stored are now full and without additional storage capacity, making any further enforcements and confiscations unfeasible.
9. That considering that most of the confiscated apparatus or equipment are either hazardous to human life, sub-standard, or no longer usable by reason of change in technologies (technological advancement), or storage, the applicant, as a regulator of the communications sector in Uganda would not like the same to be returned to the market.
10. That the applicant believes that the best way to dispose of such confiscated and potentially hazardous apparatus is by way of destruction. The applicant has contracted **LUWERO INDUSTRIES LIMITED**, an entity that is duly accredited by National Environment Management Authority (NEMA) to destroy illegally possessed, installed, connected or operated apparatus in accordance with the law.
11. That it is right that this Court grants the order(s) sought in this application to enable the process of destruction of the said illegally possessed, installed, connected or operated apparatus to commence.

In the interest of time the Applicant made brief oral submissions and also filed some written submissions which this court has considered. The applicant was represented by *Counsel Abdul Salaam Waiswa*.

Determination

The applicant's counsel submitted that this court has jurisdiction to hear and grant such an application since the Communications law is silent on the manner of dealing with the confiscated equipment. The High court has inherent powers grant such orders as may be just and in the interests of justice.

The applicant submitted that the owners of the illegally possessed, installed, connected or operated apparatus which was confiscated long time ago have not appealed to court or the applicant in order to have the equipment and apparatus returned to them.

The applicant contended that it is only fair that the illegally possessed, installed, connected or operated apparatus should be destroyed since it hazardous to the environment and it will be destroyed by an approved and licensed entity of Luwero Industries Limited.

Analysis

This court under section 33 of the Judicature Act is empowered to give any remedies sought in a matter if properly brought before the court. It provides;

The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to the cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters are avoided.

The applicant's problem or dilemma in this matter is in simple terms; it is stuck with the several confiscated items which are illegally possessed, installed,

connected or operated apparatus. The said equipment or items having been lawfully confiscated in accordance with section 6(2) of the Communications Act.

The law appears to be silent in what should be done after the equipment is impounded or confiscated. This lacunae has left the applicant with no immediate solution to the problem apart from seeking appropriate orders from this court.

The Act must be interpreted in a manner which gives effect to the intention of the legislature in some social and other conditions which obtain at the given time. Therefore, statutes are to be interpreted as always speaking. The meaning of the original intent of a statute may be of limited value as the application and interpretation will develop in the course of implementation and over time its meaning and application may alter. *See Mc Cartan Turkington Breen v Times Newspapers Ltd [2001] 2 AC 277 at 292/296; Balkissoon Roodal v The State [2003] UKPC 78; Mathew v State of Trinidad & Tobago [2004] UKPC 33; R v Ireland [1998] AC 147*

The court should be able to fill the gap in order to avoid any absurdities in application of the law. The duty of the court is to apply the law and discover the intention of the law maker. Since the Communications Act provided for confiscation of the said illegally possessed, installed, connected or operated apparatus, it would automatically be implied or read into the act that such confiscated equipment was to be destroyed to deter breaking of the law.

The provisions of any law made by the legislature are not made for mere fun of it or for the purpose of meeting the whims and caprices of the interpreter. They must be interpreted and applied to meet the circumstances, issues, conditions and situations for which they are made.

No reasonable court or tribunal should will impute any absurd and unjust consequences to a statute or imply in a statute that will lead to absurdity and injustice. This court guided by the above principles would read into the Communications Act the power to destroy such illegally possessed, installed, connected or operated apparatus which has been confiscated under section 6 of the Uganda Communications Act

This court accordingly grants the applicant an Order to **DESTROY** communications equipment (*Listed in Annexure 'A' of the affidavit in support of this application*) that were confiscated from known and unknown illegal operators across Uganda between January 2017 and 30th December 2022 by the applicants officers in accordance with section 6 of the Uganda Communications Act and other relevant laws.

The said destruction should be carried out by LUWERO INDUSTRIES LIMITED.

It is so ordered.

SSEKAANA MUSA
JUDGE
27th April 2023