THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATE'S COURT OF MUKONO AT MUKONO

MISCELLANEOUS CAUSE NO. 055 OF 2018

TUSHEMEREIRWE SHARON:==========APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF LUGAZI DIOCESE: ======RESPONDENT

RULING BEFORE H/W JULIET H. HATANGA- CHIEF MAGISTRATE

This is an application seeking for declarations and order under Section 16(3)(c),18,37 and 41(1) of the Access to Information Act and Order 52 Rules 1&3 of the CPR s1 71-1

The brief facts are that on 20th November, 2018 the applicant went to the Respondent's facility for a final check up when she was nine months pregnant. She was admitted at the Respondent's facility from 21-22nd November, 2018. During this period she delivered her child who died shortly after birth. The applicant claims that when she demanded to access her medical records the respondent refused to comply. The respondent on the other hand maintains that at the time of discharge the applicant was availed with a copy of all documents related to her admission.

The Applicant was represented in this Application by M/S E. Wamimbi Advocates & Solicitors while M/S Ssebaggala, Mirembe & Associates represented the respondent. Both parties filed written submissions.

I have had the opportunity to read the pleadings, law applicable and submissions of both counsel.

At the hearing the following issues were agreed upon;

1. Whether the access to information act applies to the respondent
2. Whether the respondent wrongly refused the applicant access to the information requested under the Act
3. Who should bear the costs

Resolving issues

1. Whether the access to information act applies to the respondent

Article 41 of the 1995 Constitution of the Republic of Uganda

Provides for a Right of access to information. (1) Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person. (2) Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information.

Section. 5 of Access to information Act provides that;

(1) Every citizen has a right of access to information and records in the possession of the state or public body, except where the release of the information is likely to prejudice the security or sovereignty of the state or interfere with the right of privacy of any other person.

For avoidance of doubt, information and records to which a person is entitled to have access under this Act shall be accurate and up to date so far as is practicable. Both counsel relied on the case of ***Aston Cantlow and Wilcomte with BillesleyParachial Church Council Vs. Wall bank and Anor (2003) UKHL 37.***

The law as provided above does not mention private bodies. Generally, a private hospital is one which is owned and governed by a person or many people who are managing the whole finances on their own behalf and everything is under control of that person or hospital. The facts of the case show that St. Francis Hospital Nkokonjeru operates under Registered Trustees of Lugazi Diocese and it is a private, non- profit, community based organisation owned by the Roman Catholic Diocese of Lugazi and it does not stand to be called government ministries, departments and other government organs and agencies according to the 1995 Constitution of the Republic of Uganda and The Access to Information Act, 2005.

International Law guarantees the right to access to reproductive health information explicitly in the convention on the Elimination of all forms of Discrimination against women (CEDAW) Article 10(h) of CEDAW requires States to take all appropriate measures to ensure on a basis of equality of men and women, access to information and advice on family planning. This right to access reproductive health information forms an integral part of all rights which are interlinked on information to health, life, privacy, dignity, liberty and security of person.

Freedom of expression and information has been guaranteed globally through Article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

Article 19(3) of the ICCPR sets out the conditions states must overcome if they take actions that restrict the right to freedom of expressions. Thus the exercise of the rights guaranteed under paragraph 2 of this Article carries special duties and responsibilities. It may be subject to certain restrictions but these must only be such as provided by law for instance, for respect of the rights or reputation of others. And secondly for the protection of national security or public order or of public health or morals.

Uganda is a state party to the above international conventions and treaties having ratified the same. It follows that within the pretext on the Access to information Act, Uganda created the necessary law which enables citizens to enjoy the access to rights information envisaged in international treaties.

It was submitted by the applicants that the obligation under the access to information Act 2005 extends to bind the respondent entity. Section 2(1) of the act sets out that it shall "apply *to all information and records of the Government ministries, departments... and other government organs and agencies unless specifically exempted by this act*" the applicant thus argued that byvirtue of the public Private partnership arrangements under which the respondent executes its operations of providing health care services to members of the public it can be categorized a government agent. Furthermore that the Public Private Partnership Act 2015 applies to all PPP for the maintenance and operation of infrastructure or services provided under the projects like social infrastructure including health care services.

The applicants further submitted that the respondent in the conduct of their business receives funding from the ministry of Health in form of Primary Health Care grants hence publically funded. Counsel relied on the decision of **Cantlow and Wilcomte with Billesly Parochial Church Council V Wallbank and another , [2003] UHHL , 37** where the house of lords in deciding what amounts to a public authority Lord Nicholls of Birkenhead at page 554 of the judgment opined that " *The manner in which a wide ranging governmental functions of government caries considerably. In the interest of efficiency and economy, and for other reasons, functions of governmental nature are frequently discharged by non- government bodies".*

The respondents on the other hand argued that the application was misconceived because the respondent was not a public body within the presents of Section 4 of the Access to information Act.

Taking all the factors into account I am not convinced by the arguments of counsel for the respondent. The constitution and the Local Government Act (with Amendment Act 2001,gives the legal mandate of the district/municipal Councils in the health Sector to

be responsible for supervision and monitoring of the private sector which includes all entities that provide Primary Health Care to the members of the public. Secondly the respondent has not denied receiving funding from the central government. Thirdly, the respondents are registered, regulated and supervised by the Allied health professionals Council which is regulated by the professional Heath professionals Act.

By virtue of the practicing license that is issued to all private health practitioners the respondent is responsible and accountable to act and implement government policies. One such responsibility is that Health care providers are bound to carry on their duties within the precincts of the law. Already I have demonstrated the nexus between the state obligations to ensure enjoyment of the right to access information under international laws. I have also belaboured to demonstrate that while the Access to information act may not explicitly mention private sector, the same can be implied from the several government policies that guide the functions of public Health service providers.

According to the law applicable the only circumstance were a person can be denied access to information are enumerated under section 5 (1) of the Access to Information Act. This is not the case with the facts that have been presented/ cited by the respondent.

In view of the forgoing it is my considered opinion that on balance of probability the applicant has adduced sufficient evidence to prove her claim. The respondent as an entity charged with the duties of providing or carrying out a public function through provision of Healthcare services is bound by the access to information Act. The issue is resolved in favour of the applicant.

Issue 2: Whether the respondent wrongly refused the applicant access to the information requested under the Act

The 1995 Constitution of Republic of Uganda under Article 20(1) provides that fundamental rights and freedoms of the individual are inherent and not granted by the state (2) that the rights and freedoms of the individual and groups enshrined in the constitution shall be respected, upheld and promoted by all organs and agencies of government and by all persons.

Article 41 provides for Access to information. Under this Article, it provides for the right to access to information held by government and organisations. Access to information Act, 2005 S.2 (1) provides for all information and records of government ministries, departments and other government organs and agencies unless exempted by this act.

The right of access to information is a social economic right provided under United Nations human rights charter. Health-related information is fundamental to the realization of the right to health. If individuals can access information on preventing and treating ill-health, they are empowered to make informed decisions about their health. The free flow of information about health is essential for building evidence-based health policies – it is a cornerstone of any health system that subscribes to the human rights and democratic principles of transparency, accountability, participation and equality.

It was submitted by the applicants counsel that the applicant on several occasion requested for her medical documents from the respondent facility however they were not provided to her see par 8, and 12 of the affidavit in support of the application.In rebuttal counsel for the respondent maintained that the respondent availed all the documents pertaining to the applicant's admission to the facility, how she was managed on the date when she was discharged on the 22nd November 2018 see paragraph 8 of Dr.Okello Lenard's affidavit in reply.

In fulfilment of Social Economic Objective N0. 2o of the Constitution of 1995, Uganda Government developed a Patient charter which binds all health service providers. It is not disputed that the respondent is in the business of provision of medical health services. Under the Patient charter close 16 a patient is entitled to obtain from the clinician or medical facility medical information concerning his or herself including a copy of the medical records.

I am less convinced with the submission of the respondents, as it simply defies logic. One wonders how a person who was given all necessary documents at the time of discharge would return to the same entity to seek for the same documents. The applicant was consistent in her affidavit in support of the application. It appears to me that the respondent failed to meet their obligation under the Access to Information Act.

From the foregoing, it is the decision of this court that the applicant is entitled to receive from the respondent the said documents.

Lastly on the issue of costs, in most proceeding of a civil nature costs are ordinarily awarded to the winning party. In this particular case the parties appear to consider the proposition that each party bears their own costs.

In the case of U.T.C vs. Outa (1985) HCB- it was held that S. 27 (1) of the CPA gives a judge wide discretion in the award of cost. A successful party should be awarded costs unless for good reason otherwise orders. similarly, in Uganda development Bank Vs Muganga Construction Company Ltd(1981) H.C.B 35, Manyindo J as he then was held

that section 27 (1) of the CPA provides that costs should follow the event unless the court Otherwise orders. I see no reason to interfere with the already established Legal Principles. The costs are accordingly awarded to the Applicant.

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Juliet H. Hatanga

Chief Magistrate

25th August, 2020