

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

MISC. CAUSE NO. 86 OF 2022

1. INITIATIVE FOR SOCIAL AND
ECONOMIC RIGHTS (ISER) LTD

2. THE UNWANTEDAPPLICANTS
WITNESS (U) LIMITED

3. HEALTH EQUITY AND
POLICY INITIATIVE LIMITED

VERSUS

1. ATTORNEY GENERAL

2. NATIONAL IDENTIFICATION AND.....RESPONDENTS
REGISTRATION AUTHORITY

1ST AND 2ND RESPONDENTS' SUBMISSIONS

BRIEF FACTS:

This application was brought by Notice of Motion under *Article 50(2) of the Constitution of the Republic of Uganda 1995, Sections 1(2), 3, 4(1)(b), 9(1) & (4), 13 & 17 of the Human Rights (Enforcement) Act, 2019 and O.52 rr.1 & 2 of the Civil Procedure Rules S.I 71-1* against the Respondents for the following reliefs;



- 1. A declaration that use of the National Identification Register as the primary data source and only means of identification under section 65 (1) (j) and 66 of the Registration Act 2015, to access SAGE benefits by older persons is exclusionary and violates the right to social security protection of older persons contrary to Articles 8A, 20, 21, 22 & 45 of the Constitution, and objectives 7 & 14 of National Objectives and Directive Principles of State Policy.*
- 2. A declaration that the use of the National Identification Register as the primary data source and only means of identification under section 65(1) (j) & 66 of the Registration of Person Act 2015, to access public health services is exclusionary and violates the right to Health contrary to Articles 8A, 20, 21, 22, 33(1), 35 & 45 of the Constitution and Objectives 14 & 20 of the National Objectives and Directive Principles of State Policy.*
- 3. A declaration that the use of the National Identification Register as the primary data source and only means of identification under section 65 (1) (j) & 66 of the Registration of Persons Act 2015 to prove nationality is a violation of the right to non-discrimination and the internationally recognized right to a nationality and freedom from statelessness contrary to Articles 21 and 45 of the Constitution.*
- 4. An order that the Respondents allow the use of other sources of identification to enable eligible older persons to access the SAGE benefits in respect and promotion of their rights to social protection in accordance with Articles 8A, 20, 21, 22 & 45 of the constitution and objectives 7 & 14 of the National Objectives and Directive Principles of State Policy, to avert the exclusionary effects of the digital national ID system until when the Government has resolved inherent errors, system access barriers and weaknesses of Digital National ID System.*
- 5. An order that the Respondents allow the use of other forms of identification to progressively realize promote respect and uphold the right to Health in accordance with Articles 8A, 20, 21, 22, 33 (1) 35 & 45 of the Constitution, and Objectives 14 & 20 of the National Objectives and Directive Principles of State Policy to avert the exclusionary effects of the digital national ID system.*

6. *An order that the Respondents require informed consent in registration in a centralized digital ID database which allows for the tracking of metadata and requires biometric authentication without a negative impact on access to goods and services.*
7. *An order for structural Interdict to the Respondents to establish the committee to adjudicate over matters arising or related to registration under Section 83 (1) (a) of the Registration of Persons Act 2015, streamline the inherent errors, system access barriers and weaknesses of the digital registration system leading to exclusion of eligible elderly persons from accessing the SAGE benefit and access to health services.*
8. *Any other relief as the court may deem fit.*

The application is supported by 32 affidavits from national, regional and international experts and other persons across the country. In the said affidavits, the deponents in summary allege that they conducted a research on how the use of digital national identification system (“Ndaga muntu”) has led to the exclusion of older persons and women (as a marginalized group) from the enjoyment of the right to social security protection and the right to health respectively.

THE RESPONDENTS’ CASE:

The 1st and 2nd Respondents opposed the application and filed affidavits in reply of;

1. *Rosemary Kitembo the Executive Director of the 2nd Respondent(NIRA)*
2. *Stephen Kasaija the Head Expanding Social Protection Programme of the Ministry of Gender Labour and Social Development.*
3. *Paul Mbaka the Assistant Commissioner Health and Information Management in the Ministry of Health and also a Digital Health Specialist.*
4. *Jaume Dubois a French Senior Digital Identity Consultant working with IDO3.*
5. *Mike Moses Odhiambo the 2nd Respondent(NIRA)’s District Registration Officer of Nebbi District.*
6. *William Loburon the 2nd Respondent(NIRA)’s District Registration Officer of Amudat District.*

7. *Atukunda Job an Information Technology Officer and the 2nd Respondent(NIRA)'s Acting District Registration Officer of Kumi District.*
8. *Shem Mwesigwa the Operations Liaison Officer of the Expanding Social Protection Programme of the Ministry of Gender Labor and Social Development.*
9. *Makwasi Suleiman Wanzala the 2nd Respondent(NIRA)'s District Registration Officer of Busia District.*
10. *Kitto Tarasisio an Information Technology Officer and the 2nd Respondent(NIRA)'s Acting District Registration Officer of Buliisa District.*

The 1st and 2nd respondents prays that this honorable court considers all the above stated evidence on court record as a whole in making a decision in this matter.

COURT DIRECTIONS ON SUBMISSIONS:

On 5th April, 2023 this honorable court directed parties to file written submissions. The applicants to file and serve by 2nd May 2023, the Respondent to file and serve by 10th July 2023 and Applicants' rejoinder by 24th July 2023. The main submissions not to exceed 20 pages and rejoinder submissions not to exceed 7 pages. All submissions must have 1.5-line spacing and an editable copy emailed to the court on the day of filing.

However, the applicants only served the respondent the submissions on 21st June 2023. By this reason the respondent was not able to file the submissions by 10th July 2023 as ordered by the court.

ISSUES:

The 1st and 2nd Respondents submit that this application gives rise to the following issues;

Issue 1: Whether the use of the National Identification Register as the primary data source and only means of identification under section 65 (1) (j) and 66 of the Registration Act 2015, to access SAGE benefits by older persons is exclusionary and violates the right to social security protection of older persons contrary to Articles 8A, 20, 21, 22 & 45 of the Constitution, and objectives 7 & 14 of National Objectives and Directive Principles of State Policy?

Issue 2: Whether the use of the National Identification Register as the primary data source and only means of identification under section 65(1) (j) & 66 of the Registration of Person Act 2015, to access public health services is exclusionary and violates the right to Health contrary to Articles 8A, 20, 21, 22, 33(1), 35 & 45 of the Constitution and Objectives 14 & 20 of the National Objectives and Directive Principles of State Policy?

Issue 3: Whether the use of the National Identification Register as the primary data source and only means of identification under section 65 (1) (j) & 66 of the Registration of Persons Act 2015 to prove nationality is a violation of the right to non-discrimination and the internationally recognized right to a nationality and freedom from statelessness contrary to Articles 21 and 45 of the Constitution?

Issue 4 Whether the applicants are entitled to the orders prayed for in the application?

SUBMISSIONS:

Issue 1: Whether the use of the National Identification Register as the primary data source and only means of identification under section 65 (1) (j) and 66 of the Registration of Persons Act 2015, to access SAGE benefits by older persons is exclusionary and violates the right to social security protection of older persons contrary to Articles 8A, 20, 21, 22 & 45 of the Constitution, and objectives 7 & 14 of National Objectives and Directive Principles of State Policy?

The applicants claim that the use of the National Identification Register as the primary data source and only means of identification under *section 65 (1) (j) and 66 of the Registration Act 2015*, to access SAGE benefits by older persons is exclusionary and violates the right to social security protection of older persons.

Sections 65 and 66 of the Registration of Persons Act 2015 provide as follows:

“65. Use of information in the register

(1) The information in the register shall be used for—

(j) providing social services, including social security services, health, education and welfare benefits;

Section 66 of the Registration of Persons Act 2015 states as follows;

“66. Mandatory use of national identification cards

(1) A ministry, department or agency of government or any other institution providing a public service shall require a person accessing the service to produce a national identification number or national identification card or alien’s identification number or alien’s identification card.

(2) For the avoidance of doubt, a ministry, department or agency of government or any other institution providing the following services shall require a person to produce a national identification number or national identification card or alien’s identification number or alien’s identification card—

(a) employment;

(b) identification of voters;

(c) application for, and issuance of a passport;

(d) opening of bank accounts;

(e) purchase of insurance policies;

(f) the purchase, transfer and registration of land by any individual or any transaction connected with the purchase, transfer and registration of land;

(g) pension and social security transactions;

(h) all consumer credit transactions;

(i) payment of taxes;

(j) financial services;

(k) registration services;

(l) statistical services; or

(m) any other purpose as may be prescribed by the Minister.”

It is the Respondents’ submission that there is no mandatory requirement under the above provisions that that the National Identification Register shall be used as the primary data source and only means of identification. Although section 66 states that **the information in the register shall be used for** inter-alia **providing social services, including social security services, health, education and welfare benefits**, that there is no rule of the thumb or a universal rule of interpretation, for determining whether in a given statutory provision, the word “shall” is used in the mandatory or directory sense. *See: Sitenda Sebalu versus Sam Njuba & another Election Petition Appeal No. 26 of 2007.* Whether an authority has discretion or is

under a duty depends, in a particular case, on the interpretation put by the courts on the statutory provision in question. The question whether 'may' or 'shall' used in a provision is directory or mandatory depends on the context in which the word has been used. It is important to note that the impugned sections are not augmented by a sanction for non-compliance and thus are clearly not mandatory.

The above notwithstanding, the Respondent submits that use of the National ID system as a means of identification for beneficiaries of social assistance is not exclusionary and or discriminatory against eligible older persons or at all as alleged by the applicants.

Objective VII of National objectives and directive principles of state policy of the Constitution of the Republic of Uganda, 1995 mandates the State to make reasonable provision for the welfare and maintenance of the aged.

Objective XIV of the Uganda's Constitution (1995): states that all Ugandans enjoy rights and opportunities and access to education, health services, decent shelter, adequate clothing, food security and pension and retirement benefits.

Article 32 of the Constitution regarding affirmative action in favor of marginalized groups states that : "Notwithstanding anything in the Constitution, the State shall take affirmative action in favor groups marginalized on the basis of sex, race, color, ethnic origin, tribe, creed, gender, age, or any other reason created by history, tradition or custom for the purpose of redressing imbalances which exist against them" The term "age is included among the groups to which special attention should be paid.

In 2009, the Government adopted the national policy for older person that calls for equal treatment, social inclusion, provision of livelihood support for older persons. The policy identifies the provision of direct income support as a key social protection instrument for addressing the needs of older persons.

One of the key interventions by government to address social protection of older persons is The Social Assistance Grants for Empowerment programs. SAGE is a scheme under the Ministry of Gender, Labour and Social Development that is directly responsible for

management and payment of grants to older persons above the age of 80 years who were previously not in formal employment. The intervention is aimed at protecting them from falling into destitution. *(See page 1 and 2 of The Senior Citizens Grant Stakeholders' Handbook, May 2022 which is annexure SM1 to the affidavit of Stephen Kasaija).*

SAGE is implemented under the legal framework set out in the National Policy for Older persons 2009. The implementation of this social protection program requires reliable identification for effective targeting and financial transfers. In order to identify beneficiaries, the SAGE program currently uses the National Identification and Registration (NIRA) database for identifying eligible older persons. The program derives a provisional list of potential beneficiaries from the NIRA register of all people who are 80 years and above in a particular sub county. This list is then subjected to verification to ensure that those people meet the selection criteria. *(See page 8 of The Senior Citizens Grant Stakeholders' Handbook, May 2022 which is annexure SM1 to the affidavit of Stephen Kasaija).* All new beneficiaries joining the program under the national rollout are required to be 80 years and above, to be registered with NIRA to hold a valid national ID, and not receive any other government pension. *(See page 8 of The Senior Citizens Grant Stakeholders' Handbook, May 2022 which is annexure SM1 to the affidavit of Stephen Kasaija).*

My Lord the Respondents submit that use of the National Identity Card to access SAGE benefits is not exclusionary but rather a universally acceptable and credible measure of identification aimed at promoting effective and efficient service delivery. The Government of Uganda's adoption of ID system was to create an all-inclusive means of identification that was free of charge, universally acceptable as opposed to the existing identification documents that are a select few i.e Passport which is costly and accessible to those that intend to travel, driving permit accessible to those that own cars, voters card accessible to eligible voters on a voluntary basis. In addition, the cost of acquisition of documents such as driving permits and passports is exclusionary in nature as compared to a NIN/NID which is issued to all citizens free of charge.

Uganda's ID ecosystem is supported by a robust legal and regulatory framework namely: The Constitution of Uganda 1995 (as amended), Registration of Person's Act 2015, the

Registration of Persons Regulations of 2015, the Registration of Persons (Access and Use of Information Regulations 2015), the Data Protection and Privacy Act 2019, the Computer Misuse Act, 2011 and the Electronic Transactions Act 2011. All the above laws ensure that the ID system is credible, accessible and fully functional.

The Uganda ID ecosystem is also characterized by inter-agency cooperation between Uganda's National Identification Registration Authority, Uganda Registration Services Bureau, the Electoral Commission, the Directorate of Citizenship and Immigration Control and other regulatory bodies. This cooperation ensures that the Uganda ID ecosystem functions properly seamlessly and in concert with systems that were already existing prior to the enrollment of Ugandan citizens on the national ID system.

In absence of a credible system to authenticate the identity of beneficiaries it is difficult to ensure that the benefits and services reach the intended beneficiaries within an environment of scarce resources. The rationale for this is so that ghost beneficiaries and those that do not qualify do not access these funds to the disadvantage of those rightfully beneficiaries. The limited resources then will be enough for the actual beneficiaries.

The potential for ID systems in advancing Social Protection Programs (SSR) saving wastage of government funds has been highlighted by *the World Bank ID4D Country Diagnostic Study for Uganda 2018 (see affidavit of Rosemary Kisembo Paragraph 17 and page 26 of Annexure RK1 to the affidavit of Rosemary Kisembo)*.

The report also notes that the government payroll verification exercise conducted in 2016 which matched Ministry of Public Service records with NIRA identified and removed "ghost workers," leading to an annual saving in the government wage bill of US\$ 24.6 billion (US\$6.9 million). The report concludes by stating that equipping the Social Protection program beneficiaries with National Identification Numbers (NINs) and National Identification Cards (NIDs) would reduce duplication across programs and realize significant cost savings alongside the SSR.

Contrary to the applicant's submission that thousands of older persons have been excluded from SAGE benefits, the evidence on record shows that the NIRA identify system is all

inclusive and allows all persons regardless of age to benefit and access SAGE services across the 117 districts. NIRA has so far enrolled over 30 million Ugandans and assigned National Identification Numbers (NINs) to over 25,854,995 million Ugandans, which is approximately 62% of the population. According World Bank statistics, no other country in Africa has issued their first or new national ID more quickly than Uganda. The NID is free of charge and this also is evidence of its being all inclusive.

The applicant's contention that many older persons have had difficulty registering due to frailty or sickness and challenges in accessing the registration points is without merit. The evidence on record shows that the second respondent in collaboration with the Ministry of Gender, Labour and Social Development (MoGLSD) have made specific interventions targeting the registration of older persons across the country in recognition of their particular needs and challenges. The MoGLSD in conjunction with NIRA has also conducted outreach programs particularly focusing on the registration of the elderly who require social benefits. This process has continued to-date and, 664,742 Males and 842,745 Females above the age of 65years have been registered and 441,752 persons aged 80 years and above have been identified. UBOS estimates of persons aged 65 plus in 2022 is estimated to be 1,059,500. (*See paragraph 18 of the affidavit of Rosemary Kisembo and Annexure "RK2"*). *Attached to the affidavit are photographs of the said outreach programmes marked "RK2"*.

In addition to the above, in cases where an older person is incapacitated by illness, old age or other reason from applying for registration, Section 54 (2) (a) of the Registration of Persons Act mandates the guardian or other person responsible for the supervision or welfare of the person to take steps to cause the person to be registered.

The applicant has not substantiated the alleged inherent errors, systemic access barriers and weaknesses of the registration system of the 2nd respondent that have impeded the system from being fully functional. The affidavit of Rosemary Kisembo demonstrates the entire process of applying for a National Identity card from filling in application form 3 to the point of receiving a NID. There are no inherent errors, systemic access barriers or weaknesses in the system as alleged by the applicants. At the point of receiving the NID, the applicant is

allowed to check and verify the particulars of the card for correctness and reject the card that does not represent their particulars accurately.

In order to mitigate the risks associated with the potential changing of biometrics over time, the second respondent utilizes various options including:

- a) Identification of a person based on a combination of their biodata and biometrics.
- b) Capture of up to 10 fingerprints to provide multiple finger options
- c) Capture of multiple biometrics that is face and finger prints and in future iris of the eye
- d) Update of biometrics whenever an applicant interfaces with the second respondent's system
- e) The probability algorithms used in matching of biometrics in the second respondent's system relies on the 100% match.

In the event that an applicant has no fingerprints, the NIN is issued based on an identification system that used biodata and the face. The Registration of Persons Act also provides for the process of change or correction of information captured.

The respondents have therefore fulfilled their obligation to ensure access to social protection by providing an identification system that is credible, all inclusive, free of charge and accessible to all available to all persons regardless of color, race, language, religion, age.

The applicants have cited some cases on exclusion notably the Supreme Court of India in the case of *Justice Puttawamy (Retd) and Another v Union of India and Others (2017) 10 SCC 1, AIR 2017 SC 4161* where the court pointed out failures and exclusions from the Aadhaar. However, Uganda's identity ecosystem is substantially different from India's Aadhaar indent system. The two operate under different social demographics, economic backgrounds and social and political contexts, structure, purpose, scope, technologies, implementation processes, procedures, legislative and regulatory contexts. Essentially Uganda's ID system has not experienced the same exclusion and discrimination problems that have characterized India's Aadhaar system. (See affidavit of Jaume Dubois deponed on 30th September 2022).

In conclusion, the Respondents submit that there is no proof that use of the of national identification register as a precondition to access SAGE benefits by older persons is exclusionary or has violated the right to social security protection of older persons contrary to the Constitution of the Republic of Uganda. On the contrary the National Identification system of the 2nd respondent is all inclusive has facilitated the identification of the actual beneficiaries. the National ID is the most credible way to identify persons.

Issue 2: Whether the use of the National Identification Register as the primary data source and only means of identification under section 65(1) (j) & 66 of the Registration of Person Act 2015, to access public health services is exclusionary and violates the right to Health contrary to Articles 8A, 20, 21, 22, 33(1), 35 & 45 of the Constitution and Objectives 14 & 20 of the National Objectives and Directive Principles of State Policy?

It is the applicants' contention that the use of national identification register as the primary data source and only means of identification under *section 65(1) (j) & 66 of the Registration of Person Act 2015*, to access public health services is exclusionary and violates the right to Health contrary to *Articles 8A, 20, 21, 22, 33(1), 35 & 45 of the Constitution and Objectives 14 & 20 of the National Objectives and Directive Principles of State Policy*.

The Respondents submit that *Section 66 of the Registration of Person Act 2015* provides that any ministry, department or agency of government or other institution providing a public service shall require the production of national identification number or card. It suffices to note that health is not among the services listed under Section 66 and therefore the production of the national ID is not mandatory.

Under Ministry of Health's Health Management Information Management System, there is no requirement for any unique form of identification. *Paul Mbaka the Assistant Commissioner Health and Information Management of the Ministry of Health, in paragraph 12 and 15 of his affidavit*, he states that in MoH's clinical documentation and primary documents used for collecting data, health care workers sometimes ask patients to identify themselves and the National Identity Card (NID) is the preferred method of identification however it is not compulsory for one to present a NID to access public health facilities. If a patient does not

have a NID the health care worker asks them for any other form of identity and if they don't have any, they will just take their name and treat them.

The Ministry of Health's Patient Charter 2019 also requires that health care be accessible and provided for all without discrimination on account of health status, race, ethnicity, age, sex, sexuality, disability, language, religion, national origin, income, or social status. Medical workers are bound by their conduct of code and oath to provide health care without any discrimination based on identify or otherwise.

There is therefore no proof that medical health centers in Uganda require the use of the national identification card as a precondition to access medical services.

The above notwithstanding, the respondent submits that a foundational and functional ID systems is an indispensable requirement in the realization of the right to health in Uganda.

The Constitution of the Republic of Uganda in Objective XIV of the objective principles of State Policy provides that the state shall endeavor to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall in particular, ensure that all development efforts are directed at ensuring the minimum social and cultural well-being of all the people; and all Ugandans enjoy rights and opportunities and access to education, health services.

It is further stated in objective XX of the Constitution that the state shall take all practical measures to ensure the provision of basic medical services to the population.

In addition, Uganda has ratified a number of international Human Rights treaties and conventions which specifically guarantee and protect the right to health.

The Government of Uganda has fulfilled the right to health through adoption of national health plans for the realization of the right to health. One of the tools that the government can utilize in ensuring efficient access health services is identification. Identification is crucial for the efficient delivery of health services and public health management in general. See affidavit of *Paul Mbaka the Assistant Commissioner Health and Information Management of the Ministry of Health*, in paragraph 4,5,6,7,8,9,9, 10 and 11 of his affidavit he states that:

- a) Healthcare systems require identification of users (patients) for a variety of reasons. This includes treating patients and managing their health records, aggregating data to optimize performance, improve planning, resource allocation and to facilitate research. Health Care providers need to know a patient's identity to access relevant medical treatment histories and ensure that they are giving consistent and appropriate care.
- b) The treatment of chronic conditions such as cancer, TB and HIV, requires precise identification of patients to avoid mixing up the treatments and for purposes of giving optimal care. It becomes difficult to give a patient optimal care where a doctor cannot uniquely identify the patient.
- c) A secure, inclusive and accessible method of uniquely identifying and authenticating healthcare users overtime across different health facilities is critical to achieving the goal of universal health care.

The potential for ID systems in advancing public health management systems has been highlighted by the World Bank in its report titled "the Role of Digital Identification for Health Care: The emerging Use Cases"¹.

The above-mentioned World Bank report revealed that streamlining identity management and integrating a foundational ID system improves patient management, insurance administration and data collection. In Estonia, for example, adopting the country's national electronic identify document (eID) as a unique patient identifier has increased the efficiency and accuracy of health data, reduced the administrative burden of doctors and facilitated new services such as an e-prescription system that leverages the eID's digital signature capability. In Botswana, various programs to address the HIV/AIDS crisis have used the national ID to uniquely identify patients and enable an advanced monitoring system that has increased patient retention and facilitated evaluation and scale up.

¹ <https://documents1.worldbank.org/curated/en/595741519657604541/The-Role-of-Digital-Identification-for-Healthcare-The-Emerging-Use-Cases.pdf>

Uganda is a member of the World Health Organization which has recognized the use of the foundational ID in the provision of health care services. The purpose of the foundational ID is not exclude individuals from health care but rather to help in patient care and management.

A foundational ID is also one of the key tools for an efficient national health insurance system which Uganda is seeking to achieve.

The ability to uniquely identify patients across healthcare facilities can improve administration, patient management, and the quality of care by ensuring that individuals can be repeatedly and correctly identified when accessing services throughout the country. The data collected through the national identification system can also be used for health planning and resource allocation. Health authorities can analyze demographic information, disease prevalence and healthcare needs of specific regions, leading to targeted interventions and resource distribution.

As illustrated in issue 1 above, the 2nd respondent has generated a national ID system is that credible, accessible and fully functional. The same system can be leveraged to enhance the health care management system and enhance the right to health in Uganda. We must however emphasize the that use of the national ID is not mandatory for access to health services in Uganda and therefore cannot constitute an exclusionary barrier to accessing healthcare as alleged by the applicant.

Issue 3: Whether the use of the National Identification Register as the primary data source and only means of identification under section 65 (1) (j) & 66 of the Registration of Persons Act 2015 is a violation of the right to equality and freedom from, nationality and privacy.

Relating to Human Rights and Identity Systems the Respondent submits that the Government of Uganda is committed to upholding all human rights throughout its operations, procedures, and policies, and to ensuring gender equity, as well as equity relating to vulnerable and marginalized populations. Uganda has ratified key global human rights conventions, it has led the UN work on Agenda 2030, and it is committed to upholding the human right to legal identity for all people.

The right to a legal identity is enshrined in the Universal Declaration on Human Rights, a milestone document in the history of human rights. It was proclaimed on 10 December 1948 in Paris at the UN General Assembly, and is the first document to set forth the key fundamental rights applicable to each person. These rights form a common and global standard. *Article 6 of the Declaration* states that “Everyone has the right to recognition everywhere as a person before the law.” This Declaration formally created a human right of legal identity for each person².

Article 16 of the International Covenant on Civil and Political Rights was adopted 16 December 1966. Uganda ratified the International Covenant on Civil and Political Rights in 1995. Article 16 states: “Everyone shall have the right to recognition everywhere as a person before the law.” *Article 24(2)* also recognized a right to birth registration. It states: “Every child shall be registered immediately after birth and shall have a name.” As a party to this International Covenant, Uganda has a responsibility to provide legal recognition to all people, and to provide for child birth registration³.

Uganda’s Registration of Persons Act, effectuates and implements these rights and responsibilities regarding child birth registration and national identification⁴.

The United Nations’ Sustainable Development Goals (SDG), includes Goal 16, which is to “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.” *SDG Target 16.9 is to: “By 2030, provide legal identity for all, including birth registration.”* The SDGs further enshrine and make more specific the necessity of provision for legal identity to all persons in inclusive ways⁵.

² <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

³ <https://www.ohchr.org/en/instrumentsmechanisms/instruments/internationalcovenant-civil-and-political-rights>.

⁴ <https://www.nira.go.ug/home>.

⁵ <https://sdgs.un.org/goals/goal16>.

Thus, right to legal identity is a human right, which Uganda has publicly recognized and committed to in its ratification of the International Covenant on Civil and Political Rights and its ratification of the Convention on the Rights of the Child, as well as its leading work in developing and introducing the UN 2030 Agenda for Development and tracking its progress on implementing the SDGs.

Uganda's statutory requirements for birth registration for all births occurring in Uganda and National ID registration for all (those below 16 gets National ID Numbers, above 16 NID Card) provides a national-level legal basis for Uganda to ensure that it is uniformly providing a core human right of identity to all Ugandan citizens, without exception. It also enables Uganda to follow through on its commitments in ratifications to key global human rights conventions and covenants. Uganda's National Identification and Registration Authority, NIRA, implements The Registration of Persons Act 2015, The Registration of Persons Regulations 2015, The Registration of Persons (Births and Deaths) Regulations 2015 which provides the legal basis for the country-level implementation of birth registration and registration for National ID⁶.

Alleged violation of the Right to equal treatment and non-discrimination

My Lords, the Respondent contends that Article 21 (3) of the Constitution defines what amounts to discrimination.

It states that;

- (1) *All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.*
- (2) *Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.*

⁶ <https://www.nira.go.ug/publications/access-and-use-of-information>

(3) For the purposes of this article, “discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.

In *Carolyn Turyatamba & 4 Ors Vs. Attorney General & Anor. Constitutional Petition No. 15 of 2006* Court while addressing the issue of discrimination held that;

“Discriminate” for purposes of Article 21, and indeed for the whole constitution, is to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, or religion, social or economic standing, political opinion or disability.

....

the term “Discrimination” has come to imply a distinction, exclusion, restriction, or preference based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”

The applicant contends that the requirement to show National ID to access public health services constitutes direct and indirect discrimination. However as illustrated in issue 2 above, there is no mandatory requirement for one to show a National ID to access public health services in Uganda therefore there is no discrimination. According to the evidence of *Paul Mbaka* in Ministry of Health’s clinical documentation and primary documents used for collecting data, health care workers sometimes ask patients to identify themselves and the National Identity Card (NID) is the preferred method of identification however it is not compulsory or mandatory for one to present a NID to access public health facilities. However even if there was such a requirement existed (which is denied) requesting for someone to identify themselves in itself cannot amount to discrimination. The purpose of identification in a national health care system has been aptly explained in the issue 2 above. Secondly as illustrated in issue 1 the national ID registration system of the 2nd respondent is all inclusive, free of charge and accessible to all groups of persons regardless of color, race, language, religion, age. It is available to the vulnerable and marginalized groups and the 2nd respondent’s services are accessible across the country. The 2nd respondent also has

programmes/outreaches targeting children, the elderly and persons with disabilities. (See paragraph 64 of Rosemary Kisembo's affidavit) There is therefore no discrimination as alleged or at all.

Right to Privacy

The applicant contends that the design of the National ID system particularly its collection of biometrics and metadata, may lead to violations of the right to privacy which right is central to the enjoyment of other human rights.

Article 27 of the Constitution provides for the right to privacy of the person, or other property. It stipulates that no person shall be subjected to unlawful search of the person, home or other property of that person; or unlawful entry by others of the premises of that person. Secondly it provides that no person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property. The applicant has to demonstrate that the national ID system has led to unlawful interference with a person's privacy or with his property.

There has been an attempt by the Court to define the right to privacy. In the case of **Paulo Baguma Mugarama Versus Uganda Revenue Authority HCCS No.93 of 2014** Justice Ssekaana Musa held as follows in determination of the Right to Privacy under Article 27

"Privacy means-state or condition of being alone undisturbed or free from public attention, as a matter of choice or right; freedom from interference or intrusion..."

It is the duty of the court to determine whether the person claiming that his or her privacy was infringed could reasonably expect his or her privacy to be protected in the particular circumstances.

Interference is defined under the **Black's Law Dictionary** to mean: The act of intermeddling in another's affairs". An important aspect of privacy is the ability to exclude others from a home, correspondence, communication or other property in this case a motor vehicle or motorcycle as a matter of choice or right.

The decision whether, reasonably speaking, a person has a legitimate expectation to privacy may depend on whether the interference was of the 'inner sanctum' of personhood or not. The effect of this view regarding privacy is that in the 'inner sanctum' of a person's life, in his or her 'truly personal realm' like his or her bedroom, there would be a far greater likelihood that a person's expectation of having his or her privacy respected is reasonable. See *Bernstein and Other v Bester NO and Others (CCT23/95)[1995] ZACC 2; 1996 (4) BCLR 449*.

As stated in paragraph 51, 69, 70, 74, 92 of the affidavit Rosemary Kisembo, Uganda respects and upholds the right to privacy and has a robust legal and regulatory framework to ensure security and privacy of collected personal information including but not limited to the 1995 Constitution of Uganda (as amended), Data protection and Privacy Act 2019, The Registration of Persons Act 2015, The Computer Misuse Act, 2011 The Electronic Transactions Act 2011.

Second respondent's Registration System is a physical ID card-based system and as such does not pose the risks associated with digital ID systems alluded to by Dr. Fisher. Furthermore, the second respondent requires consent or court order to allow access to personal identifiable information.

It should be noted however, that the right to privacy is not absolute. It should be considered on a case-by-case basis or development. It should be subject to regulations. If the scope of the right to privacy is widened beyond limit, it may interfere with governance of state or other person's constitutional rights.

Article 44 of the Constitution sets out the non-derogable rights. These are; (a) freedom from torture, and cruel, inhuman or degrading treatment or punishment; (b) freedom from slavery or servitude; (c) the right to fair hearing encapsulated in article 28 and (d) the right to an order of habeas corpus.

Consequently, it can be discerned from reading the above Constitutional provision that the right to privacy is not non-derogable under article 44 of the Constitution and can be derogated,

where it can be shown that it is acceptable and demonstrably justifiable in a free and democratic society as provided for in Article 43 of the Constitution.

Whenever an invasion of privacy is claimed, there are usually competing values at stake. Privacy may seem paramount to a person who lost it, but that right often clashes with other rights and responsibilities that we as society deem important.

The right to privacy is not unlimited and can be limited where there it is fair and justifiable in open and democratic society.

The collection and processing of data for purposes of national ID system is authorized in terms of the Data Protection and Privacy Act, 2019. Section 7 (2) states that:

Personal data may be collected or processed

- (a) Where the collection or processing is authorized or required by law;
or
- (b) Where it is necessary-
 - (i) For the proper performance of a public duty by a public body;
 - (ii) For national security
 - (iii) For the prevention, detection, investigation, prosecution or punishment of an offence or breach of law.

Duty to Protect. The Ugandan government also has a duty to protect the people of Uganda and the Ugandan information infrastructures such as financial, health, education, and other information ecosystems from fraudulent and criminal activity. One of the ways of accomplishing this is through “Know Your Customer” (KYC or e-KYC) regulations, which are pervasive across governments around the world.

Issue 4 Whether the applicants are entitled to the orders prayed for in the application?

The Respondents submit that the applicants having failed to prove the claims in the application they are not entitled to the orders prayed for in the application.

Conclusion

The 1st and 2nd Respondents pray that the Application be dismissed with costs to the Respondents.

It is so prayed

Dated at Kampala this 30th day of August 2023



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