

DRAFT HC - 00 - CX - MC - 0066 - 2022

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

MISCELLANEOUS CAUSE NO. _____ OF 2022

1. INITIATIVE FOR SOCIAL AND ECONOMIC RIGHTS (ISER) LTD APPLICANTS
2. THE UNWANTED WITNESS (U) LIMITED
3. HEALTH EQUITY AND POLICY INITIATIVE LIMITED

VERSUS

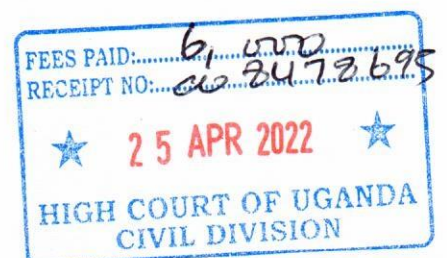
1. THE ATTORNEY GENERAL
2. NATIONAL IDENTIFICATION REGISTRATION AUTHORITY (NIRA) RESPONDENTS

NOTICE OF MOTION

(Under Article 50 (2) of the Constitution of the Republic of Uganda, 1995, Section 1 (2), 3, 4 (1) (b), 9 (1) & (4), 13, & 17 of the Human Rights (Enforcement) Act 2019, Order 52 Rules (1) & (2) of the Civil Procedure Rules SI 71-1).

TAKE NOTICE that this Honourable Court will be moved on the ____ day of _____ 2022 at _____ O'clock or as soon as Counsel for the Applicants can be heard on the Applicants' behalf for declarations and orders of Court for the following reliefs: -

1. 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 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 the 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 Persons 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 the 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 a 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.
9. Costs of the application be provided for.

TAKE FURTHER NOTICE that the grounds in support of this application are set out in the attached affidavits of KIIRA BRIAN ALEX; DOROTHY MUKASA; ODUR ANTHONY; DR. THOMAS FISHER (an expert); ARYEMO ANNA; LOMOR DANIEL; CHEPURAI LOMOR; LOPETA PAUL KICHODA; CHEPOCHEPKAI PAULINA; PEDUN MARIA TERESA; APOLOT LUCY; OTAJAR JOHN; IMALING ROSE; AKELLO IRENE; ACOM SARAH; MADUDU MARY; ASEGE MARABU; AKUM SOFIA; OZENGI MARGARITA; ACEN ANNA; OKELATHO EMMA; USUTHO FULABIA; KAHERO JANNIFER; NYIRUCIBA LUCIA; OYIKONYIGA YULIAN; JANE BITEHE; AUME KETULA; NAFULA JESCA; AJAMBO BULUMA; ANYANGO MALISELLA; NANSUBUGA ZEULENCE; NAKAGIRI NAKATO; NAKADDU EPHERANCE; AGUTTU MANGADALENA; NAFULA HENDERIKA; OKELLO YOVAN, and other additional affidavits that shall be read and relied on at the trial but the grounds are briefly set out below: -

1. That the Applicants are incorporated entities whose objectives are to among others promote the respect and upholding of human rights, and to undertake public interest litigation initiatives for the promotion of human rights.
2. The 1st & 2nd Applicants and other partners conducted a research on how the use of the digital national identification system ("Ndaga Munutu") 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, *vide* a report "*Chased Away and Left to Die*" dated 8th June 2021.

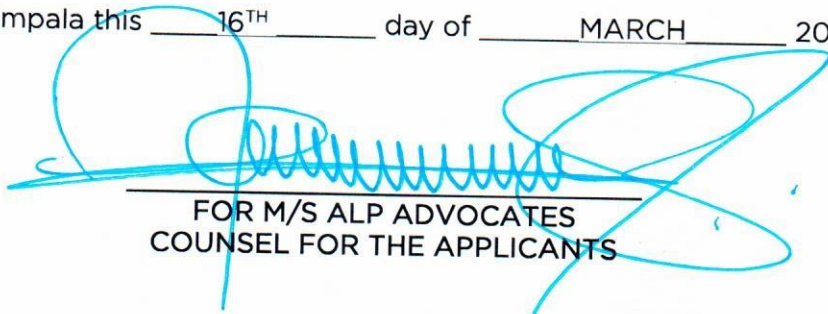
3. The Applicants' research findings from reports, interviews and published statements established that digital national identification system had the effect of excluding women and older persons violating their rights to social security protection, freedom from discrimination, right to life, rights of women, and rights of persons with disabilities.
4. That the Constitution of Uganda as the supreme law of the land guarantees the inherent right of older persons to social security protection under **Articles 8A, 20, 21, 22, & 45 of the Constitution, and Objectives 7 & 14 of the National Objectives and Directive Principles of State Policy.**
5. That the National Council for Older Persons Act 2013 which seeks to operationalise **Objective 7 of the National Objectives and Directive Principles of State Policy**, requires the Government to make reasonable provision for the welfare and maintenance of the aged (older persons).
6. That the Government under the Ministry of Gender, Labour and Social Development (MGLSD) in the Expanding Social Protection Program (ESP) has a Senior Citizens Grant under which it rolled out the Social Assistance Grants for Empowerment (SAGE) in October 2019, with the aim of promoting the rights and welfare of older persons in Uganda.
5. That the Constitution further guarantees the right to health which includes the right to access health services under **Articles 8A, 20, 21, 22, 33 (1), 35 & 45 of the Constitution, and Objective 14 & 20 of the National Objectives and Directive Principles of State Policy.**
6. That the Government of Uganda under the Ugandan National Minimum Health Care Package 2000 adopted the provision of maternal and child health as one of the core components of the Ugandan National Minimum Health Care Package in furtherance of the realization of the right to health.
7. That the National Identification & Registration Authority (NIRA) under the Registration of Persons Act 2015 manages a digital National Identification Register, which is used as the primary data source and only means of identification of beneficiaries to access SAGE benefits.
8. That notwithstanding the guaranteed right to social security protection of the older persons under the Constitution and the National Council for Older Persons Act 2013, the access to the SAGE benefits by eligible older persons under the Ministry of Gender, Labour and Social Development has been unfairly and unjustly impeded by the use of the National Identification Register as the primary data source and only means of identification.
9. That the use of the digital National Identification Register as the primary data source and only means of identification to access SAGE benefits (under the Ministry of Gender, Labour and Social Development - MGLSD) 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 the National Objectives and Directive Principles of State Policy.**

10. That persons seeking to access health services from Public Health Facilities under the Ministry of Health (MOH) are required to present a National ID or a National Identification Number (NIN) under the digital national identification system ("Ndaga Munutu") as the primary and sole mean of identification for access to health services.
11. That the use of the digital National ID or a National Identification Number (NIN) under the National Identification Register as the primary data source and only means of identification to access 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 Objective 14 & 20 of the National Objectives and Directive Principles of State Policy.**
12. That the Respondent Government's failure to allow the use of other means and forms of identification in the promotion, respect and upholding of the rights to social security protection of older persons under the SAGE Program and access to health services is contrary to the Constitutional mandate of the Respondents under **Articles 8A, 20, 21, 22, 33 (1), 35 & 45 of the Constitution, and Objectives 7, 14 & 20 of the National Objectives and Directive Principles of State Policy.**
13. That the digital National Identification Register and System established under the Registration of Persons Act 2015 and managed by the 2nd Respondent (NIRA), is tainted with errors, system access barriers and weaknesses of the digital registration system leading to exclusion of eligible older persons from accessing the SAGE benefit, and access to health services contrary to **Articles 8A, 20, 21, 22, 33 (1), 35 & 45 of the Constitution, and Objectives 7, 14 & 20 of the National Objectives and Directive Principles of State Policy.**
14. That the digital National Identification Register and system operates as a centralized digital ID system relying on biometric authentication, which allows for the collection of metadata, mass surveillance and targeted profiling contrary to **Article 27 of the Constitution and Article 17 of the International Covenant on Civil and Political Rights**
15. That the failure of the 2nd Respondent's Board to establish a **committee to adjudicate** over matters arising or related to registration under **Section 83 (1) (a)** of the Registration of Persons Act 2015, has furthered the effects of the exclusionary digital registration system under the Act, leading to exclusion of eligible older persons from accessing the SAGE benefit, and access to health services contrary to **Articles 8A, 20, 21, 22, 33 (1), 35 & 45 of the Constitution, and Objectives 7, 14 & 20 of the National Objectives and Directive Principles of State Policy.**
16. That by requiring registration in the centralized database to access services and prove nationality, the Respondents are making the system de facto mandatory in contravention of international recognized privacy and data protection rights.
17. That it is the Constitutional mandate of the Respondents to respect, uphold and promote the inherent human rights guaranteed by the Constitution, includes the right to social security protection older persons, and the right to health.
18. That the actions of the Government agencies (*to wit* the MGLSD, MOH & NIRA) violate the right to social security protection older persons, and the right to health contrary to **Articles 8A, 20, 21, 22, 33 (1), 35 & 45 of the Constitution, and**

Objectives 7, 14 & 20 of the National Objectives and Directive Principles of State Policy.

7. That it is in the interest of justice that this application is allowed.

DATED at Kampala this 16TH day of MARCH 2022.



FOR M/S ALP ADVOCATES
COUNSEL FOR THE APPLICANTS

GIVEN under my Hand and Seal of court this _____ day of _____ 2022.

D/REGISTRAR.

Drawn & Filed By: -

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SUMMARY OF EVIDENCE

The Applicants shall adduce evidence to demonstrate that the use of the digital national identification system ("Ndaga Munutu") 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 contrary to **Articles 8A, 20, 21, 22, 33 (1), 35 & 45 of the Constitution, and Objectives 7, 14 & 20 of the National Objectives and Directive Principles of State Policy**. The Applicants seek to enforce the aforementioned rights under Article 50 (2) of the Constitution.

LIST OF WITNESSES

- ✓ 1. KIIRA BRIAN ALEX
- ✓ 2. DOROTHY MUKASA
- ✓ 3. ODUR ANTHONY
- ✓ 4. DR. THOMAS FISHER
- ✓ 5. ARYEMO ANNA
6. LOMOR DANIEL
7. CHEPURAI LOMOR
8. LOPETA PAUL KICHODA
9. CHEPOCHEPKAI PAULINA
10. PEDUN MARIA TERESA
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13. IMALING ROSE
14. AKELLO IRENE
15. ACOM SARAH
16. MADUDU MARY
17. ASEGE MARABU
18. AKUM SOFIA
19. OZENGI MARGARITA

20. ACEN ANNA
21. OKELATHO EMMA
22. USUTHO FULABIA
23. KAHERO JANNIFER
24. NYIRUCIBA LUCIA
25. OYIKONYIGA YULIAN
26. JANE BITEHE
27. AUME KETULA
28. NAFULA JESCA
29. AJAMBO BULUMA
30. ANYANGO MALISELLA
31. NANSUBUGA ZEULENCE
32. NAKAGIRI NAKATO
33. NAKADDU EPHERANCE
34. AGUTTU MANGADALENA
35. NAFULA HENDERIKA
36. OKELLO YOVAN
37. Any other Witnesses with leave of court.

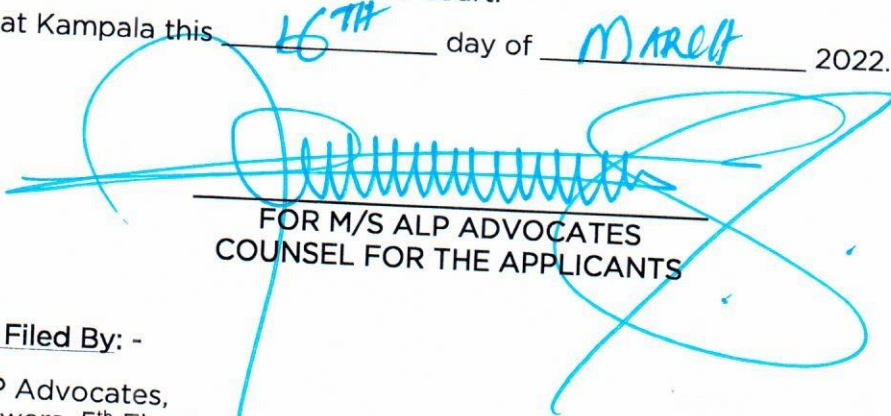
LIST OF DOCUMENTS

1. All annexures to the Affidavits in support to the Notice of Motion.
2. Any other documents with leave of court.

LIST OF AUTHORITIES

1. The Constitution of the Republic of Uganda, 1995 (as amended).
2. The National Council for Older Persons Act 2013.
3. The Registration of Persons Act 2015
4. Human Rights International Instruments.
5. Decided Cases.
6. Any other authorities with leave of court.

DATED at Kampala this 16TH day of MARCH 2022.


FOR M/S ALP ADVOCATES
COUNSEL FOR THE APPLICANTS

Drawn & Filed By: -

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