

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

MISCELLANEOUS CAUSE NO. 0086 OF 2022

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

VERSUS

**1. THE ATTORNEY GENERAL
2. NATIONAL IDENTIFICATION AND REGISTRATION**

AUTHORITY (NIRA) ::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] The applicants brought this application by Notice of Motion under Article 50 of the Constitution, Sections 1(2), 3, 4, 6(1)(b), 9(1) & (4), 13 and 17 of the Human Rights (Enforcement) Act, 2019 (now Cap 12), and Order 52 Rules 1 and 2 of the CPR seeking the following declarations and orders;

a) A declaration that the use of the National Identification Register as the primary data source and only means of identification under sections 65(1)(j) and 66 of the Registration of Persons Act 2015 (now Cap 332), to access Social Assistance Grants for Empowerment (SAGE) benefits is exclusionary, discriminatory and violates the right to social security of older persons contrary to Articles 8A, 20, 21, 22 & 45 of the Constitution of Uganda and Objectives 7 & 14 of the National Objectives and Directive Principles of State Policy.

b) A declaration that the use of the National Identification Register as the primary data source and a mandatory means of identification, under sections 65(1)(j) and 66 of the Registration of Persons Act 2015 (Cap 332), to access public health services, is exclusionary, discriminatory and violates the right to health contrary to Articles 8A, 20, 21, 22, 33(1), 35 &

45 of the Constitution of Uganda and Objectives 14 & 20 of the National Objectives and Directive Principles of State Policy.

c) A declaration that the use of the National Identification Register as the primary data source and a mandatory means of identification, under section 65(1)(j) and 66 of the Registration of Persons Act 2015 (Cap 332) to prove nationality is a violation of the right to non-discrimination and internationally recognized right to nationality and freedom from statelessness contrary to Articles 21 and 45 of the Constitution of Uganda.

d) An order that the respondents allow the use of other sources of identification to enable eligible older persons to access SAGE benefits in respect and promotion of their rights to social protection in accordance with Articles 8A, 20, 21, 22 & 45 of the Constitution of Uganda 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, systemic access barriers and weaknesses.

e) An order that the respondents allow the use of other forms of identification to progressively realise, promote, respect and uphold the right to health in accordance with Articles 8A, 20, 21, 33(1) & 45 of the Constitution of Uganda and Objectives 14 and 20 of the National Objectives and Directive Principles of State Policy to avert exclusionary effects of the digital National ID system.

f) 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.

g) 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.

h) Any other reliefs as the court may deem fit.

i) Costs of the application be provided for.

[2] The grounds of the application are set out in the Notice of Motion; which is supported by 32 affidavits deposed by Mr. Kiira Brian Alex (the Program Officer, Business and Human Rights of the 1st applicant); Ms. Dorothy Mukasa (the Executive Director of the 2nd applicant); Mr. Odur Anthony (the Executive Director of the 3rd applicant); Dr. Thomas Fisher (a Senior Research Officer of Privacy International – a UK based NGO); Dr. Reetika Kheira (an Associate Professor and Development Economist); Diana Gichengo (advocate and human rights practitioner from Kenya); Aryemo Anna (a community mobiliser working with the 3rd applicant); Chepurai Lomor (resident of Amudat District); Lopela Paul Kichoda (resident of Amudat District); Chepocheptai Paulina (resident of Amudat); Pedun Maria Teresa (resident of Kumi District); Otajar John (resident of Kumi District); Imaling Rose (resident of Kumi District); Akello Irene (resident of Kumi District); Acom Sarah (resident of Kumi District); Madudu Mary (resident of Kumi District); Asege Mirabu (resident of Kumi District); Akumu Sofia (resident of Nebbi District), Acen Anna (resident of Nebbi District); Usutho Fulabia (resident of Buliisa District); Nyiruciba Lucia (resident of Buliisa District); Oyikonyinga Yulian (resident of Buliisa District); Betehe Jane (resident of Buliisa District); Aume Ketula (resident of Busia District); Nafula Jesca (resident of Busia District); Ajambo Buluma (resident of Busia District); Anyango Malisella (resident of Busia District); Nansubuga Zuelance (resident of Kayunga District); Nakagiri Nakato (resident of Kayunga District); Aguttu Mangadalene (resident of Namayingo District); Nafula Henderika (resident of Namayingo District) and Okello Yovan (resident of Namayingo District). Due to the numerical and voluminous nature of the affidavit evidence, I will refer to

the respective affidavits where it is relevant in the course of determination of the matter before the Court.

[3] The 1st and 2nd respondents opposed the application through nine (9) affidavits in reply deposited by; Mr. Stephen Kasaija (the Head Expanding Social Protection Program – under which SAGE falls); Mr. Paul Mbaka (the Assistant Commissioner Health and Information Management, and a Digital Health Specialist); Mr. Shem Mwesigwa (the Operations Liaison Officer, Expanding Social Protection Program); Ms. Rosemary Kisembo (the Executive Director of the 2nd respondent); Mr. Jaume Dubois (a Senior Digital Identity Consultant); Mr. Atukunda Job (Information Technology Officer (ITO) and District Registration Officer of the 2nd respondent at Kumi District); Mr. Kitto Tarasisio (ITO and District Registration Officer for Buliisa District); Mr. Mukwasi Suleiman Wanzala (a District Registration Officer for Busia District); and Mr. William Loburon (a District Registration Officer for Amudat District).

[4] The applicants filed one affidavit in rejoinder to all the affidavits in reply; deposited by Mr. Kiira Brian Alex. Prior to the hearing of this matter, the Court had also admitted as *amici curiae* (friends of the court), Prof. Philip Alliston on one hand and the Collaboration on International ICT Policy for East and Southern (CIPESA) & 2 Others (CIPESA), on the other hand. Both *amicii curiae* made and filed briefs which have been considered by the Court while determining this matter.

Representation and Hearing

[5] At the hearing the applicants were represented by **Mr. Francis Gimara (SC)**, **Mr. Lastone Gulume** and **Mr. Edmond Babalanda** from M/s ALP Advocates while the respondents were represented by **Mr. Brian Musota**, a State Attorney from the Chambers of the Attorney General. The hearing proceeded by

way of written submissions which were duly filed and have been considered while determining the matter before Court.

Issues for Determination by the Court

[6] Four issues were raised for determination by the Court, namely;

- a) *Whether the use of the National ID system (including the National Identification Register, the National ID Number – NIN and the National ID Card) as the primary data source and a mandatory means of identification, under sections 65(1) (j) and 66 of the Registration of Persons Act (ROPA) to access SAGE benefits, is exclusionary, discriminatory and violates the right to social security of older persons contrary to Articles 8A, 20, 21, 22 & 45 of the Constitution of Uganda and Objectives 7 & 14 of the National Objectives and Directive Principles of State Policy?*
- b) *Whether the use of the National ID system as the primary data source and a mandatory means of identification, under sections 65(1) (j) and 66 of the Registration of Persons Act (ROPA) to access public health services is exclusionary, discriminatory and violates the right to health contrary to Articles 8A, 20, 21, 22, 33(1), 35 & 45 of the Constitution of Uganda and Objectives 14 & 20 of the National Objectives and Directive Principles of State Policy?*
- c) *Whether the use of the National ID system as the primary data source and a mandatory means of identification, under sections 65(1) (j) and 66 of the Registration of Persons Act (ROPA) to prove nationality is a violation of the right to non-discrimination, of the internationally recognized right to a nationality and freedom from statelessness, and the right to privacy contrary to Articles 21, 27 & 45 of the Constitution of Uganda?*
- d) *What remedies are available to the applicants?*

Resolution of the Issues by the Court

Issue 1: Whether the use of the National ID system (including the National Identification Register, the National ID Number – NIN and the National ID Card) as the primary data source and a mandatory means of identification, under sections 65(1) (j) and 66 of the Registration of Persons Act (ROPA) to access SAGE benefits, is exclusionary, discriminatory and violates the right to social security of older persons contrary to Articles 8A, 20, 21, 22 & 45 of the Constitution of Uganda and Objectives 7 & 14 of the National Objectives and Directive Principles of State Policy?

Submissions by Counsel for the Applicants

[7] Counsel for the applicants cited the provisions of section 3(2)(c) of the Human Rights Enforcement Act Cap 12 which allows a person acting in public interest to institute proceedings under the Act. Counsel submitted that the instant application is one of public interest for enforcement of human rights under Article 50 of the Constitution of Uganda and seeks to enforce the rights to social security and health along auxiliary rights and freedoms to equality, non-discrimination, nationality and freedom from statelessness as well as the right to privacy. Counsel stated that the application affects a significant number of persons with no national identification cards or numbers, older persons excluded from the Social Assistance Grants for Empowerment (SAGE), vulnerable women unable to access health services and, as such, raises matters of public interest.

[8] Counsel further submitted that whereas government has developed policies to realize the right of older persons to social security protection through programs like SAGE, the introduction of the National Identification (NID) system as the primary data source and mandatory means of identification has

denied access of older persons to the life-saving program leading to violation of their right to social security. Counsel stated that thousands of older persons have been excluded from SAGE on account of not being successfully registered for the national ID or due to wrong or erroneous details. Counsel reasoned that there are severe limitations to older persons accessing the National ID system on account of sickness, failure to access registration points, difficulty in producing required documents or in providing biometrics or other financial and technical barriers. Counsel therefore submitted that the National ID system is exclusionary and discriminatory to eligible older persons and violates their right to social protection, which right is recognized in numerous international human rights instruments to which Uganda is a State party. The right is also recognized under the Constitution of the Republic of Uganda.

[9] Counsel submitted that the Government has an obligation to take steps to the maximum of its available resources to progressively realize the right to social security. Providing minimum essential levels of the right to social security is considered a core obligation and the State also has an immediate obligation to ensure equal treatment and non-discrimination. Citing General Comment No. 19 (GC No. 19) paras. 42 & 65 of the Committee on Economic, Social and Cultural Rights, Counsel stated that an essential element of the right to social security is accessibility, including non-discrimination, physical accessibility, economic accessibility and information accessibility.

[10] Counsel concluded that the respondents have neglected their obligation to ensure access to social protection and, despite extensive evidence of ongoing violations, the respondents have continued to choose the most stringent, unrealistic and problematic mode of identification and have failed to allow the use of the numerous alternative options for identification. This has had the effect of restricting access to services, thereby excluding a number of genuine beneficiaries of social security benefits.

Submissions by Counsel for the Respondents

[11] In reply, Counsel for the respondent submitted that there is no mandatory requirement that the National Identification Register shall be used as the primary data source and only means of identification. Counsel argued that 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; the word shall in the said provision was not used in mandatory but in a directory sense. Counsel further argued that the relevant provisions in the instant case are not augmented by a sanction for non-compliance and are thus not mandatory.

[12] Counsel further disputed the applicants' allegations that older persons have been excluded from SAGE benefits and argued that the 2nd respondent's national identification system is all inclusive and allows all persons of the age of 80 years and above to benefit and access SAGE across the 117 districts. Counsel highlighted that over 62% of the national population has enrolled on the national ID system. Counsel further argued that under section 54(2)(a) of Registration of Persons Act and in practice, where an older person is incapacitated by illness or any other reason, a guardian or other person responsible for the supervision or welfare of that person is mandated to take steps to cause the person to be registered. Counsel therefore submitted that the national ID system is not exclusionary or discriminatory as alleged by the applicants.

[13] Counsel submitted that in line with its national and international obligations, the Government of Uganda established a key intervention towards the protection of older persons by way of the Social Assistance Grants for Empowerment (SAGE). SAGE is implemented under the legal framework set out in the National Policy for Older Persons 2009. The implementation of the

social protection program requires reliable identification for effective targeting and financial transfers. In order to identify eligible beneficiaries, the program currently uses the NIRA data base. Counsel submitted that the use of the national ID system 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. Access to the national ID system is also free of charge as opposed to prior existing identification documents that were only accessible to a select few for purpose of either travel, driving or voting, and obtained on a voluntary basis. Counsel further stated that the cost of acquiring the above named documents is high and exclusionary, compared to the national ID which is issued to all citizens free of charge.

[14] Counsel also submitted that 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 the rightful beneficiaries. The limited resources would then be enough for the eligible beneficiaries. Counsel submitted that 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, accessible and available to all persons regardless of color, race, language, religion or age.

[15] Counsel for the respondents concluded that there is no proof that the 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 is all inclusive,

has ably facilitated the identification of the actual beneficiaries and is the most credible way to identify persons.

Determination by the Court

[16] By way of a background, fundamental rights and freedoms are embedded in a country's constitution and in the international bill of rights. In Uganda, Chapter 4 of the Constitution contains the bill of rights. Article 20 of the Constitution of Uganda provides as follows;

- 1) Fundamental rights and freedoms of the individual are inherent and not granted by the state.
- 2) The rights and freedoms of the individual and groups enshrined in this chapter shall be respected, upheld and promoted by all agencies of government and all persons.

[17] Under article 50(1) of the Constitution of Uganda, 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. Section 3(1) of the Human Rights (Enforcement) Act Cap 12 provides that in accordance with article 50 of the Constitution, a person or organization who claims that a fundamental or other right or freedom guaranteed under the constitution has been infringed or threatened may, without prejudice to any other action with respect to the same matter that is lawfully available, apply for redress to a competent court in accordance with the Act.

[18] Under the bill of rights in the Constitution of Uganda, the right to social security is not specifically provided for but is recognized under Objective 7 of the National Objectives and Directive Principles of State Policy which requires the state to make reasonable provision for the welfare and maintenance of the aged. The right is, however, specifically provided for in various international

and regional human rights instruments to which Uganda is a State Party. These include articles 22 and 25 of the Universal Declaration of Human Rights of 1948 (UDHR); article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); article 28 of the Convention on the Rights of Persons with Disabilities (CRPD); article 14(2)(c) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); articles 4, 5 and 18 of the African Charter on Human and Peoples' Rights (ACHPR), among others.

[19] In this case, the allegation by the applicants is that the use of the National ID system (which includes the National Identification Register, the National ID Number – NIN and the National ID Card) as the primary data source and a mandatory means of identification, under section 65(1)(j) and 66 of the Registration of Persons Act Cap 332, is exclusionary, discriminatory and violates the right to social security of older persons and the other rights referred to in the subsequent issues. It is not in dispute that the Government of Uganda has put in place legal and policy framework for the upholding and protection of the right of older persons to social security through the Expanding Social Protection (ESP) Program, under which the Social Assistance Grants for Empowerment (SAGE) Program of the Ministry of Gender Labor and Social Development (MGLSD) is managed. The point of contention is the means used by the Government to identify eligible older persons for purpose of accessing SAGE benefits. According to the applicants, the use of the national ID system as the primary data source and a mandatory means of identification is exclusionary, discriminatory and violates the older persons' right to social security.

[20] From materials available to the Court, SAGE is a social protection program aimed at improving the wellbeing of older persons and their families that is implemented under the National Policy for Older Persons 2009 and the

National Council for Older Persons Act, 2013 (now Cap 112). It is admitted by the respondents that in the implementation of the SAGE program, information from the national ID system is used for purpose of identifying eligible older persons and to ensure that only the eligible persons access the benefits. On the one hand, it is argued for the respondents that the use of the national ID register is not necessarily mandatory as alleged by the applicants. On the other hand, it is argued that even if it were to be taken as a mandatory requirement, the use of the national ID system 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. Counsel for the respondent has argued that the adopted approach has ably facilitated the identification of the actual beneficiaries and is the most credible way to identify eligible persons.

[21] The relevant part of section 65 of the Registration of Persons Act Cap 332 provides as follows;

“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 ...”

[22] Section 66 of the Registration of Persons Act provides as follows;

“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 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, 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 the minister. [Emphasis added]

[23] The first question to be addressed is whether the use of the national ID system is mandatory in law and practice for purpose of accessing social security benefits for older persons under the SAGE program. From the above cited provisions of the law and the evidence on record, the answer is in the affirmative. According to section 66(2)(g) of the Registration of Persons Act, a ministry, department or agency of government or any other institution providing pension and social security transactions shall require a person to produce a national identification number or national identification card. It is already agreed that SAGE is a social security program for older persons whose framework has already been alluded to. The head note of section 66 of the Act categorically states; “Mandatory use of national identification cards”. In view of the head note and the express provision of section 66 of the Act, it is undebatable as to whether the provision is mandatory or not. The overly

expressed intention of the legislature is that for purpose of services listed under section 66(2) of the Act, which includes social security services, the use of the national ID system is mandatory.

[24] Turning to the practice, the respondents categorically stated that the use of the national ID system is strictly required and adhered to in compiling the role of SAGE beneficiaries and in processing the benefits. It is therefore not in dispute that the national ID system has been used as the primary data source and mandatory means of identification for purpose of accessing SAGE benefits. The only emphasis is that the framework does not insist on physical production of the national ID card. According to the evidence, where a person is registered, the mention of their NIN or the presence of their name on the register suffices to grant the person access to the benefits. I have not found any evidence to contradict this assertion and I have believed it as the correction obtaining practice on the matter.

[25] The next question thus is whether the use of the National ID system as the primary data source and a mandatory means of identification is exclusionary, discriminatory and violates the right to social security of older persons. In the present case, it has been argued by the applicants that the mandatory use of the national ID system for gaining access to social security benefits by older persons excludes a number of genuine beneficiaries from accessing the benefits which amounts to an unjustified violation of their right to social security. The applicants have relied on the evidence of a number of experts (including briefs by two sets of *amicii curiae*) and a number of comparative studies on the harm resulting from exclusion occasioned by digital ID systems in other national and international contexts. They have also adduced evidence by way of affidavits from persons allegedly affected by the existing exclusionary measures, namely; Chepurai Lomor, Lopeta Paul Kichoda, Chepochepkai Paulina, Pedun Maria Teresa, Otajar John, Imaling Rose, Akello Irene, Asege Marabu, Akumu Sofia,

Acen Anna, Usutho Fulabia, Nyiruciba Lucia, Bitehe Jane, Aume Ketula, Nafula Jesca, Anyango Melisela, Nansubuga Zeulance, Nakagiri Nakato, Aguttu Mangadalena, Nafula Henderika and Okello Yovana.

[26] On the other hand, the respondents have adduced evidence and argued that it is not true that older persons have been excluded from SAGE benefits on account of use of the national ID system since the national ID system is all inclusive and allows all persons of the age of 80 years and above to benefit and access SAGE across the 117 districts in Uganda. It was stated for the respondents that there are no deliberate, inherent or systemic barriers to inclusion onto the national ID system by any category of persons and that the reliance by the applicants on systemic barriers inherent in digital ID systems is inapplicable to Uganda since the Ugandan ID ecosystem is not a purely digital one. The respondents indicated in evidence that there are means in place to ensure that every eligible person gets on the national ID system including the very elderly, sick, disabled or incapacitated. The respondents concluded that the applicants have not proved that the use of the national identification register as a precondition to access SAGE benefits by older persons is exclusionary or has violated their right to social security protection. The respondents finally argued that on the contrary, the National ID system is all inclusive, has ably facilitated the identification of the actual beneficiaries and is the most credible way to identify persons.

[27] I intend to approach this discourse by examining two questions; first, whether there is proof of exclusion of eligible persons from SAGE benefits on account of use of the national ID system as the primary data source and mandatory means of identification; and secondly, whether a better identification system or mechanism has been presented by the applicants as available, practicable and usable within the national and international legal and policy framework.

[28] On the first question as to whether the applicants have adduced sufficient evidence to prove actual exclusion of eligible persons from SAGE benefits on account of use of the national ID system as the primary data source and mandatory means of identification, I note that a number of the deponents of the affidavits produced by the applicants are persons who were entered on the national register with what they refer to as incorrect data concerning their dates of birth. These include Chepurai Lomor, Lopeta Paul Kichoda, Chepochepkai Paulina, Otajar John, Imaling Rose, Akumu Sofia, Acen Anna and Nafula Jesca. It was explained by the respondents that where a person notices an error on the card at the point of issuance, they have a right to reject and return the card for correction free of charge. Where a person notices later, there are available mechanisms for rectification of such an error upon application by the concerned person. Where a person intends to change a detail like the date of birth, they need to do so with evidence concerning the actual date of birth.

[29] On the case before me, the named deponents claim that they noticed the errors on their national IDs after learning of the SAGE program and sought enrolment. All of them had no evidence of their correct date of birth beyond their word. Indeed, many of them categorically stated that they did not know their actual date of birth and only referred the registration officers to historical events before arriving at their proximate dates of birth. In absence of any credible evidence, I do not see the basis upon which the agents of the 2nd respondent could have allowed to alter the dates of birth of the said deponents. It is apparent from the evidence of the respondents in reply that there was a possibility of the persons in issue seeking to adjust their ages for purpose of fitting into the social protection program; which would have had serious negative impact in terms of planning and budgeting.

[30] I have believed the position presented by the respondents that in order to sustain a social security program like the SAGE, it is very crucial to guard the integrity of the roll of beneficiaries and this can only be done by ensuring that only eligible beneficiaries can get on the roll. It is overtly clear to me that if the roll of beneficiaries is infiltrated, there would be a budgetary overrun which could lead to the collapse of the program. As such, in my view, stricter means of identification are less harmful to the right to social protection than a total failure of the program. As I will show later in this ruling, it has to be appreciated that the Government upholds the right to social protection within the purview of the principle of progressive realization.

[31] The next category of deponents is of those who claim to have failed to get on the national ID register despite efforts to that effect. I have considered the evidence by the respondents of the available means and mechanisms for enrolment of a person on the national register. The evidence indicates that apart from mass enrolment, each of the 112 districts of Uganda has a national ID registration centre. The other newly created districts are currently served from their mother districts. It is further stated that the 2nd respondent operates within an inter-agency cooperation arrangement between itself and other agencies of Government, namely; Uganda Registration Services Bureau, the Electoral Commission, the Directorate of Citizenship and Immigration Control, among other regulatory bodies. It was submitted that 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. It was also shown in evidence that on every occasion one of the key stakeholder agency has an activity, the 2nd respondent avails itself to enroll persons on the register and to handle recurrent issues.

[32] In view of the above evidence and submission of the respondents, I am not convinced that the named deponents were prevented from getting on the national register by any systemic or inherent barriers of the national ID system. The deponents appear to me to be few and isolated cases that could be handled through proper follow up, guidance and assistance rather than as constituting evidence of a failed national ID system.

[33] The third and last category of the depositions presented by the applicants is of persons that obtained registration on the national ID system but have not been enrolled on the SAGE program or have not accessed the benefits. Clearly, this has nothing to do with the national ID system; it has to do with operations of the SAGE program. This application is not concerned with questions of the nature and operations of the SAGE program.

[34] In all, therefore, on this question, the applicants have not adduced sufficient evidence to prove on a balance of probabilities that there has been actual and systemic exclusion of eligible persons from SAGE benefits on account of use of the national ID system as the primary data source and mandatory means of identification.

[35] The next question is whether a better identification system or mechanism has been presented by the applicants as available, practicable and usable within the national and international legal and policy framework. To answer this question, I will need to examine the Ugandan national ID system within the international context of identification systems. It has been heavily opined by the applicants that the Ugandan national ID system is a digital ID system and possesses all the inherent and systemic barriers that characterize digital ID systems. These include exclusion, limited accessibility, disproportionality between limitations and benefits, and eventual violation of human rights.

[36] On the other hand, it has been shown and argued by the respondents that the Ugandan ID system is not a digital ID system and cannot be categorized as such. In her affidavit in reply, Ms. Rosemary Kisembo, the Executive Director of the 2nd respondent, in paragraph 55 thereof, states that the NIRA system is offline and verification of a person appearing on the register can be done without internet, just like enrolment of persons on the register and issuance of national ID cards. In paragraph 70, the same deponent states that the Ugandan national ID system is a physical ID card-based system that does not pose the risks associated with digital ID systems alluded to by the applicants. The above evidence is corroborated by that of Mr. Jaume Dubois, a Senior Digital Identity Consultant, working with Consulting ID30, who stated that Uganda's ID ecosystem's end product is a physical ID card which can be verified in absence of any technology. He also confirmed that the Ugandan national ID system cannot be categorized as a digital ID system.

[37] No contrary evidence was adduced by the applicants to challenge the above highlighted expert evidence. I have found the evidence credible and I am convinced that the Ugandan national ID system cannot be categorized as a digital ID system since in majority of cases it operates offline. A person cannot be denied access simply because of lack of internet connectivity among other features of a digital ID system. As such, the attempt by the applicants to offload all the shortcomings of a digital ID system onto the Ugandan national ID system is inaccurate and inapplicable in the circumstances.

[38] I should also state that despite the apparent and stated shortcomings of the Ugandan national ID system, the applicants have not led evidence of any ID system in the world that is perfect, seamless and foolproof. The applicants' argument is that the system should allow for use of alternative means of identification. The applicants referred the Court to two developed nations, as

presenting the best options, where use of the national ID was trashed in preference to alternative identification documents. In his affidavit in support of the application, Dr. Thomas Fisher, a Senior Research Officer with Privacy International (a UK-based firm), stated that the UK abandoned use of the national ID and basically uses two forms of identity documents, namely, the passport and driving licence (paras. 73 – 77 of his affidavit). He also referred the Court to Canada which has no definite form of identification but relies on a collection of means that include a government-issued document containing a voter's name, address and photograph; or "two additional methods. First, the voter can provide two pieces of evidence from a long list of sources that include various proofs of identity from government, private sector, financial sector, utilities and educational institutions. Many of these do not have a photograph but must include the voter's name. Finally, a vouching system is in place, where another person who knows the voter can vouch in writing for their identity" (see para. 79 of his affidavit).

[39] In all reasonableness, I am unable to see how the two cited ID systems are in any way better than the Ugandan ID system. As clearly stated in evidence by the respondents, the use of the passport and driving licence have obvious severer limitations in the Ugandan context in terms of access and cost. The national ID is a government program that is built alongside principles of mass enrolment and targets all Ugandans including a component of registration of aliens. Evidence has been led to the effect that it is cost free at initial registration and re-issue of a card upon notice of an error. This evidence has not been controverted. In my considered view, whatever the shortcomings of the Ugandan national ID system, I do not see how it can be substituted by adoption of the above highlighted UK system as a better alternative.

[40] Regarding the Canadian identification system, it is apparently a worse off example since it is restricted to identification for voting purposes, which stage

Uganda has exceeded by the adoption of an all-inclusive national ID system. The other angle to the argument by the applicants appears to be that instead of the Government using the national ID as a mandatory means of identification, it should be used alongside other identification documents or methods. It ought to be noted that what is suggested by the applicants is what the history in Uganda looked like. Before the introduction of the national ID, people relied for identification on documents like the voter's card, passport, driving licence, local council 1 letters and locally issued identity cards, baptism tickets, among others. There was no uniform identification instrument. The voters' register was inaccurate and only captured Ugandans willing to vote. The passport and driving licence are optional for Ugandans intending to travel or to drive. The other mentioned documents were easy to forge and manipulate and, as such, their reliability was seriously questionable.

[41] I do not agree that the use of a cocktail of identity documents would produce better and more tangible benefits than an all-inclusive national ID system of the kind that is in place in Uganda, if well implemented. I equally do not agree that by allowing the cocktail instead of a uniform means of identification, more effective and efficient delivery of services, including social security services, would be attained. I am of the view that the prevailing shortcomings in the national ID system are not systemic but rather operational challenges that can be addressed for better implementation of the system. The challenges certainly do not call for abandonment, halting or alteration of the system as apparently sought by the applicants.

[42] While reaching the conclusion I have on this issue, I have also taken into account the fact that the right to social security just like the right to health and the other rights subject of this application are economic and social rights whose protection, internationally, follows the principle of progressive realization. It would be utter disregard of the said principle to demand that for

Uganda to implement the use of a national ID, the system should be perfect, seamless and foolproof. In the realm of international human rights law, the steps taken by a nation towards realization of such rights are more important than what is yet to be achieved or any perceived violations.

[43] I am also fortified in the above finding by the decision of the Constitutional Court in *Center for Health, Human Rights and Development (CEHURD) v Attorney General of Uganda, Constitutional Petition No. 29 of 2018* wherein the petitioner sought orders directing the Government to construct gender-based violence (GBV) shelters as part of the rights of women guaranteed under the Constitution of Uganda. While dismissing the petition, the Constitutional Court set out a number of principles that ought to guide the courts when adjudicating cases involving allegations of breach of socio-economic rights of private citizens by the Government, namely;

(a) Operationalization of the constitutional provisions: The socio-economic rights as set out in the Constitution being “aspirational goals” which the government should aspire to achieve, the court ought to look at the instruments in place operationalizing the rights.

(b) International Instruments: The International Covenant on Economic, Social and Cultural Rights (ICESCR), the Sustainable Development Goals (SDGs) and the Global Framework of Indicators that has been developed to monitor each country’s SDG performance; are all relevant international instruments.

(c) Progressive realization of Rights: Progress being an outcome of comparison between the present (or any other starting point of reference) with a measurable or indefinite past, the court should always evaluate evidence covering a period of three to five years in order to determine whether the pattern established is not consistent with improvement, advancement or progress over the said period of time.

(d) Process Flow Analysis: Instead of focusing on the socio-economic right claimed as an end product only, the courts should consider the whole process flow starting with planning, policy formulation, legislation, budgeting, resource mobilization, resource disbursement, implementation, monitoring and evaluation. Even where the given socio-economic right has not been realized, the Government should not be faulted for not fulfilling its obligations to deliver on the given socio-economic right once there is progress registered during any of the different phases of the process flow.

(e) Holistic Lenses: The court should consider the totality of the rights and other constitutional obligations which the Government is obliged to satisfy from the same resource envelope when considering the *bonafides* of the complaint against the Government for failing to deliver on any single socio-economic right.

[44] In light of the above principles, the evidence before me and my findings herein above, I find that a proper consideration of the complaint raised by the applicants reveals that it has not been proved on a balance of probabilities that the use of the National ID system as the primary data source and a mandatory means of identification is exclusionary, discriminatory and violates the right to social security of older persons in Uganda. Issue 1 is therefore answered in the negative.

Issue 2: Whether the use of the National ID system as the primary data source and a mandatory means of identification, under sections 65(1) (j) and 66 of the Registration of Persons Act (ROPA) to access public health services is exclusionary, discriminatory and violates the right to health contrary to Articles 8A, 20, 21, 22, 33(1), 35 & 45 of the Constitution of Uganda and Objectives 14 & 20 of the National Objectives and Directive Principles of State Policy?

[45] Although the right to health is not expressly provided for in the Constitution of the Republic of Uganda, there is no dispute that it is justiciable under the human rights regime. Articles 8A and 45 of the Constitution of Uganda recognize rights and freedoms that are not expressly provided for by the Constitution. The right to health is provided for under objectives 14 and 20 of the National Objectives and Directive Principles of State Policy; under which the State has an obligation to ensure that all Ugandans access health and basic medical services. The right to health is also provided for under human rights treaties, agreements and conventions to which Uganda is a State Party. These include the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples Rights.

[46] It is a true position of the law that the obligation of the state with regard to the right to health encompasses not only the positive duty to ensure that its citizens have access to health care services and medication but must also encompass the negative duty not to do anything that would in any way affect access to such health care services and essential medicines. See: *Patricia Asero Ochieng and Others v AG & Anor, High Court Petition No. 409 of 2009 (Kenya)*.

[47] On the facts before me, the case by the applicants is that there is a restriction to access to public health services through imposition of a mandatory requirement to prove one's identity by production of a national ID and without allowing for alternative forms of identification; which violates the concerned persons' right to health. For the respondents, it is denied that there is a requirement in law, policy or practice for mandatory use of the national ID in order to access public health services.

[48] I will begin with the law. Reference was made to the provisions of sections 65(1)(j) and 66 of the Registration of Persons Act. The provisions have been set out herein before in this ruling. A clear reading of the provisions indicates that

while [under section 65(1)(j)], “the information in the national register shall be used for providing social services, including social security services, health, education and welfare benefits”, health services are not one of the listed services for which mandatory use of the national ID is required under section 66 of the Act. In law, therefore, there is no requirement for use of the national ID as a primary data source and mandatory means of identification of persons for purpose of access to public health services.

[49] Regarding policy, it was stated by Mr. Paul Mbaka, an Assistant Commissioner, Health and Information Management, who is also a digital specialist, in his affidavit in reply that there is no official policy by the Government of Uganda for medical services providers to require patients to produce national IDs before accessing medical services. He explained that in the Ministry of Health's clinical documentation and primary documents used for data collection, 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 services. If a patient does not have a NID, the health care worker asks them for any other form of identity and if they do not have any, they will just take their name and offer them the service. He further stated that he knows of so many scenarios in the health care sector where it is impossible to identify someone by any means but the health care center is still mandated to provide the requisite health care. He also knows that the medical workers are bound by their code of conduct and oath to provide health care without any discrimination based on identity or otherwise.

[50] The above deponent also stated that he knows that in the provision of health services, availability of 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. He stated that the potential for ID systems in advancing public health management systems has been highlighted by the World Bank in a report which revealed that streamlining identity management and integrating a foundational ID system improves patient management, insurance administration and data collection. He further stated that 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 whose purpose is not to exclude individuals from health care but rather to help in patient care and management.

[51] The applicants have relied on a research conducted by the 1st and 2nd applicants titled: “Chased Away and Left to Die”. They have also relied on evidence by way of affidavits sworn by Ms. Aryemo Anna, Ms. Acom Sarah and Ms. Madudu Mary; who claim that they tried to access services from named health units which was denied on account of not having national ID cards.

[52] It has been established herein that there is no legal requirement for mandatory use of a national ID before access to public health services. I have also believed the evidence of the respondents that there is no official policy in the health sector supporting enforcement of such a requirement. Upon considering the evidence before me, my conclusion is that if the incidents referred to by the applicants are to be believed as having occurred, they are isolated incidents which could have been occasioned either by errant health workers or on account of misconception of the law and health policy. These could better be handled as disciplinary cases rather than as a systemic challenge. Beyond the named incidents, the applicants have not adduced any evidence showing that there was a known official policy or practice that require mandatory use of the national ID in order to access health services. From the law and policy as laid before the Court, the use of the national ID (in appropriate cases and not as a mandatory requirement) is necessary for

effective and efficient provision of health services going by the rationale provided in the evidence by the respondents.

[53] In view of the foregoing, therefore, my finding is that it has not been proved by the applicants on a balance of probabilities that a requirement exists for use of the national ID as a primary data source and mandatory means of identification of persons for purpose of access to public health services. Secondly, it is also my finding that the use of the national ID (in appropriate cases and not as a mandatory requirement) is necessary for effective and efficient provision of health services and occasions no exclusion, discrimination or violation of the right to health of Ugandans. Issue 2 is also answered in the negative.

Issue 3: Whether the use of the National ID system as the primary data source and a mandatory means of identification, under sections 65(1) (j) and 66 of the Registration of Persons Act (ROPA) to prove nationality is a violation of the right to non-discrimination, of the internationally recognized right to a nationality and freedom from statelessness, and the right to privacy contrary to Articles 21, 27 & 45 of the Constitution of Uganda?

Submissions by Counsel for the Applicants

[54] Counsel submitted that the right to equal protection under the law is guaranteed and discrimination against any person or class of persons is forbidden under the provisions of Article 21 of the Constitution and under various international instruments. Counsel referred the Court to the affidavits sworn in support of the application by Kiira Brian Alex, Prossy Mukisa and Anthony Odur as well as the experts, namely; Dr. Thomas Fisher, Dr. Reetika Khera and Diana Gichengo; to illustrate the exclusions and effects arising from the national ID requirement. Counsel argued that systemic delays and

difficulties in citizenship verification process and birth registration, inability to register certain groups, are all an affront to the right to nationality. Counsel further stated that the use of biometrics increases risks of data breaches and misuse as well as discrimination, surveillance and denial of access. Counsel argued that the registration requirements and the design of the national ID system infringe on the right to nationality just as the collection of biometrics and meta data may lead to violations of the right to privacy.

Submissions by Counsel for the Respondents

[55] Counsel submitted that the national ID system is all inclusive, free of charge and accessible to all groups regardless of color, age, ethnic group, vulnerable or marginalized groups and the services are accessible all over the country. Counsel submitted that the applicants have not substantiated the alleged inherent errors, system access barriers and weaknesses that have impeded the system from being fully functional. Counsel also stated that in order to mitigate the risks associated with the potential of changing biometrics overtime, the 2nd respondent utilizes various options based on a combination of biodata and biometrics, finger prints, iris of the eye and update of the biometrics whenever an applicant interfaces with the system. Counsel stated that no violation of the right to nationality or to non-discrimination has been proved by the applicants.

[56] Regarding the violation of the right to privacy, Counsel for the respondents submitted that the applicant has failed to demonstrate that the national ID system has led to unlawful interference with any persons' right to privacy or his property. Counsel argued that the national ID system is a physical ID card-based system that does not pose risks associated with the digital ID system alluded to by the applicant. Counsel further submitted that the 2nd respondent requires consent or a court order in order to allow access to personal identification information. Counsel further submitted that the right to privacy

is not one of the non-derogable rights under article 44 of the Constitution and the collection of national identification data is authorized in the terms of the Data Protection and Privacy Act. Counsel stated that under section 7 of the Act, personal data may be collected upon authorization or under the law and where necessary for proper performance of a public duty, national security, prevention, detection, investigation, prosecution or punishment of an offence or breach of the law.

Determination by the Court

[57] I have already come to a conclusion that Uganda's national ID system is not a digital ID system in the terms alleged by the applicants. I have also established that the Uganda national ID system has no blanket mandatory application except in respect to services set out under section 66(2) of the Registration of Persons Act. As such, where a person is denied access to a service, not being one listed under the law, on account of lack of a national ID, the problem ought not be construed as systemic to the national ID system; but rather as a misfeasance on the part of the particular entity. I have further found no systemic barriers that are inherent in the existing national ID system as alleged by the applicants. All I have found are operational challenges that can be addressed for a better implemented ID system.

[58] It is, therefore, not true that by its nature and design, the Ugandan national ID system is exclusionary and discriminatory. I have already alluded to the mechanisms put in place by the respondents to ensure that all Ugandans are enrolled on the system as per the evidence adduced by the respondents. Beyond criticisms based on inherent challenges of a digital ID system, the applicants have not shown how the Ugandan national ID system (which has been established to be not a purely digital one) violates the right to nationality or causes statelessness. No evidence of any persons whose nationality was questioned or who were rendered stateless on account of failure

to obtain a national ID. According to the evidence by the respondents, neither lack of an ID nor expiration of one affects a person's nationality. The applicants' claims based on alleged violations of the rights to equality, non-discrimination, nationality or freedom from statelessness, thus have no merit and accordingly fail.

[59] Regarding the allegation that the national ID presents an affront to the right to privacy of Ugandans, it was stated by the respondents through the affidavit of Rosemary Kisembo that 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, the Data protection and Privacy Act 2019, the Registration of Persons Act 2015, the Computer Misuse Act, 2011 and the Electronic Transactions Act 2011. I find this position well-grounded in the law. The existing legal regime sets ample parameters on the collection, processing, storage, use and release of data collected for official purposes. It has not been shown how data collected for purpose of the national ID system risks to be abused in light of the existing legal regime. The allegation by the applicants that the use of the national ID system has potential to or occasions a violation of the right to privacy is devoid of merit and it fails.

[60] One last point that was raised by the applicants is the failure by the 2nd respondent to establish the committee mandated under section 83(1) of the Registration of Persons Act to handle complaints by Ugandans aggrieved by decisions or omissions of the 2nd respondent in the implementation of the national ID system. I have established from available materials that the committee was established pursuant to *The Registration of Persons (Identification and Registration Committee) (Practice and Procedure) Notice, 2015 (Legal Notice No. 13 of 2015)*. The committee is therefore in place and in case of any operational challenges, the same are not systemic or inherent in the

national ID system and can be accordingly addressed. Issue 3 is as well answered in the negative.

Issue 4: What remedies are available to the applicants?

[61] In light of the foregoing, therefore, the applicants have failed to satisfy the Court on a balance of probabilities on all the claims raised in the application. The application has been found to be devoid of merit and is accordingly dismissed. However, since the application was brought in public interest, each party shall bear their own costs of the application.

It is so ordered.

Dated, signed and delivered by email this 10th day of June, 2025.



Boniface Wamala

JUDGE