

UGANDA / JUDGMENT

Opiyo Otiiti v Kwezira (Misc Cause 15 of 2022) [2023] UGHCCD 262 (12 September 2023)

[2023] UGHCCD 262

COURT

HC: Civil Division (Uganda)

BEFORE

Okello, J

CASE / FILE NUMBER

Misc Cause 15 of 2022

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

MISCELLANEOUS CAUSE NO. 15 OF 2022

\$10\$

\$15\$

 $\$S$

<table>

OPIYO JOSEPH OTIITI.....

VERSUS

KWIZERA VIAN.....

BEFORE: HON. MR. JUSTICE GEORGE OKELLO

RULING

By the present action, the Applicant, under the various provisions of the Human Rights (Enforcement) Act, 2019, among other laws, seeks to vindicate his Human Rights alleged to have been violated by certain 30 decisions rendered by the Respondent in the exercise of his judicial duties. The Respondent who is a Magistrate Grade One and serving in the Judiciary of the Republic of Uganda, entertained an Application lodged against the Applicant by an Officer of the

Attorney General's Chambers, Ministry of Justice & Constitutional Affairs, Nyeko Joseph, a Principal State Attorney (PSA), Gulu. There, the learned PSA sought for order that 35 the Applicant be subjected to medical examination to determine his mental status under section 50 of the Mental Health Act, 2018. The Application

Husselen:

\$\mathsf{S}\$ was predicated on the fact that, the present Applicant had filed numerous suits in the High Court of Uganda at Gulu and in the Chief Magistrates Court of Gulu, against judicial officers, on account of judicial decisions the judicial officers rendered. He also filed suits against advocates because they represented the Applicant's adversaries. Regarding suits against \$10\$ judicial officers, one such suit was lodged against Hon. Lady Justice Margaret Mutonyi, a Judge of the High Court. The Lady Judge was sued because she had upheld a preliminary objection raised in a suit lodged by the Applicant against Action Against Hunger. The Lady Judge was sued alongside two lawyers and two law firms. Mubiru, J., heard the suit against the Lady Judge and the Advocates/ Law Firms, and struck it out with \$15\$ costs, for being barred by law. Mubiru, J's decision attracted the Applicant's ire, who lodged a suit against Mubiru, J. Having lost the action against Mutonyi, J., the Applicant filed another case against the Lady Judge. He challenged the learned Judge for allegedly not posting her 20 Ruling in the case decided in favour of Action Against Hunger, on the judiciary website. This Court takes judicial notice that, the Applicant lodged a further suit against Mubiru, J. Consequently, the suit against Mutonyi, J., came up for hearing before Alex Ajiji Mackay, J. on 17th May, 2019. Mutonyi, J., was represented by Mr. Nyeko Joseph, PSA from the 25 Attorney General's Chambers. The PSA moved court for certain orders requiring that the Applicant be mentally examined due to his compulsive behaviour, and given the nature of the averments the Applicant made in the

Hutolm.

\$\overline{2}\$

\$\mathsf{S}\$ suit against Mutonyi, J. In his suit, the Applicant averred that, Mutonyi, J., deserves death sentence by hanging or beheading, and that, her alleged default to post her ruling on the judiciary website was an act of war against the Republic of Uganda. Ajiji, J., ordered that, due to compulsive behavior of the Applicant shown in court, the hearing of all his numerous cases \$10\$ pending in courts, be stayed, until a medical report is furnished as to his mental health status. The learned Judge also directed counsel in the affected cases to apply for appropriate orders. Armed with the High Court Order, the PSA applied in the Magistrate Grade One Court, Gulu, for an order to issue, requiring the Applicant to be mentally examined, pursuant 15 to the Mental Health Act, 2018. That application was heard by the present Respondent, who apparently heard and allowed it. Apparently, the Applicant has, however, never been mentally examined to-date, as he appears to have refused to be subjected to mental examination. However the Applicant's several suits in the courts, remain stayed. Being aggrieved 20 and dissatisfied, the Applicant commenced the present action against the judicial officer for the judicial decisions taken, in compliance with the High Court Order of Ajiji, J. The Applicant raises a litany of allegations

against various judicial officers, which I shall set out briefly.

Grounds of the Application 25

In his Notice of Motion and the affidavit in support, the Applicant contextualizes his claims and prayers outside the human rights sphere.

$\frac{Z}{}$

Harrolm.

S Although he avers that his action is for enforcement of human rights, the pleadings appear to defeat that belief. The Applicant for instance recognizes in his pleading that, the Respondent is a serving judicial officer and that he came to know the Respondent when the latter was adjudicating matters in which the Applicant is a party against other 10 adversaries. The Applicant for instance takes issue with the Respondent's decision to stay a taxation proceeding against a one Claire Mazin, following the impugned High Court Order. By the present action, the Applicant further questions a stay order against proceeding with civil suit he commenced against Mr. Nyeko Joseph (the PSA). The Applicant contends 15 that, paradoxically, the Respondent stayed the case against the PSA, yet he continued proceedings in a matter lodged by the PSA seeking a determination of the Applicant's mental health status. The Applicant wondered why the Respondent could take two inconsistent positions, in purported reliance on the High Court Order of Ajiji, J. The Applicant also doubts whether the High Court order is authentic, and asserts, it must be 20 forged. In one breadth, the Applicant claims the case commenced by the PSA was dismissed by the Respondent but on the other, asserts that the dismissal was altered by the Respondent to create a win situation for the learned PSA. The Applicant charged that, the Respondent connived with 25 unscrupulous lawyers to abuse human rights of the Applicant while adjudicating cases where the Applicant is a party. The Applicant claims the Respondent has caused him severe damage and loss of reputation by

Huavam'

$\overline{4}$

acting on the High Court stay Order and by creating the impression that S the Applicant is a person of unsound mind.

Prayers

In his several prayers, the Applicant seeks a declaration that, the 10 Respondent violated the Applicant's human rights. The alleged violations include: denial of quick hearing of the stayed suits; alleging that the Applicant is of unsound mind; refusal to supply record of proceedings, ruling and orders in the case commenced by the PSA; failure to ensure the PSA follows correct procedure for filing pleadings; loss of a job due to the 15 court allegation that the Applicant is a person of unsound mind.

The Applicant also seeks for aggravated damages in the sum of Ugx 350,000,000, for defamation. He prays court recovers damages through attachment of 80% of the Respondent's salary and retirement benefits, until all cases lodged by the Applicant in all courts are concluded and finally executed. He also prays for security for self and family for fifty (50) years, due to fear that he will be murdered, a crime he infers will occur if he is examined without his consent. The Applicant prays for prosecution of the Respondent for violation of human rights. He also seeks costs of the action. He concludes his affidavit by asserting that, the Respondent has no evidence but is preparing to connive and bribe the High Court that will hear this matter. He charged that, should the Respondent cause the

Hutolm.

$\$S$

$\$S$ wrongful dismissal of the instant application, it would amount to further abuse of the Applicant's human rights.

Other purported reliefs

This Court notes that, other reliefs are purportedly being sought in the \$10\$ Motion, but structured as issues. I think this is due to the Applicant's lack of legal grounding on drawing pleadings. For instance, the applicant raises the following illogical matters, which he wants this court to resolve: whether the Respondent supervises the High Court Judge?; whether the High Court order staying all matters filed by the Applicant is valid?; and whether the Respondent has overridden the High Court Order by allowing \$15\$ the case commenced by the PSA to proceed against the Applicant? The Applicant also questions whether forgery of judicial documents (he claims the High Court Order directing a stay of all his suits, is forged) has been legalized?

Opposing affidavit

In in his opposition, the Respondent deposed that, as a Magistrate Grade One, he observed the applicant's rights during all judicial hearings. He asserted that, none of the alleged rights of the Applicant were violated. The Respondent denied the alleged alteration of any court ruling. He asserted that, the applicant was not denied a copy of any court proceedings. The Respondent deposed that the Applicant is frustrating court process by not

Hlason.

$\$6$

\$\mathsf{S}\$ obeying the High Court order requiring his mental examination. The Respondent deposed that, the Applicant's allegations of a criminal nature against the Respondent, are defamatory. The Respondent asserted, he has never conceived any plans of murdering the Applicant. He asserted that the Applicant has shown disrespect for court. The Respondent concluded, \$10\$ the Application is frivolous and vexatious. He prayed the same is dismissed with costs.

Issues

Although the parties did not frame issues, from court's perusal of the Motion and the Replying affidavit, the following issues arise; 15

- 1. Whether the action against the Respondent for judicial decisions taken by the Respondent, is maintainable at law?
- 2. Whether the Respondent violated any human rights of the Applicant?
- 3. What remedies are available to the parties?

Arguments

\$25\$

The parties appeared **prose**. Each addressed court orally. The applicant argued that, he had sued Hon. Lady Justice Margaret Mutonyi for dismissing a case involving the Applicant. Although the Applicant did not give the details of the suit dismissed by the learned Judge, this Court has, HlutoQue.

\$\overline{7}\$

- \$\mathsf{S}\$ from the material on record, been able to confirm that, it was civil suit No. 46 of 2013: Opiyo Joseph Otiiti Vs. Action Against Hunger. The suit was dismissed on a preliminary objection that the plaint did not disclose a cause of action against **Action Against Hunger**. Crucially, the Ruling and Orders by Mutonyi, J., was not appealed by the Applicant. Aggrieved, the \$10\$ Applicant sued the learned Judge and all advocates involved, **vide** Civil Suit No. 0019 of 2016: Opiyo Joseph Otiiti Vs. M. S M. Oyet & Co. Advocates, Mumtaz Kassam & Co. Advocates & Solicitors; Dr. Mumtaz Kassam; Oyet Moses; and Margaret Mutonyi.
- \$15\$ As noted, Mubiru, J., adjudicated the above matter and struck out the suit against the 5th Defendant, holding that the suit was barred by law, that is, article 128 \$(4)\$ of the Constitution of Uganda, 1995, and section 46 \$(1)\$ of the Judicature Act, Cap. 13. Court also rejected the plaint by virtue of Order 7 rule 11 (d) of the Civil Procedure Rules, S. I 71-1.

\$25\$

Regarding the Advocates sued alongside the Lady Judge, Court held that, the Advocates enjoyed immunity at common law for their conduct of litigation, and thus, the action against them by an unhappy litigant, was barred. Court held that the Plaintiff did not disclose a cause of action against all the Defendants. It struck it out with costs in a Ruling of 13th September, 2018. As noted, the Applicant sued Mubiru, J., in two other suits, following his decision. After the decision by Mubiru, J., the Applicant filed another

HUADON

suit against Mutonyi, J., vide Civil Suit No.002 of 2019: Opiyo Joseph Otiiti Vs. Margaret Mutonyi. He raises matters he had apparently raised in the suit decided by Mubiru, J. He averred that, the Lady Judge recklessly ruled in Civil Suit No. 46 of 2013 (Action Against Hunger) without hearing the case on merit (the case was determined on a preliminary objection).

\$10\$

$\$S$

In his further oral address, the Applicant argued that, Ajiji J., stayed all the Applicant's suits, directing that, the Applicant be examined as to his mental status. The stay Order, it was contended, was granted during the proceedings in Civil Suit No.002 of 2019: Opiyo Joseph Otiiti Vs. Margaret Mutonyi. The Applicant argued that, he was not a party to the proceedings (I think he seeks to claim he was absent) when the Order was made by court. However, this court notes that the Court Order embodies the fact of the Applicant's presence during the hearing. The Applicant brags in his submission that, he never bothered to have the Order of Ajiji, J., set aside, and that he is not interested in moving any Court to that effect. He asserts that, it is Nyeko Joseph (the PSA) and his Colleagues State Attorneys, as well as Mutonyi J., Mubiru, J., Kwizera Vian (Magistrate Grade I), and Advocates- Oyet Moses, Okot Michael Obalo, Watmon Ronald Brian, Akena Kenneth Fred, Odongo Louis, Anyuru Geoffrey Boris, who should prove that the Applicant is mentally sick. The Applicant argued that, Court was wrong to order for the Applicant's mental examination, without the Applicant's consent. The Applicant submitted that, he sued Nyeko Joseph

HUADQue.

$\$S$ (PSA) in the Magistrate Court, so that, Mr. Nyeko is compelled to produce medical report of the Applicant's mental health, as ordered by Ajiji, J. The Applicant also argued that, after the suit against Mr. Nyeko was lodged, the present Respondent (H/W Kwizera) allowed Mr. Nyeko to also sue the Applicant (for an Order for the Applicant's examination), a suit which H/W Kwizera entertained. The Applicant brags that he has not been arrested for \$10\$ any medical examination. Asked by this Court whether he considered pursuing his right of appeal against decisions he is aggrieved with, the Applicant retorted that, he is fully aware of the right to appeal but decided to sue H/W Kwizera personally. He, however, conceded, he is aware of 15 protection accorded to judicial officers by law, but hastened to submit that, section 14 of the Human Rights Enforcement Act overrides judicial immunity, especially, since his human rights were violated by

the Respondent as a judicial officer. The Applicant argued, he was forcefully 'tried', so, judicial immunity does not avail to the Respondent. He 20 reiterated the prayers made in the Application.

In his brief response, the Respondent detailed how he came to adjudicate some of the matters mentioned by the Applicant. He explained that, the High Court Order meant a Medical examination of the Applicant was to be conducted and a Report submitted to the High Court. The Respondent argued that, the Applicant had lodged multiple suits against several judicial officers, including H/W Matenga Francis Dawa (the then Chief

HUADDAM.

\$\mathsf{S}\$ Magistrate of the Court). The Respondent argued, vide Misc. Cause No. 26 of 2022 filed by Nyeko Joseph (PSA), the Respondent tried to inquire into the Applicant's mental health by putting questions to him whilst in the court room. In his response to court question, the Applicant asked the Respondent to make an Order to have a High Court Judge (Mutonyi, J.) \$10\$ beheaded. As Court, the Respondent allowed the Application by Mr. Nyeko, and ordered that the Applicant be mentally examined. The Respondent argued, he made the Order pursuant to the High Court Order. He submitted that, after making the Order, the Applicant sued the Respondent the following week. The Respondent wound up his submission \$15\$ by contending that, he enjoys judicial immunity. He prayed for dismissal of the application with costs.

Determination

In my resolution of the issues, this Court will steer clear of touching the 20 merits or otherwise of the decision made by the Respondent as a judicial officer which appears was the launch pad for the present action. What court will consider is whether adverse judicial decisions constitute a human rights violation that is justiciable in a court of law. This Court is aware it is not sitting in the exercise of any revisionary powers against the decision of His Worship (the Respondent) under section 83 of the Civil 25 Procedure Act Cap 71. This is so because the present action is grounded entirely on allegations of human rights violations. This Court will also

HeADDm.

- refrain from commenting on the decisions taken by Judges of this Court, \$\mathsf{S}\$ as court is not being asked to review its decision under 0.46 of the CPR. This court is also not sitting in an appeal against itself. It is also not sitting as an appellate court against the decision of the lower court. At any rate, the Applicant swore he would never appeal the decisions of the court \$10\$ below, and of this Court (Ajiji, J.) I think, in his qualified view, the Applicant deemed it most befitting to take the litigation route against judicial officers, for redress.

- The question I seek to resolve, therefore, first, is whether the action against 15 the Respondent for judicial decisions taken against the Applicant, is maintainable at law. I seek to begin with the Constitution of the Republic of Uganda, 1995, which is the grand norm for the country's legal system and has binding force on all authorities and persons throughout Uganda, in light of article 22 (1) thereof. I shall, therefore, draw a lot from the 20\$ Country's Constitution, in resolving this issue.

The Constitution of Uganda, 1995, establishes the Judiciary in Chapter Eight. It states the source of judicial power in article 126 (1), thus:

25 "Judicial power is derived from the people and shall be exercised by the courts established under this Constitution in the name of the

HUAVEL

people and in conformity with law and with the values, norms and S aspirations of the people."

In light of the quoted text of the Constitution, I posit that, in the exercise of judicial power, courts do so in the name of the people, but courts must conform to the law, the values, norms and aspirations of the people of 10\$ Uganda. The provision of article 126 (1) also encompasses the aspect of judicial accountability. Therefore, to be able to effectively discharge judicial powers, the Constitution conferred on Courts, its independence. Judicial independence is both at institutional and individual level. Judicial 15 independence is necessary for decision making. Judicial independence is both a state of mind and a set of institutional and operational arrangements. The former is concerned with a judicial officer's independence in fact, while the latter is concerned with defining the relationships between the judiciary and others, especially the other two branches of government, to assure both the reality and appearance of 20 independence. It has been opined that, an individual judicial officer may possess a state of mind but if the court over which he/she presides is not independent of the other branches of government, the judicial officer cannot be said to be independent. See: Valente Vs. The Queen, Supreme

25 Court of Canada [1985] 2 S. C. R 673. Judicial independence is, therefore, a prerequisite of the rule of law and a fundamental guarantee of a fair trial. A judicial officer must, therefore, uphold and exemplify judicial

Hertodur

S independence in both its individual and institutional aspects. The Constitution of Uganda, 1995, provides eight pillars of judicial independence enumerated in article 128 clauses (1) to (8). Of relevance to the matter at hand, are three pillars, found in clause (1), (2) and (4) of article 128. Thus, article 128 (1) of the Constitution provides that, in the 10\$ exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority. Under clause (2) it is provided that, no person or authority shall

interfere with the courts or judicial officers in the exercise of judicial duties. Last but of profound relevance to the instant matter, is clause (4) of article 128 of the Constitution. It provides, 15

"A person exercising judicial power shall not be liable to any action or suit for any act or omission by that person in the exercise of judicial power." (Underlining is mine.)

Judicial power is defined in article 257 (1) (p) of the Constitution to mean, "The power to dispense justice among persons and between persons and the State under the laws of Uganda."

25 In light of the immediately the foregoing, the exercise of judicial power, accordingly involves persons and persons, and persons and the State, as parties, as circumstances may dictate. Therefore, persons who dispense

HeAde.

- $\$ \text{mathsf{S}} \$$ justice and, therefore, exercise judicial powers, pursuant to article 126 (1) of the Constitution, are called judicial officers. Judicial officers, therefore, for the purposes of chapter eight of the Constitution of Uganda, unless the context otherwise requires, means,
- $\$10 \$$ "A judge or any person who presides over a court or tribunal howsoever described; the Chief Registrar or a registrar of a court; and such other person holding any office connected with a court as may be prescribed by law." See: Article 151 of the Constitution, 1995.
- $\$15 \$$ Although not expressly mentioned, it is my considered view that, Magistrates of all ranks, and Deputy and Assistant Registrars, are judicial officers within the context of Chapter eight of the Constitution, 1995. I say so because these officers hold offices connected with a court. They also preside over courts, as specified in the instruments prescribing their jurisdictions. Given that judicial officers dispense justice, the dispensation 20 of justice take a myriad of forms. It has generally been observed that, judicial officers have power to punish for an offence, or to vindicate rights of persons, whatever the form the proceedings may take. See: **Chunder Narain Vs. Brijo Bullub** (1874), 14 Beng. L. R 254, at 257 (per Makby, J), followed with approval in **Kionywaki Vs. Republic** [1968] 195 (HCT), 25 at p.199 (Biron, J.)

HutoDen.

$\$ \text{mathsf{S}} \$$ What, therefore, is judicial duty? Some learned authors have attempted to define the term "judicial" in their written works. Ratanlal and Thakore, in their Commentary on section 77 of the Indian Penal Code in the **Law of Crimes** (14th Ed.) considered the term 'judicial' as appearing in Section 77 of the Indian Penal Code. The section of the Code protects a $\$10 \$$ judge *who acts judicially* in the exercise of his/her powers, from criminal liability, so long as he/she in good faith, believes to be given to him/her by law. **Ratanlal and Thakore** thus opine that, the word '*judicial*' has two meanings. It may refer to the discharge of duties exercisable by a judge or by justices in court, or to administrative duties which need not be $\$15 \$$ performed in court, but in respect of which it is necessary to bring to bear a judicial mind, that is, a mind to determine what is fair and just in respect of matters under consideration. The Learned Authors

further observe:

"Justices, for instance, act judicially when administering the law 20 in court, and they also act judicially, when determining in their private room what is right and fair in some administrative matter brought before them, as for instance, levying a rate. It is not merely in respect of acts in Court, acts *sedente curia*, that a Judge has an immunity, but in respect of all acts of a judicial nature. An order 25 under the seal of a criminal court to bring a native in that court, to be dealt with on a criminal charge, is an act of a judicial nature, and whether there was any irregularity or error in it, or not, would

Hypolin.

- $\$$ be dispunishable by ordinary process at law. If it be once established that the act in question emanated from, and was appropriate to, the legal duties of the office of a judge, it must stand as an act purely judicial. Whether such act be done by the judge in chamber or *sedente curia* (during court recess) the privileges connected with the $\$$ duties of the judge's situation, and which are given for the public safety and advantage, in which security and independence of the judge are interwoven, must necessarily await upon such acts, as if they are judicial." (Underlining is for emphasis.)
- 15 In this court's considered view, what Ratanlal and Thakore (**supra**) write about, encompass and apply not only Judges or Justices of our Courts, but to all judicial officers envisaged under Chapter 8 of the Constitution of Uganda, 1995. It is, therefore, of constitutional significance that, judicial officers of all ranks enjoy judicial independence in the discharge of their judicial duties. Judicial independence is key because judicial officers are 20 charged with, *inter alia*, safe guarding the rights and freedoms of the citizenry. Judicial officers check the excesses of the Executive and the Legislature. The duties that judicial officers discharge require they be insulated from any peril that could cause apprehension in the discharge 25 of judicial duties. They should, therefore, be protected from intimidation and outside interference. See: *Pullman Vs. Allen*, 466 U. S 522 (Supreme Court of the United States, 1984), cited with approval by the Supreme

Harodin.

Court of Uganda in the case of Attorney General Vs. Nakibuule Gladys $\$$ Kisekka, Const. Appeal No. 2 of 2016. (Per Prof. Tibatemwa Ekirikubinza, JSC)

In my considered view, it is only when judicial officers and the Judiciary $\$$ is independent that they can administer justice fairly and impartially. It is only then that the rights of persons who appear before the courts can be equitably observed, as judicial officers are assured of safeguards while administering impartial justice and the rule of law. This court accordingly takes judicial notice of the past struggles the Country's judiciary has had $\$$ to endure during the times the rule of law and judicial independence was neither felt nor visible. I think, the dark alleys of Uganda's history must have partly contributed to the enactment of Article 128 of the Constitution of Uganda, 1995, to avoid history repeating itself. Therefore, maintaining an independent

judiciary is a cardinal principle of the rule of law and must be engendered at all cost. There is, therefore, no gainsaying that, an independent judiciary is the bedrock of democracy, because, when all other protections fail, the judiciary provides a bulwark to the public against any encroachments on rights and freedoms. Therefore, if courts were to be vulnerable, people would lose confidence in the judicial system and the rule of law. As I have stated, article 128 (2) of the Constitution of Uganda prohibits any form of interference with the courts or judicial officers in the exercise of their judicial functions. There is of course a rider

Haroom.

to this prohibition which is provided in article 147 (1) (d) of the Constitution, where Judicial Service Commission of Uganda is mandated to receive and process complaints against the judiciary and judicial officers, from the public. The Judicial Service Commission can also exercise disciplinary controls over judicial officers, under article 148 of the Constitution, 1995. In my view, the intervention by the Judicial Service Commission is to ensure judicial accountability which, as I have opined, is rooted in article 126 (1) of the Constitution. The intervention by the Judicial Service Commission also ensures judicial integrity. I must, however, observe that, judicial accountability does not at all cover maintainability of law suits of any kind against a judicial officer for judicial decisions they take. Therefore, a person who is aggrieved with any judicial decision cannot sue the judicial officer or government for judicial decisions made. Thus, clause (4) of article 128 of the Constitution which provides for judicial immunity from law suits, in my view, is a non derogable provision. A suit against a judicial officer on account of his or her judicial decisions or judicial conduct, is unmaintainable. This position was recognized by the Supreme Court of this Country in the landmark decision of **Attorney General Vs. Nakibuule Gladys Kisekka (supra)**. The apex Court referenced, with deference, the statement of Buckley LJ in **Sirros Vs. Moore [1974] 3 All ER 776**, where the Lord Justice had held:

HEADELM

"It is perhaps arguable that a judge, though acting within his powers, might be shown to have acted so perversely or so irrationally that what he did should not be treated as a judicial act at all. In such a case the remedy of his removal from office would be available. I doubt whether it would be in the public interest that his conduct

should be open to debate in a private action." (Underlining is supplied)

On the facts of the matter before it, the Supreme Court, in the Lead Judgment of Prof. Tibatemwa Ekirikubinza, JSC, concluded, thus:

- "Proceedings before the Judicial Service Commission do not constitute an action or "suit" envisaged under article 128 (4) of the Constitution from which a judicial officer is protected." (Underlining is mine.)

- 20 The quoted part of the Supreme Court decision means the Court was cognizant of the fact that a judicial officer can not be sued for his/ her judicial acts or decisions. This court is obliged to follow the binding wisdom of the Supreme Court in line with Article 132 (4) of the Constitution, 1995.
- 25 Applying the principle to the instant matter, I have no doubt in my mind that the action against the present Respondent, which is predicated on judicial decisions he made as a court, with respect, is unmaintainable. The

Happlin

Applicant claims that, the immunity is assailed by section 14 of the *Human Rights (Enforcement), Act, 2019*. With respect, that notion is misconceived. First, there is no way that provision can override Article 128 (4) of the Constitution. Second, it is a wrong postulation that adverse judicial decisions constitute a human rights infringement. I think the Applicant has completely misconceived the essence of the Act by downgrading the category of matters coming within its purview to cover adverse judicial decisions/ actions by judicial officers. Even if the Applicant's views that some judicial acts could constitute human rights violations, I do not think the remedy available is to litigate against such unjudicial acts, or to contemplate prosecution. In my view, article 128 (4) of the Constitution, 1995, is absolute.

The above finding should dispose of the application. However, because of the importance of the matter, I seek to consider other equally important 20 legal provisions. Parliament of Uganda in its wisdom enacted statutes which offer additional protections to judicial officers, and by extension, persons who execute judicial orders. Judicial immunity has also for long been extended to criminal prosecution. Under section 13 of the Penal Code Act Cap. 120, judicial officers cannot be prosecuted for their judicial acts and decisions. Furthermore, the Judicature Act Cap 13, provides for immunity of judicial officers in section 46. Further, under section 3 (5) of the Government Proceedings Act Cap 77, no proceedings can lie against

Hhrodm.

the Government in tort, under the doctrine of vicarious liability, for acts of judicial officers. The protections under the Government Proceedings Act and the Judicature Act, was considered by the then East African Court of Appeal sitting in Nairobi, in the case of **Attorney General Vs. Oluoch** [1972] 1 EA 392 (CAN). The Court noted that the rationale behind the protection is rooted on public policy. I think, it was Lutta, Ag. V-p, who made a profound observation in that regard. In **Attorney General Vs. Oluoch (supra)** the learned Ag. V-P, stated:

"I think that public policy does require that a person acting judicially or who is executing the lawful warrants or process of the court should not be sued for any act done or ordered by him in the lawful discharge of his duties. It seems to me that this is necessary if such a person is to perform his duties without fear of harassment by those who feel aggrieved by his acts. In this case, the two Magistrates were, in the course of their duties, discharging responsibilities of a judicial nature and the two police officers were discharging responsibilities connected with the

execution of judicial process. In my view, section 4 (5) of the Government Proceedings Act provides protection for such persons and I would therefore in the 25 circumstances agree with the Acting President that this appeal must **be allowed.**" (Underlining is mine.)

Audolem

\$\mathsf{S}\$ In the Oluoch case (*supra*), the Respondent had sued the Attorney General for wrongful arrest and wrongful detention occasioned by actions of two Magistrates and two Police Officers. The 2nd Defendant (a Magistrate) had issued a search warrant to the officer in charge of Central Police Station, requiring the Police Officer to 'seize and take possession' of the Respondent \$10\$ (Plaintiff) who had allegedly taken away (eloped with) the wife of the complainant. The Plaintiff was arrested and detained pursuant to the warrant. The Magistrate refused to release the Respondent on bail or bond and committed him to a remand home. The Attorney General was sued for the alleged tort of its officers. The Court (Spry, Ag. P., Lutta, Ag. V-P, and Mustafa, JA, considered the then provisions of section 4 (5) of the 15 Government Proceedings Act Cap 4, which has since been re-enacted in section 3 (5) of the Government Proceedings Act Cap 77. The Court also considered the provision of section 6 of the Judicature Act Cap. 8, which was also later re-enacted, with some modifications, and is now contained 20 in section 46 (1) and (2) of the Judicature Act Cap. 13. The Court concluded that, the case as pleaded by the Respondent, was covered by the Government Proceedings Act, and accordingly, was one in which no proceedings could lie against the Government. See also **Ismail Serugo Vs. Kampala City Council and Attorney General**, Const. Appeal No. 2 of 25 1998 (SCU) which considered and adopted the principle in AG Vs. Oluoch (supra).

Hudoam

- \$\mathsf{S}\$ Whereas this court is aware that the Government of Uganda has not been sued in the instant matter, it is court's view that, had the Government (through the Attorney General) been sued, Section 3 (5) of the Government Proceedings Act Cap 77 might have applied. The section reads:
- " No proceedings shall lie against the Government by virtue of this \$10\$ section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him or her, or any responsibilities which he or she has in connection with the execution of judicial process." 15

Section 3 of the Government Proceedings Act Cap 77 deals with action against government in torts, or where common law or statutory duties are involved, and where it is alleged to have been committed by servants or agents of government.

As I have noted, apart from the Constitutional provision of article 128 (4), section 46 of the Judicature Act Cap. 13 offers additional protection to persons acting judicially. The section also goes further to insulate from suits, persons who are bonded to execute court warrants or orders. In my humble view, section 46 of the Judicature Act, appears to be wider than article 128 (4) which protects only judicial officers envisaged under

Hard@w

$\S$ Chapter Eight of the Constitution. Section 46 (1) of the Judicature Act provides:

"s. 46 (1) A judge or commission or other person acting judicially shall not be liable to be sued in any civil court for any act done or ordered to be done by that person in the discharge of his or her or its judicial functions whether or not within the limits of his or her or its **jurisdiction**.

" (Underlining is supplied.)

Unlike section 46 (1) of the Judicature Act which covers 'commission' article 128 (4) and Chapter eight of the Constitution, 1995, appears not to cover Commission. Section 46 (2) of the Judicature Act also covers officers of the court or other person bonded to execute any order or warrant of court or commission acting judicially, which again, appears wider than article 128 $\S$ (4) $\S$. It provides

$\S$ 25 $\S$

$\S$ 10 $\S$

" s.46 (2) an officer of the Court or other person bonded to execute any order or warrant of any judge or person referred to in subsection (1) acting judicially shall not be liable to be sued in any civil court in respect of any lawful or authorized act done in the execution of any

```
such order or warrant.
```

 (Emphasis is added.)</pre>

Humodin

Section 46 (1) of the Judicature Act Cap 13, is also materially different $\S$ from the old Judicature Act Cap 6 which was considered in **AG Vs. Oluoch** (*supra*). The difference is that, the old law provided for the aspect of 'good faith' in the judicial officer's belief that he/she had jurisdiction to do or order the act complained of. In the current Judicature Act, however, the $\S$ 10 aspect of '*good faith*' was removed by the legislature. Therefore, I opine that, currently, a person acting judicially can not be sued for judicial acts done or ordered to be done, in the discharge of judicial duties, whether or not the judicial officer acted within the limits of his/her jurisdiction. I think the aspect of 'good faith' in the repealed Judicature Act limited the full enjoyment of immunity by judicial officers of the time. I also think, the change in the text of the current law, was to align it to the constitutional protection ushered in by the 1995 Constitution. This is because the Judicature Act Cap 13, commenced after the coming into force of the 1995 Constitution. As a matter of fact, the Act commenced on 17th May, 1996. Thus, section 46 (1) of the Judicature Act was designed to offer additional 20 layer of protection, in accordance with the Constitution of Uganda. This was a game changer as it strengthened the

concept of judicial independence and the rule of law. It is this wrong for the Applicant to think that the Human Rights (Enforcement) Act, 2019, can purport to take away 25 judicial immunity. With respect, the immunity which section 12 says it is lost, in cases of human rights violations, does not cover judicial immunity

Hatoam.

from suits/ actions, which is constitutionally entrenched in article 128 (4) S of the Constitution.

I wish to add that, although not in issue in the present proceedings, section 46 (2) of the Judicature Act also protects clerks of court, who work undoubtedly with court and serve the court process. Similarly, Police officers executing warrants of arrest and serving criminal or witness summons, are protected by section 46 (2) of the Judicature Act. Court bailiffs are also protected but only if they act lawfully. See: **Hannington** Wasswa & another Vs. Maria Onyango Ochola & 3 others, SCCA No.22/1993 (Plat, JSC); Nansio Micah Vs. Nuwa Walakira, SCCA No. 24 of 1994 (Tsekooko, JSC)

\$10\$

\$15\$

Having demonstrated that a judicial officer enjoys immunity from suits for judicial acts or decisions, I would hold that the present action is 20 unmaintainable against the Respondent. I should, perhaps state that, if the Applicant felt aggrieved with the judicial decision rendered by the Respondent, he knew the options available to him at law, but as noted, he swore never to attempt any of the options. This means, his action was not mistaken but deliberate. I think he wanted to vex. The Applicant cannot 25 therefore, hide under the cover of being an unrepresented litigant to escape the consequences of pursuing frivolous litigation. In fact, litigation against judicial officers for judicial actions/ decisions, is not contemplated at law.

Harolan

- S A suit such as the instant can potentially erode the integrity of the legal system. If such suits were to be maintainable, people would lose confidence in the judiciary. A law suit against a judicial officer would render judicial officers unable to adjudicate impartially but rather under fear, contrary to the judicial oath they take pursuant to article 149 of the \$10\$ Constitution, 1995 and the Fourth Schedule thereto. I hasten to state that, although judicial immunity and independence is not a privilege but a responsibility imposed on each judicial officer to enable him/ her perform judicial duties on the basis of the law and evidence, and without external
- AG & Judicial Service Commission, SCCA No.8 of 2010, filing a law 15 suit against a judicial officer by an aggrieved litigant does not come within the context of judicial accountability.

pressure or influence or interference from anyone (*H/W Aggrey Bwire Vs.*)

In light of the foregoing analysis, I do not find it necessary to determine in detail, the claim that human rights of the Applicant were violated. I hold that, taking adverse judicial decisions do not constitute human rights violations. In the event I am wrong, I still maintain the view that, such would not be justiciable in a court of law against a judicial officer.

25 In the final result, this suit fails and it is dismissed with costs. Further, given the clear continual breaches of Article 128 (4) of the Constitution of Uganda, 1995 by the Applicant, as exemplified by numerous suits the

Hussolm

Applicant has lodged and continues to lodge with reckless abandon $\$$ against judicial officers who have decided cases against him, and this court being the Guardian and the Protector of the Constitution, suo motu, in the exercise of this court's inherent powers under section 98 of the CPA, this Court hereby issues a permanent injunction against the Applicant, Opiyo Joseph Otiiti, and hereby bars and restrains Opiyo Joseph Otiiti $\$10$ from filing any suit henceforth, against any Judicial Officer in Uganda, unless otherwise ordered by this or a Superior Court. Whereas this court appreciates the right of every person to access courts, as observed in a plethora of case, such as Rwanyarere Vs. AG, inter alia, nonetheless, this is an exceptional case in which the Applicant, Opiyo Joseph Otiiti should 15 be barred from continuing his reckless suits against judicial officers simply because they may decide cases in a way he may be unhappy with.

It is so ordered.

$\$20$

Delivered, dated and signed in Court this 12th September, 2023.

HUADOLW. 12/9/2023 George Okello JUDGE HIGH COURT

Ruling read in Court $\$$

12th September, 2023

Attendance

$\$10$ Ms. Grace Avola, Court Clerk. Applicant in Court, self-represented. Respondent absent – unrepresented.

Applicant: The matter is for Ruling. I am ready to receive it.

$\$15$

Ruling read in open court. Court:

> George Okello JUDGE HIGH COURT

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughccd/2023/262/eng@2023-09-12>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/opiyo-otiiti-v-kwezira-misc-cause-15-of-2022-2023-ughccd-262-12-september-2023-unknown-topic-unknown-court-2023--6a3ea4d93b1caa91297e6787>

Prepared on 14 October 2026 · Esheria