



Kampala, 25th November, 2024

HIGH COURT FINDS MAYOR LIABLE FOR VIOLATION OF THE RIGHTS TO FREEDOM FROM TORTURE, INHUMAN AND DEGRADING TREATMENT AND THE RIGHT TO PRIVACY OF 20 SUSPECTED LGBTIQ YOUTHS ARRESTED DURING THE COVID-19 LOCKDOWN

On 22nd November 2024, Justice Dr. Douglas Karekona Singiza of the High Court of Uganda issued the long-awaited judgment in the case of *Henry Mukiibi & 20 Others v Attorney General*, Miscellaneous Cause No. 179 of 2020, which has been pending since 2020. Justice Singiza found the then Kyengera Town Council LC III Chairperson (Mayor), Hajji Abdul Kiyimba and Kyengera Town Council liable for the violations of the human rights of 20 youths who were arrested during the COVID-19 lockdown in 2020.

On the morning of 29th March, 2020, the very day after the first COVID-19 lockdown was announced by the President of Uganda, Hajji Abdul Kiyimba led a mixed force of local government officials, police officers and citizens who demanded access to a home where the 20 individuals were at the time. He claimed that the 20 were homosexuals. The process of arresting the individuals and searching their home lasted approximately 3 hours. During that time, most individuals were beaten, all of them were verbally abused and one of them was taken behind the house by a group of local area leaders, forced to undress and have his genitalia checked for 'evidence of homosexuality', and the whole group was forcefully filmed. Video evidence clearly shows that Hajji Abdul Kiyimba picked up a large stick and beat some of the individuals with it while asking them questions about their sexuality. They were then bound with ropes and marched to a police station in the area, where they were held until 31st March, 2020, when they were arraigned before the Chief Magistrates Court of Mpigi at Nsangi and remanded to Kitalya Mini-Max Prison. At Kitalya Mini-Max Prison, the group was repeatedly harassed and isolated as homosexuals, and beaten brutally by/on the orders of Principal Officer Philemon Woniala, who in one case burnt one of the suspects with a burning piece of wood around their genitalia, accusing them of being homosexuals.

The Court was asked to determine whether the actions of Hajji Abdul Kiyimba and the other respondents violated the right of the 20 individuals to freedom from torture and other cruel, inhuman and degrading treatment or punishment, protected in Article 24 and 44 of the Constitution of Uganda; whether these actions violated the right to privacy as protected in Article 27 of the Constitution; and whether these actions violated the right to equality and freedom from discrimination as protected in Article 21 of the Constitution.

The Court ruled that:

1. There was evidence that torture and inhuman and degrading treatment was meted out on the 20 individuals by the Mayor.
2. The actions of the Mayor Hajji Abdul Kiyimba in entering the house where the applicants were without a search warrant constituted a violation of the right to privacy of the 20 individuals.
3. That Kyengeru Town Council was vicariously liable for the actions of its then LC III Chairperson, Hajji Abdul Kiyimba.
4. There was no evidence to prove that PO Woniala or the Prisons authorities had done anything that was out of the ordinary way in which prisoners were treated.
5. The court was unable to issue a finding on whether the actions of the respondents amounted to discrimination and specifically noted that it was unable to determine whether sexual orientation and gender identity are protected grounds under Article 21 of the Constitution in light of the recent enactment of the Anti-Homosexuality Act, 2023 and the appeal pending before the Supreme Court challenging the constitutionality of the Act.

The Court made the following orders:

1. Hajji Abdul Kiyimba and Kyengeru Town Council jointly pay to each of the 20 individual applicants a sum of 5,000,000/- as damages for the harm suffered by them.
2. That each of the 20 individual applicants is paid a sum of 2,500,000/- by Hajji Abdul Kiyimba and Kyengeru Town Council as exemplary damages.
3. That Hajji Abdul Kiyimba and Kyengeru Town Council bear the costs of the application
4. That the award of damages will bear interest at a commercial rate from the date of the judgment until payment in full.

HRAPF and COSF welcome this ruling. The ruling follows the earlier one by Justice Michael Elubu issued on 15th June 2020 in the case of *Human Rights Awareness and Promotion Forum (HRAPF) Vs. Attorney General and The Commissioner General of Prisons*, High Court Miscellaneous Cause No. 81 of 2020. The Court declared that denial of the same 20 youths access to their lawyers was a violation of their rights to a fair hearing and liberty by the state. The Court also awarded damages of UGX 5,000,000 (about USD 1340) to each of the affected persons. Unfortunately, the state is yet to pay the damages.

It also follows the opinion of the United Nations Working Group on Arbitrary Detention which found in 2021 that the detention of the 20 was arbitrary.¹ The Working Group called upon the Ugandan government to take the steps necessary to remedy the situation of the affected individuals without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Working Group equally called on the government to

¹ See A/HRC/WGAD/2021/20.

bring its laws into conformity with the present opinion and with the commitments made by Uganda under international human rights law.

'We welcome this decision. Although the prisons authorities have not been held responsible for their actions, we are happy that justice has in part been served,' said the lead applicant, Mukiibi Henry.

'This judgment affirms the humanity of the applicants who have for long suffered the effects of the indignity and violence meted out against them. Local leaders and politicians have now been put on notice that if you beat up people based on their sexual orientation and gender identity, you pay from your own pockets as provided for under the Human Rights Enforcement Act. The taxpayer is no longer there to always pay for the misdeeds of individuals,' said Dr. Adrian Jjuuko, Executive Director of HRAPF.

Whereas HRAPF and COSF welcome the decision of the Court in this matter and applaud the Court for holding Hajji Abdul Kiyimba, a political leader, accountable for actions done by him personally to undermine the rights and liberties of individuals in his jurisdiction while using the authority of his office, we are concerned about the failure of the court to recognise that, at the very core, these actions were prompted by discrimination against the individuals concerned on the basis of their real or presumed sexual orientation or gender identity, which have been found by the UN Human Rights Committee to be protected under sex and 'other status' in articles 2(1) and 26 the International Covenant on Civil and Political Rights (ICCPR). We also note that the Court failed to hold PO Philemon Woniala and the state accountable for acts of violence perpetrated by himself and on his orders against the 20 individuals during their stay at Kitalya Mini-Max prison, a fact that was glossed over by the Court in this judgment as normal/institutionalised treatment of prisoners.

According to the Court *'Simply because an inmate has been medically examined while in prison, told to be isolated, or openly rebuked does not imply that somehow he or she has been subjected to psychological torture falling under the ambit of anti-torture legislation.'* This greatly trivializes the pain and suffering that the applicants went through since all these actions were based on the real or imputed sexual orientation of the applicants. An anal examination by other prisoners on order of prisons authorities is not an authorized medical examination, and the burning of a person's genitalia should not simply be glossed over in the way the Court did.

We therefore call upon:

1. Hajji Abdul Kiyimba and Kyengera Town Council to immediately pay the damages as issued by the government and to desist from similar lawless actions, as we are ready and willing to enforce the judgment in its entirety.
2. Political and other leaders not to take the law in their hands and violate the rights of persons based on their real or imputed sexual orientation gender identity.
3. The Government of Uganda, particularly in light of the recent enactment of the AHA 2023, to protect all persons against violence and discrimination based on real or imputed sexual

orientation/ and or gender identity in line with Resolution 275 of the African Commission on Human and Peoples' Rights.

4. The state to pay damages to the 20 persons as was ordered in the *HRAPF* case and emphasised by the UN Working Group on Arbitrary Detentions.
5. The Government of Uganda should repeal laws like the Anti-Homosexuality Act 2023 which promote impunity and violence against LGBTIQ persons.