

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
(Coram: Gashirabake, Kihika, & Byaruhanga-Rugyema, JJA)

**CIVIL APPEAL NO. 195 OF 2014**  
(Arising from High Court Misc. Cause No. 33 of 2012)

1. JACQUELINE KASHA NABAGESERA  
2. FRANK MUGISHA  
3. JULIAN PEPE ONZIEMA  
4. GEOFFREY OGWARO ::: APPELLANTS

**VERSUS**

1. ATTORNEY GENERAL  
2. REV. FR. SIMON LOKODO ::: RESPONDENTS

*[Appeal from the Ruling and orders of the High Court (Musota, J) delivered on 24<sup>th</sup> June, 2014]*

**JUDGMENT OF BYARUHANGA JESSE RUGYEMA,JA**

**Introduction**

[1] This is an appeal against the ruling/decision of Musota, J in High Court Misc. Cause No. 33 of 2012 delivered on 24<sup>th</sup> June, 2014 in favour of the Respondents.

**Background**

[2] The Appellants/Applicants filed Misc. Cause No.33 of 2012 under Article 50(1) of the 1995 Constitution, O.52 rr.1 & 3 CPR for orders inter alia, that the action of the 2<sup>nd</sup> Respondent on 14/02/2012 to order the closing of an ongoing workshop that the applicants organized and/or had been invited to and were attending constituted an infringement of the Applicants/Appellants'

and other participants' rights guaranteed under **Articles 21, 29(1) (a), 29(1) (d), 38 (2), of the Constitution**, that the 1<sup>st</sup> Respondent is vicariously responsible for the actions of the 2<sup>nd</sup> Respondent and costs of the application.

- [3] As per affidavits deponed by the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Applicants in support of the Notice of Motion, it was the Applicants' case that the 1<sup>st</sup> applicant was the organizer while the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> applicants were invited to attend the workshop on planning, Advocacy and leadership organized by Freedom and Roam Uganda (FARUG) at Imperial Resort Beach Hotel Entebbe. The workshop was aimed at empowering participants with skills to advocate for respect of their rights; engage and influence government policy and laws in a peaceful manner; to build leadership qualities, to train and equip participants from various walks of life with project planning, advocacy, human rights, and leadership and business skills. Thirty two (32) participants were invited and seven persons were to facilitate at the workshop.
- [4] The 2<sup>nd</sup> Respondent in his capacity as Minister for Ethics and Integrity appeared at the workshop venue on 14<sup>th</sup>/2/2012 and ordered for the closure of the workshop on the allegation that it constituted an illegal gathering of Homosexuals. According to the Applicants/Appellants, the closure of the workshop and dispersal of the applicants and other participants was unjustified on the grounds that it constituted an infringement of their fundamental rights on freedoms guaranteed under the 1995 Constitution.
- [5] On the other hand, the Respondents through an affidavit in reply deponed by the 2<sup>nd</sup> Respondent, averred that the Directorate of Ethics and Integrity carried out investigations and established that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants' organizations (FARUG and SMUG) had previously organized and coordinated various workshops, where they invited people mainly youths identified as practicing homosexuals, lesbians, and bisexuals. It was established that the workshops were attended by homosexuals and they aimed to encourage and

strengthen the participants' resolve to engage and promote homosexual/same sex practices. That during the workshops, the participants were taught that it is a human right for persons to practice sex with members of the same sex, trained on how to conceal their sex practices/relationships from the public, trained to become more adept/accomplished at promoting and engaging in various un natural same sex practice which is prohibited under the laws of Uganda. As a result, the workshop was closed in the public interest to protect public moral standards and did not unlawfully infringe on the rights of the applicants/Appellants.

[6] The trial court heard the application and found that the limitation on the applicants' rights was effected in public interest specifically to protect moral values. Further that the applicants did not, on a balance of probabilities, prove any unlawful infringement of their rights and therefore, they were not entitled to any compensation and the declarations sought.

[7] The Appellants being dissatisfied with the Ruling and orders of the trial Court, appealed to this court on the following six (6) grounds of appeal.

1. *The Learned Trial Judge erred in law and fact in attempting to resolve on the basis of affidavit evidence the highly contentious question of whether the Appellants committed a criminal offence when they organized the impugned workshop hence leading to a miscarriage of justice.*
2. *The Learned Trial Judge erred in law and fact when he relied on conjecture and speculation and reached a wrong conclusion that the Applicant's closed workshop was aimed at encouraging persons to engage in and or promote same sex practices thereby leading to a miscarriage of justice.*
3. *The Learned Trial Judge erred in law and fact when he turned an application for the enforcement of fundamental rights into a criminal trial leading to a miscarriage of justice.*
4. *The Learned Trial Judge erred in law and fact in concluding that the restrictions of the Applicants' rights was justified on the basis that they*

[Applicants] were promoting an illegality in the exercise of their rights which conclusion is erroneous and constitutes a miscarriage of justice.

5. The Learned Trial Judge erred in law and fact when he concluded that the 2<sup>nd</sup> Respondent couldn't be sued in his individual capacity in the circumstances of the case.
6. That in the circumstances of the case, the findings of the learned Trial Judge justifying the acts of the Minister in storming and closing the impugned workshop in public interest, and in view of the law were injudicious, unfair, and inequitable and constituted a miscarriage of justice.

### **Legal Representation**

- [8] The Appellants were represented by Mr. Edward Ssemambo of Human Rights Awareness and Promotion Forum, Kampala while the Respondents were represented by Senior State Attorneys Ms. Harriet Nalukenge and Twinomugisha Mugisha of the Office of the Attorney General, Kampala. Written submissions were filed and adopted for consideration in the determination of this appeal.

### **Duty of the 1<sup>st</sup> Appellate court**

- [9] Rule 30 (1)(a) of the Judicature (Court of Appeal Rules) Directions, S.I 13-10 empowers this court to reappraise all the evidence on the record afresh and make its own inferences and conclusions of fact. The Supreme Court affirmed the duty of a first appellate Court as; to rehear the case on appeal, review, re-appraise or re-evaluate the evidence by reconsidering all the materials before the trial Court by carefully weighing and considering the judgment appealed from and make up its own mind and conclusion; **Kifamunte Henry Vs Uganda, SCCA No.10 of 1997 and Pandya Vs R (1957).**

[10] Mindful of the above, this court is to therefore resolve this appeal by re-appraising all the evidence and materials that were before the trial court and arrive at its own conclusion.

[11] In his submissions, counsel for the Appellants argued **grounds 1, 2 and 3** together as they relate to evaluation of the evidence adduced in court and argued the rest of the **grounds 4, 5 & 6** separately. This court shall resolve the appeal following the order taken by the Appellant's counsel.

### **Resolution of the grounds of the appeal**

#### **Grounds 1, 2 & 3**

1. The Learned Trial Judge erred in law and fact in attempting to resolve on the basis of affidavit evidence the highly contentious question of whether the Appellants committed a criminal offence when they organized the impugned workshop hence leading to a miscarriage of justice.
2. The Learned Trial Judge erred in law and fact when he relied on conjecture and speculation and reached a wrong conclusion that the Applicant's closed workshop was aimed at encouraging persons to engage in and or promote same sex practices thereby leading to a miscarriage of justice.
3. The Learned Trial Judge erred in law and fact when he turned an application for the enforcement of fundamental rights into a criminal trial leading to a miscarriage of justice.

#### **Submissions of Counsel**

[12] As regards grounds 1, 2 and 3 of the appeal, Counsel for the Appellants submitted that the learned judge erred when he accepted the unsupported and uncorroborated assertions contained in the affidavits of the **2<sup>nd</sup> Respondent, George Oundo and Abola Nicholas** that the workshop was promoting

commission of the prohibited same sex practices and failed to consider the evidence availed by the Appellants on the content and materials of the workshop. That none of the three deponents in support of the Respondent's case was involved in the workshop either as a participant or organizer to credibly be able to depone on the contents of the workshop. That therefore, their assertions on the contents of the workshop are hearsay. Secondly, that an examination of the materials used by the facilitators at the workshop which were availed to the trial court, show that there was nothing therein teaching the participants or encouraging them to engage in same sex practices.

[13] Counsel submitted the trial judge gave a blind eye to the materials and evidence produced by the Appellants and instead wholeheartedly embraced the Respondents' hearsay and speculative accounts of events thus engaged in speculation and conjecture, a practice which has been strongly denounced by this Court in **Kabegambire Wilber Vs Uganda, Criminal Appeal No.56 of 2006 (CA)**. He also relied on the authority of **Eric Tibebaga Vs Narsensio Begumisa & Ors, S.C.C.Application No.18 of 2002,[2003] UGSC 14** where Kato JSC, held that a party cannot rely on hearsay to prove his or her case and that a person swearing an affidavit in support of an application must have knowledge of the facts involved.

[14] Counsel for the Appellants concluded that if this court is to analyze and examine all the evidence on record as regards the content of the workshop, it will conclude that there was no evidence to prove that the workshop was promoting commission of any criminal offences or illegalities.

[15] On the other hand, counsel for the Respondents submitted that there was credible evidence adduced as per the 2<sup>nd</sup> Respondent's affidavit that the 2<sup>nd</sup> Respondent established that the workshop was intended to equip the participants with information and skills to promote same sex practices which practices are illegal in Uganda. That in order to ascertain the intent of the

workshop and to appreciate how the workshop could be used to promote homosexual practices, it is necessary to look at the background, the objectives and previous activities of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants' organizations to wit; FARUG and SMUG and their participation with a Swedish LGBT Organization (RFSL) which train members of LGBT organizations including the Appellants in leadership, project planning, advocacy with the aim of enabling them to effectively conduct their activities/projects in encouraging same sex practices.

[16] Further, that the 2<sup>nd</sup> Respondent in his affidavit, confirmed the purpose and aim of the workshop to have been for encouragement and promotion of same sex practices upon receipt of information from a whistle blower that FARUG was conducting a similar workshop for homosexuals. That when the 2<sup>nd</sup> Respondent looked at the workshop content materials, coupled with the knowledge of FARUG's previous activities in supporting same sex practices and the clandestine nature of the workshop, the intention of the Applicants was clearly ascertained as to promote illegal or prohibited same sex practices. Counsel invited court to note that the organizers/participants were not willing to offer access or open their workshop activities to scrutiny. Counsel concluded that the evidence as adduced by the Respondents' deponents was sufficient to persuade the trial judge to conclude that the Appellants were engaging in illegal and or unlawful activities.

[17] Lastly, that whereas this application is indeed for enforcement of human rights, Counsel contended that the Applicants/Appellants organized the impugned workshop at Imperial Resort Hotel Entebbe from 9<sup>th</sup> to 16<sup>th</sup> February 2012 to engage and promote illegal and/or unlawful activities and not for enforcement of human rights. He concluded that the trial judge rightly found that the Appellants had assembled to promote an illegality.

## Analysis

[18] The Appellants' application was commenced by Notice of motion and as a result, evidence was adduced by way of affidavits. The Appellants' motion/case was supported by affidavits deponed by the 1<sup>st</sup> Appellant/applicant (Ms. Jacqueline Kasha Nabagesera), 2<sup>nd</sup> Appellant (Mr. Frank Mugisha) and 4<sup>th</sup> Appellant (Mr. Geoffrey Ogwaro) while the Respondents filed a reply supported by the affidavits of the 2<sup>nd</sup> Respondent, Rev. Fr. Simon Lokodo, Mr. George Oundo and Mr. Abola Nicholas.

[19] In the instant case, I will consider first the vital parts of the affidavit of the 1<sup>st</sup> Applicant, **Jacqueline Kasha** whose evidence relates with that of the 2<sup>nd</sup> and 4<sup>th</sup> Appellants. In paragraphs 4-19 she states thus:

*"4. THAT the aforementioned workshop was aimed at empowering participants with skills to advocate for respect of their rights; engage and influence government policy and laws in a peaceful manner; to build leadership qualities and equip the participants with knowledge on project planning and economic empowerment. The workshop program, topics and papers are herewith attached and collectively marked "annexture A".....*

*12. That I returned to Elgon Hall and retrieved the workshop program and training materials which I gave to him and after reading the said materials, Hon. Lokodo said he was not satisfied that the materials I have given him reflected what was taking place in the workshop hall.....*

*14. That later, Hon. Lokodo together with a police officer, stormed the workshop room where participants were having break tea and, after observing the participants for about five minutes, informed the participants that based on what he had seen he was convinced that what was taking place was unethical, illegal, null and void and was therefore declaring the workshop closed....*

17. That the more I attempted to explain the workshop agenda to Hon. Lokodo the angrier he became and he then ordered for my arrest but before I could be arrested, I ran off to my room and later fled the venue....

19. That the said Nicholas continued calling me from mobile number 0774-371957 requesting that I go to their office and explain more about the workshop which Hon. Lokodo closed."

[20] The 2<sup>nd</sup> Respondent, **Rev. Fr. Simon Lokodo**, Minister of State, Ethics and Integrity, Office of the President, on the other hand, in paragraphs 5-13 of his affidavit in reply states thus:

"5. That the Directorate of Ethics and Integrity and myself have established through an investigation that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicant's organizations (FARUG and SMUG) have previously organized, held and coordinated various workshops where they invite persons identified as practicing homosexuals, lesbians and bisexuals and who are mainly youth...we established that they organize these workshops in conjunction with other Local and International organizations which support, encourage the same sex practices of homosexuals, lesbians, bisexuals and support and fund 'projects' deemed relevant to supporting these persons.

6....we established that when these workshops were held in public places they were concealed from the general public e.g., they have no signs displayed indicating the ongoing workshop or its organizers and activities....the participants were taught under the guise of training in 'human sexuality', 'human rights' and 'advocacy' that it is a human right for persons to practice sex with members of the same sex, trained on how to conceal their sex practices and how to avoid creating suspicion among the public and law enforcement officers about the objectives of their planned trainings/activities."

Further that;

*"13. I instructed Mr. Abola to call the person who had barred him and he identified the first Applicant who had followed him to the reception area.....Thereafter, she briefly availed materials some of which have not been attached by the Applicants. On perusal of the materials availed, coupled with my knowledge of FARUG's activities and the secretive nature of the workshop, I confirmed that the workshop was attended by homosexuals and aimed to encourage and strengthen the participant's resolve to engage in and promote homosexual/same sex practices. Further that it was also aimed to equip them with individual and organizational skills and knowledge to carry out their objective of promoting same sex practices/relationships."*

[21] In paragraphs 3, 5, 6 & 7 of her rejoinder, the 1<sup>st</sup> Applicant stated thus;

*"3. That the said George Oundo was not at the hotel and neither was he in Elgon Hall where the said workshop was being held. He did not witness the closure of the workshop by the 2<sup>nd</sup> respondent on 14<sup>th</sup> February, 2012 and therefore does not have capacity to depone to what he did not witness.*

*5. That it is not true as alleged in Paragraphs 2-29 that FARUG promotes same sex practices; it is also not true that FARUG or any of the applicants recruit any persons to practice same sex practices and no one recruited George Oundo into same sex practices and neither was he recruited into male prostitution as stated.*

*6. That the objectives of FARUG and SMUG are to promote the respect for Human Rights of all persons irrespective of their sexual orientation and neither I nor the above organizations investigate, observe or even monitor the private sexual activities or members of these organizations or other private individuals.*

*7. That the workshop which the 2<sup>nd</sup> respondent closed was meant to equip*

*participants with knowledge and skills in project planning, advocacy and leadership; and there were no instances where same sex practices were promoted or even practiced.”*

[22] On **page 304 of the Record of the Appeal [page 8 of the Ruling]**, the trial judge states thus:

*“After consideration of the affidavit evidence on record, there is ample proof that the first, second and third applicants were members of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community in Uganda which encourages same sex practices among homosexuals. This proof can be found in the affidavit of the Minister, the second respondent. The Minister’s affidavit was not rebutted by any of the applicants thus leaving the averments intact.”*

Then at **page 9 of the ruling**,

*“The evidence adduced by the second respondent was minutely corroborated by that of George Oundo, a former associate of the applicant. This evidence was equally not rebutted by the applicants.”*

Further at **page 10 that**,

*“Although the first Applicant swore an affidavit in rejoinder, it only had general denials and was restricted to FARUG. There was no rebuttal of Mr. Oundo’s detailed evidence that FARUG’s project activities encouraged same sex and conducted training in project planning, advocacy and leadership with the aim of equipping homosexuals and members of LGBT organizations to effectively carry out such activities. All these activities amount to direct or indirect promotion of same sex practices. Available evidence shows that the applicants’ closed workshop was aimed at encouraging persons to engage in and or promoted same sex practices in future.*

*The organizers and participants were not willing to open their workshop activities to scrutiny. According to the affidavit of the minister and Mr. Abola, unlike other workshops, the applicants' workshop was not displayed at the hotel. The first applicant refused Mr. Abola a government official to observe the workshop proceedings and by the time the minister arrived to observe the proceedings, they had been halted and the participants were having a break. In view of the law cited above, it was reasonable and justified for the Minister to conclude that this workshop was engaging in direct and indirect promotion of same sex practices which is prohibited by S.145 and 21 of the Penal Code Act.*

At page 25, the trial Judge concluded thus:

*"I am of the considered view that in the circumstances of the case under consideration, the essence of the rights to expression, association, assembly, political participation and equality under the law were not jeopardized and the rights remain available to the applicants. The actions of the second respondent were permissible limitation of the applicants' rights."*

[23] From the evidence on record highlighted above, this court is of the firm view that the findings of the trial court are supported by evidence that was adduced in court. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants were members of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community in Uganda. It is also not in dispute that members of LGBTQI encourage same sex among homosexuals. It is a known fact that same sex practices among homosexuals are prohibited in this country. This explains why the trial Judge during his analysis and evaluation of evidence before him alluded to Ss. 21, 145, 148 and 392 of the Penal Code Act.

[24] S.145 of the Penal Code Act provides thus:

*"145. Un natural offences*

*Any person who-*

*(a) has carnal knowledge of any person against the order of nature*

*(b) has carnal knowledge of an animal; or*

*(c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life."*

It is not suggested in this case that the Appellants were found committing an offence under S.145 PCA. It is the Respondent's case that the Respondents established that the workshop which was attended by homosexuals aimed to encourage participants to engage in and promote same sex practices, a likely offence under Ss. 21, 145, 148 and 392 and PCA. Sections 21, 148, and 392 of the Penal Code Act when read together with S.145 that create other various offences to wit; indecent practice (S.148), other conspiracies to commit misdemeanor offences (S.392 PCA) and incitement to commit an offence (S.21 PCA). The trial Judge thus concluded as follows:

*"I agree with the submission by learned counsel for the Respondent that the applicants' promotion of prohibited homosexual acts in the impugned workshop would amount to incitement to commit homosexual acts and conspiracy to effect an unlawful purpose which is unlawful."*

[25] By the above finding or statement, the trial Judge cannot be said to have conducted a criminal trial against the Appellants as counsel for the Appellants/Applicants faulted him in his submission. The trial Judge was evaluating evidence for a finding that the Respondents were justified to close the workshop in question which was hinged on the fact that the workshop was aimed to encourage the participants to engage in and promote same sex

practices. This court is therefore not able to find any miscarriage of justice occasioned by the approach adopted by the trial Judge while resolving the issue that was before him.

[26] As to whether the trial Judge relied on conjecture and speculation when he concluded that the Appellants' workshop was aimed at encouraging persons to engage in or promote same sex practices and thereby led to a miscarriage of justice, the trial Judge based his findings on the following:

(a) The organizers and participants were not willing to open their workshop activities to scrutiny.

(b) The Applicants' workshop was not displayed at the hotel.

Then the trial Judge concluded thus:

*"...it was reasonable and justified for the minister to conclude that this workshop was engaging in direct and indirect promotion of the same sex practices...."*

[27] What this court understands from the Respondents' case and the trial Judge is that the 2<sup>nd</sup> Respondent relied on the doctrine of "reasonable belief" that the Appellants had committed or were about to commit a criminal offence under the laws of Uganda. The expression, 'reason to believe' is not defined anywhere in law but needs to be understood through judicial interpretation, some of which are as follows: 'Reason' means a cause of justification; 'Believe' means to accept as true or to have faith in it, **Ganga Saran & Sons (P) Ltd Vs Income Tax Officer (1981) 130 ITR 1 (SC)**. See also **R Vs Commissioner of Police Ex parte Michael Monari [2012] eKLR**. Reasonable belief in the context of crimes refers to a standard used in law to determine whether an individual has a justifiable basis for believing that a crime has occurred or is about to occur. It requires facts that would lead a reasonable person to believe a crime is in progress, has been committed or is about to be committed and the standard of belief is higher than mere suspicion, **Dallison Vs Caffery [1965] 1QB 348**. Mere

suspicion does not satisfy the legal threshold where liberty or rights are at stake.

[28] In other words, the belief of the concerned authority should be based on some actionable material that he or she has had an opportunity to peruse. In **Sheo Nath Singh Vs Appellate Assistant Commissioner of Income Tax, Calcutta [1971] AIR SC 2451**, it was held that court can examine the materials to find out whether an honest and reasonable person can base his reasonable belief upon such materials although the sufficiency of the reasons of the belief cannot be investigated by the court. Court stated thus:

*"...it is well established that expression reason to believe does not carry the same connotation as to say reason to suspect, the standard of belief is that of a reasonable and honest person and not one based on surmises and conjectures, or mere suspicion...."*

[29] The implication of the above persuasive Supreme Court Indian authorities is therefore that it is open to the concerned authority to form a prima facie view based on evidence that may be direct or circumstantial. This strict requirement of reasonable belief is to safeguard the citizen from vexatious proceedings. The burden of establishing reasonable belief is on the Respondents. The Respondents would discharge this burden that there was reasonable belief or cause for suspecting that the Applicants' workshop and activities were aimed at encouraging the same sex practices of homosexuals e.t.c as alleged by adducing evidence to the satisfaction of court that the authority had reasonable belief that the Appellants had committed or were about to commit the offence.

[30] In the instant case, it is the Appellants' case that the workshop in question that was closed by the 2<sup>nd</sup> Respondent aimed at, among other things, empowering participants with skills to advocate for respect of their rights and equip the participants with knowledge on project planning and economic empowerment.

That therefore, the actions of the 2<sup>nd</sup> Respondent to order, the closing of the ongoing workshop organized by the Applicants and/or who had been invited, and were attending constituted an infringement of the Applicants' and other participants' right to freedom of assembly and association, right to participate in peaceful activities and right to equal treatment before the law guaranteed under Articles 21, 29(1) (d) & 38(2) of the Constitution.

[31]The Respondents on the other hand contend that the closing of the workshop was in the public interest and did not unlawfully infringe on the rights of the Appellants. That this was after establishing that the Appellants belong to organizations whose main objective is to encourage, support, promote, empower, finance and mobilize homosexual lesbian practices. The trial Judge believed and agreed with the Respondents that the Minister (2<sup>nd</sup> Respondent) acted in public interest of Uganda to protect the public moral standards which fell under his docket.

[32]In an affidavit in rejoinder, the Appellants denied that their organization FARUG promotes same sex practices or recruit any persons to practice the same sex. The duty of this court is to re-evaluate the evidence on record and re-appraise all the materials that were before the trial Judge and make its own conclusions as regards whether the 2<sup>nd</sup> Respondent had reasonable belief based on materials received and perused disclosed that a crime was in progress, had been committed or was about to be committed. If the finding of the above is in the affirmative, the issue 1,2,3 will be found in the negative.

[33] According to the 2<sup>nd</sup> Respondent's affidavit, the 1<sup>st</sup>, 2<sup>nd</sup>, & 3<sup>rd</sup> Appellants had and/or belong to organizations whose main objective is to encourage, support, promote, empower, finance and mobilize homosexual, lesbian and bisexual practices. This is not denied by the Appellants. The 1<sup>st</sup> Appellant in his affidavit in support of the application deponed that she is the Executive Director of

Freedom and Roam Uganda (FARUG), a lesbian, bisexual and transgender women's rights association founded in July 2003.

[34] According to the affidavit evidence of George Oundo, a former homosexual and transgender (Georgina) who had sex with fellow men for 17 years until 2020 when he publicly denounced the practices, the Appellants' organizations encourage, support, promote, empower, finance, mobilize and raise up leaders among lesbians, gay and bisexual persons who are identified to be engaging in same sex practices. These Respondents' averments which were not rebutted by the Appellants appear also to be supported by the workshop materials the Appellants attached to her affidavit in support of the application. I proceed to examine the content of some of the materials adduced by the Appellants themselves and those recovered by the Respondents here below:

(a) **A Paper by Sylvia Tamale, School of law, Makerere University titled "*Standing, sitting and sleeping: Unveiling the Politics of Sexuality and Gender Identity in Uganda.*"**

[35] Upon perusal of the above paper, I find that the contents of the paper were clearly meant to encourage and strengthen the participants' resolve to engage in and promote homosexual/same sex practices. At **page 24 of the Record of Appeal** (P.10 of the paper), the author glorified Nelson Mandela on homosexuality as follows:

*"To day Nelson Mandela stands tall as a great icon of the rights of homosexual individuals. But Mandela's perspective on gays was not liberal when he started out on his political career. Indeed, his view point on homosexuality has evolved from the conservative opposition that he held in 1950s and 60s to the full support of gay rights that he holds today. Even Desmond Tutu- currently one of key proponents of gay rights globally- denounced homosexuality in 1973 as one of the most dehumanizing*

*effect of the migrant labour system (EPPrecht 2008:169)"*

Then at P.25 of the record of Appeal (P.11 of the paper):

*"The ANC under Mandela was thus well ahead of its time; this was a whole 20 years before we got legislation such as AHB [Anti Homosexuality Bill] in Uganda! What further evidence do we need to show that Mandela is a man deeply in touch with what it means to change?"*

**(b)A Paper on power of Affirmations**

[36]At page 31 of the Record of appeal, the power of affirmations assures and promises the participants the following;

*"The power of affirmations can help you to transform your life. By stating what you want to be true in your life, you mentally and emotionally see and feel it as true, irrespective of your current circumstances, and thereby attract it into your life.*

*Positive affirmations*

- I am healthy and happy*
- Wealth is pouring into my life*
- I am getting wealthier each day*
- My body is healthy and functioning in a very good way*
- I have a wonderful and satisfying job*
- I have the means to travel abroad, whenever I want to*
- I am successful in whatever I do*
- Everything is getting better every day"*

As per the above paper on power of affirmations, it is apparent that during the workshop, there were preaching promises of a better future and improved quality of life in form of quick wealth, good health, satisfying jobs and travelling abroad for LGBT participants and recruits. The recruits appear

mainly to be youths as reflected on the logo of the "Queer Youths", one of the local organizations.

(c)A Paper on "Strategies for movement building Tips from Jesus Christ and the Christian Movement" by Hope Chigudu (pages 40-46 of the Record of Appeal):

[37]By quoting for example, **John 5:39**, the author justifies why participants should willingly follow her, thus:

*"Constituency building. The CORE PURPOSE AND DRIVING ENERGY: He (Jesus) did not beg, 'follow me'. He justified why people should follow him and those who were willing did."*

Again, she quoted **Mathew 10:16** to encourage the followers, participants as follows:

*"His (Jesus) leadership was transformative. He told his disciples to be as "shrewd as snakes."*

Here, the participants are encouraged to sacrifice themselves despite the backlashes from their communities.

*"SACRIFICE POWER IN ORDER TO BUILD.*

*This is more troubling.*

*He gave his life for what he believed in. Here I suggest we avoid emulating him (Jesus) but recognize the ultimate social justice we aim to achieve and that the price might be our very lives."*

[38]Then lastly, that Jesus branded issues, the message and not his organization. He privileged his view, he did not make a distinction between 'political and civil', between 'non-governmental' and 'governmental' but rather preached the vision of his kingdom and walked the talk.

[39]The Appellants' workshop materials highlighted above clearly comprise of same sex practice literature and information. The context of the above biblical quotes is intended radicalize the LGBT participants and recruits to brave whatever consequences they are to face in case of opposition. This is clearly reflected in the affidavit evidence of **George Oundo** in support of the Respondents case. He deponed that the purported training is with focus on gender, "equality" human rights and media but in the course of the projects, the well needed competences on the subject of LGBT rights are developed and the Appellants spear head lobby for Human rights for LGBT people in Uganda.

**(d)Documents recovered by the 2<sup>nd</sup> Respondent**

[40]The documents are attached to the affidavit of the 2<sup>nd</sup> Respondent and George Oundo. They are;

**(i) RFSL: LGBT Rights in Uganda:**

Capacity Building grass roots organizations; 2008-2010.

The cooperating organizations in Uganda include Ice-Breakers, Spectrum Uganda Initiatives, Farug and Smug.

**(ii) The capacity Building Frame Work:**

RSFL, Uganda LGBT(I) Community Cooperation.

**(iii) Code of conduct LGBT Capacity Building project in Uganda.**

**(iv) The implementing organization:**

Queer youth Uganda, a local LGBT organization.

Again, the entire of the above workshop materials recovered from the Appellants by the Respondents, the titles and the contents, clearly are ample evidence of LGBT organizational literature and when coupled with the Appellants' conduct to wit; the concealment of the workshops from the general public, absence of signs displayed indicating the ongoing workshops or the organizers and activities; the organizers and participants un willingness to open their workshop activities to scrutiny (they frowned at any stranger in the

workshop, a fact admitted by the appellant in her affidavit regarding Nicholas Abola presence in the workshop) supported the 2<sup>nd</sup> Respondent's reasonable belief that the intention and purpose of the Appellants' workshop was to support, encourage same sex practices of homosexuals, lesbians and bisexuals.

[41] The foregoing comprise of reasons which when considered in relation to each other amounted to reasonable belief on which the 2<sup>nd</sup> Respondent based himself that the Appellants' workshop was being conducted illegally and or promoting illegal activities thus as a Minister of Ethics and Integrity was justified to close it for purposes of prevention of further illegalities. The workshop was being conducted under concealed circumstances to avoid suspicion among the public and law enforcement officers about the objectives of their planned trainings/activities because same sex practices are prohibited by law in this country.

[42] This court finds that the trial court rightly found that the 2<sup>nd</sup> Respondent's conclusion was reasonable and justified. This is because activities of the Appellants in organizing and participating in the workshop were directly and indirectly promoting and encouraging same sex practices which practices are prohibited under the law. In their pursuit of enforcement of their rights under **Articles: 21 on equality and freedom from discrimination; 29(1) (a) & (d) on freedom of speech and expression and freedom to assemble and 38 on civic rights and activities**, the Appellants must note that no right is absolute. The case of **Ryan Vs Attorney General [1965] IR 294** establishes that no personal rights are unlimited. Kenny, J observed thus;

*"None of the personal rights of the citizen are unlimited; their exercise may be regulated by the Oireachtas when the common good requires this."*

There must therefore be a balancing exercise between affording rights to citizens, but not letting those rights abused towards crime. The question then becomes, if no right is absolute, when may grounds for legitimate interference

emerge (i.e, when can rights be infringed upon?) There are several grounds; the "common good", "public order and morality" and the "principles of social justice". The test to be applied justifying interference is that of proportionality test, **Charles Onyango Obbo & Anor Vs Attorney General, Constitutional petition No.15 of 1997**. The nature of the proportionality test will vary depending on the circumstances of each case. The court will be required to balance the interest of society with those of individuals and groups. The authority may act on direct or circumstantial evidence and not on mere suspicion, gossip or rumour.

[43]In this case, the Respondents adduced evidence that the closure of the Appellants' workshop arose out of reasonable belief based on credible information, suspecting that the Appellants were conducting activities aimed to promote crime. The impugned actions of the 2<sup>nd</sup> Respondent were deemed permissible limitation of the applicant's rights. In the premises, **grounds 1, 2 & 3** accordingly fail.

#### **Ground**

- 4. The Learned Trial Judge erred in law and fact in concluding that the restrictions of the Applicants' rights was justified on the basis that they [Applicants] were promoting an illegality in the exercise of their rights which conclusion is erroneous and constitutes a miscarriage of justice.**

[44] Counsel for the Appellants submitted that the issue of morals came up strongly in the trial Judge's decision stating that public interest includes morals. According to counsel, morality referred to a limitation to human rights under constitutional law is not popular morality but rather constitutional morality and as such, social morality cannot be used to violate fundamental rights of even a single individual. He relied on the authority of Navtej Sing Johar & Ors

Vs Union of India Thr. Secretary Ministry of Law and Justice, AIR 2018 SC 4321 to support his submission and concluded that the actions of closing down a capacity building workshop attended by members of LGBT community in Uganda cannot be justified under **Article 43(1) of the Constitution**.

On page 322 of the record [page 26 of the ruling], the judge stated thus;

*"In as far as there is no legal challenge to the validity of the S.145 of the Penal Code Act, it is still valid and binding on all courts in Uganda, regardless of whether there are foreign precedents stating that prohibition of homosexual acts as offences against morals is unjustified restriction on rights of the homosexuals."*

[45] In my view, relying on authorities of foreign jurisdictions would be persuasive if there was no law in Uganda prohibiting the **promotion** of such unnatural same sex practices. **Section 145 of the Penal Code Act** is still a valid Penal provision. The Appellants would only be expected to exercise their rights within the law. In this country, an action taken in enforcement of the law and prevention of crime is in alignment with the values, norms and aspirations of the people of Uganda and therefore, such action is deemed to have been taken in public interest unless it is proved otherwise. In this case, Appellants failed to prove that the closure of the impugned workshop did not meet the proportionality test.

[45] I am therefore unable to fault the trial Judge for concluding that the restrictions of the Appellants' rights was justified and effected in public interest to protect moral values. The Appellants were promoting prohibited or criminalized same sex practices while purportedly in the exercise of their rights which called for the restrictions. This 4<sup>th</sup> ground fails.



## Ground

- 5. The Learned Trial Judge erred in law and fact when he concluded that the 2<sup>nd</sup> Respondent couldn't be sued in his individual capacity in the circumstances of the case.**

[46] Counsel for the Appellants submitted that the 2<sup>nd</sup> Respondent personally closed the workshop and therefore he was liable for violation of the rights of the Appellants regardless of the vicarious liability of the state for his actions. Counsel for the Respondents did not submit on this ground.

[47] I find that the 2<sup>nd</sup> Respondent acted in his capacity as Minister for Ethics and Integrity for the Government of Uganda, the authority mandated to enforce ethics and promote moral values. Therefore, the 2<sup>nd</sup> Respondent's impugned actions were in performance of his official duties. In agreement with the findings of the trial judge, I find that actions undertaken by the 2<sup>nd</sup> Respondent in closing the Appellants' workshop were in public interest enforcing public order and morality. In the circumstances, it was wrong to sue the 2<sup>nd</sup> Respondent in his individual capacity. This ground also fails.

## Ground

- 6. The findings of the learned Trial Judge justifying the acts of the Minister in storming and closing the impugned workshop in public interest, and in view of the law were injudicious, unfair, unfamiliar and inequitable and constituted a miscarriage of justice.**

[48] Counsel for the Appellant submitted that **Article 44(c) of the Constitution** is to the effect that the right to a fair hearing is non derogable. That however, the 2<sup>nd</sup> Respondent did not accord the Appellants an opportunity to be heard but simply stormed the workshop and ordered its closure without following due process. According to counsel, the trial judge erred when he justified the acts of the Minister which was unfair and caused a miscarriage of justice. Counsel

for the Respondents did not respond to this submission by the Appellant's counsel.

[49] It is the evidence of the 2<sup>nd</sup> Respondent and Mr. Abola Nicholas that the 1<sup>st</sup> Applicant fled for fear of arrest. As a result, the 2<sup>nd</sup> Respondent directed the said Abola to contact the 1<sup>st</sup> Appellant and tell her to go to their offices and explain more about the workshop. The 1<sup>st</sup> Applicant in her affidavit in support admitted to receiving the call from Abola. However, there is no evidence that she heeded to the call or that she went to the 2<sup>nd</sup> Respondent's offices as was requested. In light of the above, it cannot be said that the Appellants were denied fair hearing by the 2<sup>nd</sup> Respondent.

[50] In conclusion, I find that all the 6 grounds of appeal are devoid of any merit and they accordingly fail. The appeal has failed in its entirety and it is accordingly dismissed with costs.

Dated at Kampala this 30<sup>th</sup> day of January 2026



.....  
BYARUHANGA JESSE RUGYEMA  
JUSTICE OF APPEAL

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
(Coram: Gashirabake, Kihika, & Byaruhanga-Rugyema, JJA)

**CIVIL APPEAL NO. 195 OF 2014**  
(Arising from High Court Misc. Cause No. 33 of 2012)

1. JACQUELINE KASHA NABAGESERA
2. FRANK MUGISHA
3. JULIAN PEPE ONZIEMA
4. GEOFFREY OGWARO ::: **APPELLANTS**

**VERSUS**

1. ATTORNEY GENERAL
2. REV. FR. SIMON LOKODO ::: **RESPONDENTS**


*[Appeal from the Ruling and orders of the High Court (Musota, J) delivered on 24<sup>th</sup> June, 2014]*

**JUDGMENT OF OSCAR JOHN KIHKA. JA**

I have the benefit of reading in draft the judgment of my learned brother Justice Byaruhanga Jesse Rugyema. I am in agreement that all the 6 grounds of appeal are devoid of any merit and as such accordingly fail. The appeal ought to be dismissed with costs in the Court below and in this Court.

It is so ordered.

Dated at Kampala this 30<sup>th</sup> day of January, 2026

  
**OSCAR JOHN KIHKA, JA**  
**JUSTICE OF APPEAL**

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**JUDGMENT OF CHRISTOPHER GASHIRABAKE, JA.**

I have had the benefit of reading in draft the judgment originated by my learned brother, Byaruhanga Jesse Rugyema, JA.

I concur with the judgment and the orders proposed and have nothing useful to add.

Dated at Kampala the 30<sup>th</sup> day of January 2026.



Christopher Gashirabake  
**JUSTICE OF APPEAL**