



RE: END OF YEAR LETTER FROM HRAPF

Dear all,

Hope you are enjoying the holidays so far. We have not been able to fully close our offices for the end of year as the political and human rights situation continues to worsen, and as such HRAPF remains open to handle emergency matters. Today, we just returned from the Anti-Corruption Court where our colleague Nicholas Opiyo was granted bail. He is charged with money laundering seemingly because the organisation he heads - Chapter 4 Uganda received money on its account from a foreign donor! The charge is that strange, but very worrying, as was the manner of his arrest. Also, a link has been made between his arrest and his work on LGBT rights. We are also handling a case of murder - where a father, uncle, and brothers yesterday murdered their own son accusing him of being gay and thus embarrassing them. Violence from both state and non state actors continues.

Amidst all these, we have received a ruling from the High Court dated 21st December 2020, where the State's Application to have the decision in the earlier case that we won on behalf of the COSF-19 set aside on grounds that the state was prevented by valid reasons from appearing and defending the matter. Thus the declaration that the denial of the COSF-19 from accessing their lawyers was a violation of the right to liberty and the right to a fair hearing, as well as the award of Uganda shillings 5 million to each of the 19, remain standing.

The state had filed Miscellaneous Application No. 482 of 2020, *Attorney General V Human Rights Awareness and Promotion Forum (HRAPF) and Commissioner General of Prisons* seeking to set aside the High Court's decision in Miscellaneous Cause No. 81 of 2020. The main issue was that the state was unable to appear to defend the matter due to COVID-19 transport restrictions, and that judgment can be passed against the government in its absence.

The Court concluded that the state was well served with court process, and they had no justifiable reason not to come to court. That the Attorney General had been coming to court in many different matters at the time and so there was no real reason to prevent them from coming for this

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one. Also, transport restrictions had been lifted by the time the case came up, and that counsel had simply arrived late after the hearing had been concluded. The fact that they filed the application more than 80 days after the judgment showed that they filed the application as an afterthought.

The Court also made an important finding on the new Human Rights Enforcement Act, 2019. It applied section 6(5) of the Act to dismiss the assertion by the state that we had filed our affidavit in reply out of time. The section reads as follows:

'No suit instituted under this Act shall be rejected or otherwise dismissed by the competent court merely for failure to comply with any procedure, form or on any technicality.'

This is perhaps the first time courts are ruling on this provision, and it will go a long way in removing procedural obstacles from the way of substantive justice.

Another important finding was on rules made under the Government Proceedings Act, which treated the government as a special litigant. In this case, Rule 6 of the Government Proceedings (Civil Procedure) Rules required that no Judgment shall be entered against the government in default of appearance or pleading without leave of the court, and 7 days' notice had to be given. The Court stated that the government was a litigant like any other under the Constitution and so no special rules apply:

'I find that that leave and notice is not mandatory before a default judgment can be entered against Government. Under Order 9 of the Civil Procedure Rules, no such leave or notice are required for ordinary parties. The same should hold true for the Government.'

The application was thus dismissed with costs as against the government. Our victory is thus well protected this far, and the precedents set in that case still do hold. We can now pursue the realisation of the compensation for the COSF-19 and also justice in the cases that we filed challenging the torture, and inhuman and degrading treatment meted out against the 19.

Thank you all, and all of us at HRAPF wish you a Happy New Year.

For the full ruling visit <https://www.hrapf.org/index.php/resources/court-judgements/176-20-12-21-ruling-in-application-to-set-aside-access-to-lawyers-ruling-attorney-general-v-hrapf/file>

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