

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. 50 OF 2021**



M/S THE UNWANTED WITNESS (U) LTD ::::::::::::::: APPLICANT

VERSUS

- 1. ATTORNEY GENERAL**
- 2. UGANDA COMMUNICATIONS COMMISSION**
- 3. MOBILE TELEPHONE NETWORK (MTN) UGANDA**
- 4. AIRTEL UGANDA**
- 5. AFRICELL UGANDA ::::::::::::::: RESPONDENTS**

NOTICE OF MOTION.

(Under articles 20(2), 26, 29(1)(a), 30, 40(2), 41, 45 & 50(1)&(2) of the Constitution of the Republic of Uganda, Sections 1(1)& (2), 3, 4, 6 & 9 of the Human Rights (Enforcement) Act, 2019)

TAKE NOTICE that this Honorable Court shall be moved on the 10th day of June 2021 at 9:00 O'clock in the forenoon or soon thereafter as Counsel for the Applicant can be heard on an Application for orders and declarations herein below;

- (a) A declaration that the actions and conduct of the 1st, 2nd, 3rd, 4th and 5th respondents in arbitrarily shutting down the internet countrywide from the 9th to 18th days of January, 2021 were unlawful and an infringement of rights enshrined under ***articles 20(2), 29(1)(a), 30, 40(2), 41 & 45 of the Constitution of the Republic of Uganda.***
- (b) An order that the 1st Respondent refunds all the over the top (OTT) Tax paid for the period from 9th January, 2021 till the end of January, 2021.
- (c) An order that the Respondents restore access to all social media services unconditionally.
- (d) An order restraining the Respondents against future arbitrary and unjustified shutdown and restrictions of access to internet and social media services to the public.

(e) An order that the Respondents pay the costs of this application.

TAKE FURTHER NOTICE that the grounds of this Application are contained in the Affidavit of **DOROTHY MUKASA** and **SEMPALA ALLAN KIGOZI** in support of this Application, which shall be read and relied upon but briefly are that: -

1. The Applicant is an independent, non-partisan, and not-for-profit civil society organization based in Kampala, Uganda whose core objectives include to seek and create a secure uncensored online platforms for activists, netizens, bloggers, freelance journalists, and writers; to promote human rights through writing and informing; to educating the citizenry who also utilize the platforms for strengthening free expression and demand for accountability.
2. The Applicant is aggrieved by the actions of the 1st, 2nd, 3rd, 4th and 5th Respondents in as far as they constitute a violation of freedom of press and other media, right to practice a profession, right to life, right to education, right to access to information, contrary to **articles 29(1)(a), 40(2), 22, 30, 41 & 45** of the Constitution of the Republic of Uganda respectively.
3. That between 9th January 2021 and the 12th January 2021, internet service providers 3rd and 4th Respondents had blocked Google play and App store, Facebook videos did not play or download on 3rd, 4th and 5th Respondents' networks. Later twitter, whatsapp, telegram and Instagram were also blocked on 12th January 2021 to date.
4. That on the 12th January, 2021, the 1st and 2nd Respondent instructed the 3rd, 4th and 5th Respondents who are internet service providers in the country to immediately suspend any access and use of all messaging apps and social media platforms until further notice.
5. That accordingly, accesses to the social media platforms were restricted on 3rd, 4th and 5th Respondents' networks.
6. On the 12th day of January, 2021, the President of the Republic of Uganda while addressing the nation said he had ordered a shutdown of the internet throughout the country ahead of the Presidential and parliamentary elections, and the same was implemented by the Respondents until 18th January, 2021.
7. That between 12th and 18th January, 2021 all internet services were nonfunctional following the internet shut down by the Respondents.

8. That the Respondents restored internet services, but shutdown on access to social media platforms has remained and only Ugandans with Virtual Private Networks (VPN) are currently able to access social media.
9. That members of the public who had paid the OTT tax for the week 4th-10th, 11th to 18th, January, 2021 and for the month of January, 2021 were denied their right to access OTT services.
10. That the internet shutdown disrupted people's lives, endangered the safety and security of citizens, limited the access to information and emergency services, negatively impacted small and large businesses and their customers, and interfered with the provision of education and e-services.
11. That as a result of internet shutdown and restrictions to access social media services, businesses were unable to provide goods and services and many ordinary citizens were unjustly censored and unable to obtain vital information.
12. That the actions of the 1st and 2nd Respondents in concert with the 3rd, 4th and 5th Respondents contravened **articles 26, 29(1)(a), 30, 40(2), 42 and 45** of the **Constitution** of the Republic of Uganda in as far as they constituted a violation of the right to property, violation of the freedom of press and other media, a violation of the right to practice a profession, a violation of the right to education, and a violation of the right to a fairness in administrative decisions hearing.
13. That consequently the Applicant brings this application against the Respondents for redress under **article 50 of the Constitution of the Republic of Uganda and sections 1(1)&(2), 3, 4, 6 & 9 of the Human Rights (Enforcement) Act, 2019.**
14. It is just and equitable that this Application be allowed, the prayers therein granted on such terms as the Court deems fair and expedient.

TAKE FURTHER NOTICE that the Applicants' address of service shall be M/s Mpamizo, Nabaasa & Akineza Advocates, Plot 7/9, 2nd Street, Industrial Area, Kinyara Building, 2nd Floor, Flat 1, P.O. Box 34704, Kampala.

DATED at KAMPALA this 11th day of February, 2021.



M/s Mpamizo, Nabaasa & Akineza Advocates
Counsel for the Applicant

GIVEN under my HAND and SEAL of this Honorable Court this 19th day of March, 2021.



DEPUTY REGISTRAR

Drawn and filed by:

M/s Mpamizo, Nabaasa & Akineza Advocates,
plot 7/9, 2nd Street, Industrial Area,
Kinyara Building, Flat 1, 2nd Floor,
P.O. Box 34704, Kampala.

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- 3. MOBILE TELEPHONE NETWORK (MTN) UGANDA]**
- 4. AIRTEL UGANDA]**
- 5. AFRICELL UGANDA] ::::::::::::::: RESPONDENTS**

AFFIDAVIT IN SUPPORT OF THE NOTICE OF MOTION

I, M/s DOROTHY MUKASA c/o M/s Mpamizo, Nabaasa & Akineza Advocates, plot 7/9, 2nd Street, Industrial Area, Kinyara Building, Flat 1, 2nd Floor, P.O. Box 34704, Kampala do hereby swear and state as follows: -

1. That I am a female adult Ugandan of sound mind, the Respondent's Chief Executive Officer and duly authorized to swear this affidavit in that capacity.
2. That the Applicant is a company limited by guarantee, whose main objective is promotion of media freedom and human rights. **(A copy of the Certificate of Incorporation is attached hereto and marked annexure 'A').**
3. That between 9th January 2021 and the 12th January 2021, internet service providers the 3rd, 4th and 5th Respondents blocked Google play and App store, face book videos did not play or download on 3rd, 4th and 5th Respondents' networks.
4. That by 12th January, 2021 twitter, WhatsApp, telegram and Instagram were also blocked on 3rd, 4th and 5th Respondents' networks.
5. That on 12th January, 2021, the 1st and 2nd Respondent instructed the 3rd, 4th and 5th Respondents who are major internet service providers in the country to immediately suspend any access and use of all messaging apps and social media platforms until further notice.

6. That accordingly, access to the social media Platforms of Google play, App store, Twitter, WhatsApp, Telegram and Instagram were restricted on 3rd, 4th and 5th Respondents' networks despite the fact that people including myself had bought data and paid OTT tax to access social media services and platforms.
7. On the 12th day of January, 2021, the President of the Republic of Uganda while addressing the nation between 08:00 pm and 10:00 pm announced the total shutdown of internet services and social media ban throughout the country ahead of the Presidential and parliamentary elections, and the same was implemented by the Respondents until 18th January, 2021 **A video of the of the president's speech will be adduced in evidence at the hearing.**
8. That between 12th January, 2021 and 18th January, 2021 all internet services were nonfunctional following the internet shut down by the Respondents. **Copies of public notices on the 3rd, 4th and 5th Respondents websites are hereto annexed and marked "B", "C", and "D" respectively.**
9. That on the 18th January, 2021 internet services were restored, but the ban on access to social media has remained in place and only Ugandans with access to Virtual Private Networks (VPN) able to access social media which is expensive and unreliable.
10. That as a result of the Respondents' actions, the online bloggers who are not necessarily engaged in politics, the online publishers and ordinary citizens depending on internet for news, research and communication suffered a violation of their freedom and rights.
11. The internet shutdown disrupted people's lives, hurt the safety and security of citizens, unjustly limited access to information and emergency services, negatively impacted small and large businesses and their customers, and interfered with the provision of education and e-services.
12. That private business, civil society organisations like the Applicant were unable to provide goods and services and many more ordinary citizens were unlawfully censored and unable to obtain vital information for their daily lives.

13. That the public including myself, staff and members of the Applicant lost their hard earned money in unused taxes and payments for access to social media services that were never enjoyed due social media services and internet blockage by the Respondents without justification.
14. That I have been advised by our lawyers of M/s Mpamizo, Nabaasa & Akineza Advocates which advice I verily believe to be true and correct that the actions of the 1st and 2nd Respondents in concert with the 3rd, 4th and 5th Respondents infringed the rights enshrined under articles **22, 26, 29(1)(a), 30, 40(2), 41 and 45** of the Constitution of the Republic of Uganda to wit, the right to property, the freedom of press and other media, the right to practice a profession, a right to life, the right to education, and the right of access to information.
15. That I am further advised by our lawyers whose advice I verily believe to be true and correct that this Court is competent and has jurisdiction to grant reliefs sought under this Application and any other relief deemed fit and proper.
16. That it is just and equitable that this Application be allowed, prayers therein granted on such terms as the Court deems fair and expedient.
17. That all I have stated in this Affidavit is true and correct to the best of my knowledge, save for information whose sources have been stated therein.

Sworn at Kampala]

By the said

M/s. Dorothy Mukasa]

This 10th day of Feb 2021


.....
DEPONENT

Before me:

.....
A COMMISSIONER FOR OATHS

Drawn and filed by:

*M/s Mpamizo, Nabaasa & Akineza Advocates,
Plot 7/9, 2nd Street, Industrial Area,
Kinyara Building, Flat 1, 2nd Floor,
P.O. Box 34704, Kampala.*



SERVICE RESTRICTION ORDER

'B'

Monday, 12 January 2021 - Kampala, Uganda:

MTN STATEMENT.

MTN Uganda informs its esteemed customers and other stakeholders that National Telecommunication Operators in the country, have received a directive from Uganda Communications Commission (UCC) to immediately suspend access and use, direct or otherwise of all social media platforms and online messaging applications over the network until further notice.

MTN Uganda has, in compliance with its National Telecommunications Operator License and in accordance with MTN's group-wide Digital Human Rights due diligence framework implemented the directive.

MTN Uganda will continue engaging with the relevant stakeholders to limit the scope and duration of the service disruption.

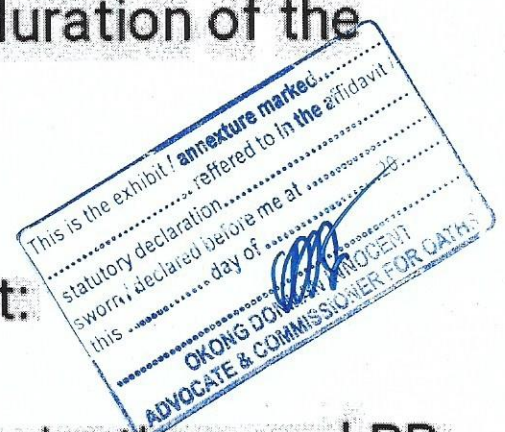
Ends.

For more information, please contact:

Rhona Arinaitwe

Senior Manager – Corporate Communications and PR

Rhona.Arinaitwe@mtn.com





PUBLIC NOTICE:

ACCESS TO SOCIAL MEDIA AND OTHER PLATFORMS

Wednesday 13 January 2021

Airtel Uganda wishes to inform its esteemed customers that following a directive from Uganda Communications Commission, access and use, direct or otherwise of all social media platforms and online messaging applications has been suspended until further notice.

As a result, Airtel Uganda customers are currently not able to access the aforementioned services via its network.

All other services offered by Airtel Uganda continue running seamlessly including Airtel Money.

Thank you for choosing Airtel Uganda.

Management.

For more information, please contact:
Sumin Namaganda
Public Relations Manager
Sumin.Namaganda@ug.airtel.com

☎ 100 ✉ customerservice@ug.airtel.com 🌐 www.airtel.co.ug 📘 www.facebook.com/airteluganda 🐦 www.twitter.com/Airtel_ug

Airtel is Regulated By Uganda Communications Commission

PUBLIC NOTICE

Thursday 14 January 2021



Africell Uganda is working closely with regulators to restore access for customers to its internet and Afrimoney services following directives by the Uganda Communications Commission and the Bank of Uganda respectively to all licensed telecommunications operators to suspend internet and mobile money services, with the exception of utility payments and airtime top-ups. Our voice services are currently unaffected and continue to operate as usual.

We will notify users as soon as access is restored, and we would like to thank all our valued customers for their patience and understanding during this time.

For more information, please contact:

Edgar Karamagi, Public Relation Officer
edgar.karamagi@africell.ug

afri^{cell}

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AFFIDAVIT IN SUPPORT OF THE NOTICE OF MOTION

I, SEMPALA ALLAN KIGOZI C/O M/s Mpamizo, Nabaasa & Akineza Advocates, plot 7/9, 2nd Street, Industrial Area, Kinyara Building, 2nd Floor, Flat 1, P.O. Box 72668, Kampala do hereby swear and state as follows: -

1. That I am a male Ugandan adult of sound mind, a Bar Course student of the Law Development Centre Kampala Campus who was affected by the internet shutdown on 12th January 2021 and swear this affidavit in that capacity. **A copy of Admission letter is hereto attached and marked 'A'.**
2. That I was admitted to the Law Development Centre (LDC) Bar Course in October, 2020 and informed in the admission letter that learning would be online including the use of zoom as a measure against COVID-19 spread.
3. That LDC also uses other communication platforms such as Email, Whatsapp and Moodle to disseminate learning materials to students and I accessed the different internet and social media platforms using my telephone numbers of +256772264073, +256709746843 and +256792641690.
4. That the Law Development Centre indeed uses zoom platform to facilitate learning during this covid-19 pandemic as a way of adhering to the Ministry of Health guidelines.

5. That between 9th January 2021 and the 12th January 2021, 3rd, 4th and 5th Respondents who are major internet service providers blocked internet and the above learning platforms.
6. On the 12th day of January, 2021, I watched the President of the Republic of Uganda while addressing the nation on Tuesday evening saying that he ordered a shutdown of the internet and social media platforms ban throughout the country ahead of the Presidential and parliamentary elections, and the same was implemented by the Respondents until 18th January, 2021 when internet service was restored. **A copy of the transcript/video of the president's speech will be availed at the time of trial.**
7. That I learned on 14th January, 2021, the 1st and 2nd Respondent instructed the 3rd, 4th and 5th Respondents who are internet service providers in the country to immediately suspend any access and use of all learning and social media platforms until further notice. **Copies of the notices accessed from the 3rd 4th and 5th Respondents are hereto attached and marked annexure 'B' 'C' and 'D' respectively.**
8. That accordingly, access to Zoom, Whatsapp, facebook, twitter, email and Moodle were denied and my right to education affected.
9. That during the internet shutdown, the learning platforms could not be accessed even with the use of Virtually Private Network (VPN).
10. That following the restoration of internet services, the ban on social media has remained in place to date and only Ugandans with Virtual Private Networks (VPN) that was accessed before 12th January, 2021 are able to access social media.
11. That as a result of the Respondents' actions I and other Distance Learning students, depending on internet for research and communication suffered a violation of their right to education.
12. That the Internet shutdown has disrupted my education, it has limited my access to information and has negatively impacted and interfered with the provision of educational services.

13. That it is just and equitable that this Application be allowed on such terms as the Court deems fair and expedient.

14. That I depone this affidavit in support of this Application for the orders and reliefs stated in the notice of motion.

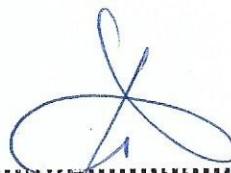
15. That all I have stated in this Affidavit is true and correct to the best of my knowledge.

Sworn at Kampala]

By the said

Sempala Allan Kigozi]

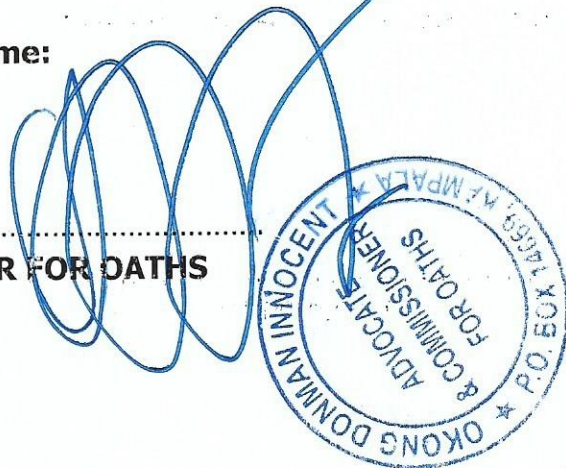
This 11th day of Feb 2021



DEPONENT

Before me:

A COMMISSIONER FOR OATHS



Drawn and filed by:

*M/s Mpamizo, Nabaasa & Akineza Advocates,
plot 7/9, 2nd Street, Industrial Area,
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SERVICE RESTRICTION ORDER

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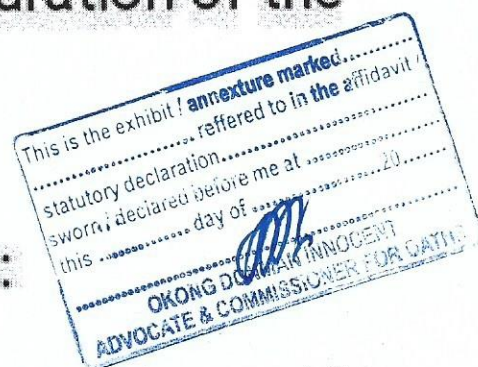
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For more information, please contact:

Rhona Arinaitwe

Senior Manager – Corporate Communications and PR

Rhona.Arinaitwe@mtn.com





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SUMMARY OF EVIDENCE

LIST OF WITNESSES

1. Dorothy Mukasa
2. Others with leave of court

LIST OF DOCUMENTS

1. The Certificate of Incorporation
2. The letter by Uganda Communications Commission to the internet service providers dated 12th January, 2021.
3. The Public notices by 3rd, 4th and 5th Respondents.
4. A transcript of the president's speech.

LIST OF AUTHORITIES

1. The Constitution of the Republic of Uganda, 1995 as amended
2. The Human Rights (Enforcement) Act, 2019
3. The Civil Procedure Act, Cap 71
4. The Civil Procedure Rules S.I 1/71
5. Any other with leave of Court.

Dated at Kampala this 11th day of February, 2021

.....

M/s Mpamizo, Nabaasa & Akineza Advocates
Counsel for the Applicant

Drawn and filed by:

*M/s Mpamizo, Nabaasa & Akineza Advocates,
Plot 7/9, 2nd Street, Industrial Area,
Kinyara Building, Flat 1, 2nd Floor,
P.O. Box 34704, Kampala.*