

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA, KAMPALA
(CIVIL DIVISION) 132
MISCELLANEOUS CAUSE No. OF 2018



THE UNWANTED WITNESS (U) LIMITED APPLICANT

Versus

UGANDA COMMUNICATIONS COMMISSION RESPONDENT

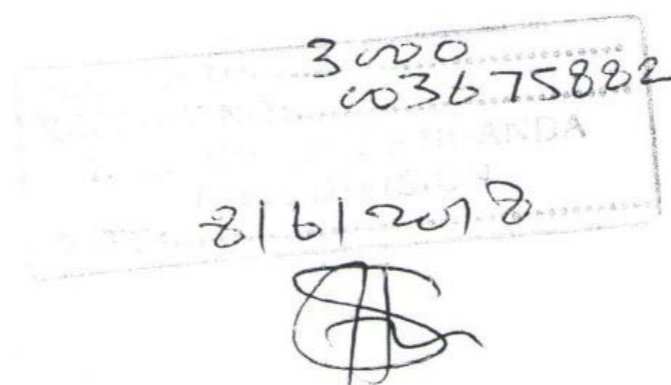
NOTICE OF MOTION

(Under Article 50 of The 1995 Constitution of the Republic of Uganda; The Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules, 2008; & all enabling Laws)

TAKE NOTICE that this Honourable Court will be moved on the 24th day of Sept 2018 at 3 O'clock in the noon or soon thereafter as counsel for the Applicant shall be heard on an application for orders for judicial reliefs, namely that:-

DECLARATIONS

- (a) A declaration that the decision, and conduct of the Respondent requiring all online publishers, news platforms, all those offering online data communications services to **"apply and obtain authorizations from Uganda Communications Commission with immediate effect in order to avoid the risk of enforcement"** threatens and infringes their online freedom of anonymous expression, and other freedoms guaranteed by Article 29 of the 1995 Constitution of the Republic of Uganda, especially;;
- (b) A declaration that the decision, and conduct of the Respondent imposing, through their registration forms, an obligation on all online media and communication services an obligation to identify anonymous users is incompatible to freedom of anonymous expression; and Article 27 privacy of communication, home and property.
- (c) A declaration that the Respondents' conduct, or decision directing Internet Service Providers (ISPs) to **"IMMEDIATELY SUSPEND** the provision of carriage service to any online communication service



provide (online/electronic media news provider)" that is not specified by or have a certificate authorization certificate or other express clearance from the Respondent - threatens and violates their freedom of expression, association and right to work.

- (d) A declaration that data privacy, confidentiality, online anonymity and concomitant principles integral to contemporary online freedom of expression are grossly threatened or violated by the Respondent's application forms, procedures and prerequisite information disclosures required of all online data publishers, news, media and other online communication service providers as a condition precedent for the Respondent's authorization to work.
- (e) A declaration that Respondent's impugned decisions, directives and orders were reached and issued without giving the said online data communications service providers, their consumers and other people adversely affected by the Respondent's impugned orders a fair hearing; and without meaningfully consulting such key stakeholders.
- (f) A declaration that Respondent's impugned decisions, directives and orders are vague, overbroad, arbitrary, illegal, null and void.

ORDERS

- (g) An order nullifying the Respondent's impugned barriers to anonymity; and registration and authorization requirements, conditions procedures for online communication service providers;
- (h) An order permanently stopping the Respondent or any person acting on the Respondent's advice, directions or instructions from blocking, stopping any online data communication service providers or otherwise interfering with their existence, application or usage.
- (i) An order directing the Respondent always consult, and give consumers of information and general public a fair hearing before reaching decisions that truncate or otherwise affect their privacy, freedom of expression or consumer rights.
- (j) Costs of this application be paid by the Respondents.
- (k) Any other orders the court deems appropriate in the circumstances.

THE GROUNDS of this application are set out in the affidavit of **CEASAR MUKASA** but briefly are that:

1. On the 5th of March 2018, the Respondent required and ordered all online publishers, news platforms, all those offering online data communications services to “*apply and obtain authorizations from Uganda Communications Commission with immediate effect in order to avoid the risk of enforcement.*”
2. The Respondent then generated and published, and required the compliance with registration forms that obligated all online media and communication service providers to identify anonymous users and furnish further details about their proprietors, administrators, location and users that are incompatible with freedom of expression, media freedom, personal and data privacy as well other fundamental rights and freedoms.
3. The Respondent further directed Internet Service Providers (ISPs) to “IMMEDIATELY SUSPEND the provision of carriage service to any online communication service provider (online/electronic media news provider)” that is not specified by or have a certificate authorization certificate or other express clearance from the Respondent.
4. The neither providers nor consumers of the online data communication services targeted were meaningfully consulted or afforded a fair hearing prior to the issuance of the impugned adverse directives, orders or requirements that impact on their expression and other freedoms.
5. The Respondent has a duty to observe, respect, protect uphold, promote, and fulfill fundamental human rights, and freedoms of all persons in Uganda.
6. Respondents has omitted or failed to perform the said duties or obligations towards online data communication service providers and consumers relative to its impugned orders, decisions and conduct.
7. Anonymity gives online security, and protects privacy of online communication empowering users to browse, read, develop and share opinions without interference.

8. Anonymity is very important in safeguarding and advancing privacy, free expression, political accountability, public participation and debate.
9. The Respondent's requirement for real name registration for online activity such as communication or publication is a ban on anonymity that offends the important principles of legality, necessity, proportionality, and legitimacy.
10. It is lawful, just and equitable to allow this application.

Dated at Kampala this 7th day of June 2018



COUNSEL FOR THE APPLICANTS

GIVEN under my hand and the seal of the court this.....day of.....2018.

REGISTRAR

Drawn & filed by:

M/S Aguma Kifunga & Co. Advocates
Master Plaza, Second Floor, Room S9
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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA, KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE No. 138 OF 2018



THE UNWANTED WITNESS (U) LIMITED APPLICANT

Versus

UGANDA COMMUNICATIONS COMMISSION RESPONDENT

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

I, **CEASAR MUKASA** of c/o **M/S Aguma Kifunga & Co. Advocates, Master Plaza, Second Floor, Room S.9 P.O. Box 1443, Kampala** do solemnly swear and state on oath as follows:

1. That I am a male adult Ugandan of sound mind, the Applicant's Advocacy Officer, conversant with the facts I depose herein and swear this affidavit in that capacity.
2. The Applicant is a Ugandan based company limited by guarantee keen on rights of individuals, media freedom and privacy.
2. On the 5th of March 2018, the Respondent required and ordered all online publishers, news platforms, all those offering online data communications services to "*apply and obtain authorizations from Uganda Communications Commission with immediate effect in order to avoid the risk of enforcement.*"
3. The Respondent then generated and published, and required the compliance with registration forms that obligated all online media and communication service providers to identify anonymous users and furnish further details about their proprietors, administrators, location and users.
4. The Respondent further directed Internet Service Providers (ISPs) to "IMMEDIATELY SUSPEND the provision of carriage service to any online communication service provider (online/electronic media news provider)" that is not specified by or have a certificate authorization certificate or other express clearance from the Respondent.
5. The neither providers nor consumers of the online data communication services targeted were meaningfully consulted or

afforded a fair hearing prior to the issuance of the impugned adverse directives, orders or requirements that impact on their expression and other freedoms.

6. Each of the Respondents has a duty to observe, respect, protect uphold, promote, and fulfill fundamental human rights, freedoms and dignity of the Applicant; and all other persons;
7. Each of the Respondents has omitted or failed to perform the said duties or obligations towards the Applicant – with apparent impunity.
8. It is lawful, just and equitable to allow this application.
9. That for the reasons stated hereinabove; and in the Motion, I swear this affidavit in support of the application for the Applicant's release on bail.
10. That whatever I have stated herein above is true and correct to the best of my knowledge.

SWORN at Kampala by the said

CEASAR MUKASA

On this...th day of June.....**2018**

DEPONENT

BEFORE ME

A COMMISSIONER FOR OATHS

Drawn & filed by:

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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA, KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE No. 188 OF 2018



THE UNWANTED WITNESS (U) LIMITED APPLICANT

Versus

UGANDA COMMUNICATIONS COMMISSION RESPONDENT

BRIEF SUMMARY OF EVIDENCE

The Applicant shall adduce evidence as contained in the affidavit of the deponent, or otherwise.

LIST OF WITNESSES

- i. The Applicants, and/or deponents
- ii. Any other with leave of Court

LIST OF DOCUMENTS

- i. At trial, with leave of court

LIST OF AUTHORITIES

- i. The 1995 Uganda Constitution
- ii. The International Bill of Rights
- iii. Any other with leave of court

Dated at Kampala this 7th day of June 2018

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COUNSEL FOR THE APPLICANT

Drawn & filed by:

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