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THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 256 OF 2016

UNWANTED WITNESS UGANDA :::::::::::::::::::::::::::::: APPLICANT

10

VERSUS

1. ATTORNEY GENERAL

2. UGANDA COMMUNICATIONS COMMISSION

:::::RESPONDENTS

15

BEFORE: HON.MR. JUSTICE BASHAIJA K. ANDREW

RULING:

Unwanted Witness Uganda (*hereinafter referred to as the "Applicant"*) filed this application against the Attorney General of the Republic of Uganda and the Uganda Communications Commission(*hereinafter referred to as the 1<sup>st</sup> and 2<sup>nd</sup> Respondent, respectively*)seeking declarations for the alleged violations by the Respondents, of the right to freedom of speech and expression, the right to work and the right to a livelihood and an adequate standard of living under Articles; 20(2), 29 (1), 40(2), 45 and 50 of the

5 Constitution of the Republic of Uganda; Articles 6(d), 7(2) of the  
Treaty for the Establishment of the East African Community (as  
amended in 2006 and 2007); Article 9 of the African Charter on  
Human and People's Rights,1981; Article 19 of the Universal  
Declaration of Human Rights,1948; Articles 19(2) of the  
10 International Covenant on Civil and Political Rights,1966, and  
Article 6, 11 of the International Covenant on Economic and Social  
and Cultural Rights,1966. The Applicant in particular seeks for  
declarations and orders that;

*a) The shutting down of social media by the Respondent*  
15 *during the Presidential and Parliamentary and Local*  
*Council elections in February 2016, violated the rights of*  
*Ugandan citizen and residents to the freedom of speech*  
*and expression, which is guaranteed under Article*  
*29(1)(a) of the Constitution of Uganda; Article 9 of the*  
20 *Charter on Human and People's rights; Article 19(2) of*  
*the International Covenant on Civil and Political Rights;*  
*and Article 19 of the Universal Declaration of Human*  
*Rights.*

- 5       **b) The blocking and shutting down by the 2<sup>nd</sup>, 3<sup>rd</sup>, 7<sup>th</sup> and**  
**9<sup>th</sup> Respondents of mobile money transfer services during**  
**the general elections in February 2016 violated the rights**  
**of Ugandan citizens and residents to work and to**  
**livelihood, which was guaranteed under Article 20(2).**  
10       **40(2), 45 of the Constitution of Uganda, Article 14 of the**  
**African Charter on Human and People's Rights; Article 6**  
**and 11 of the International Covenant on Economic, Social**  
**and Cultural Rights, and Articles 23 and 25 of the**  
**Universal Declaration of Human Rights.**
- 15       **c) The shutting down of social media by the Respondents on**  
**11<sup>th</sup>-12<sup>th</sup> May 2016, violated the right of Uganda citizens**  
**and residents to the freedom of speech and expression**  
**which is guaranteed under Article 29(1)(a) of the**  
**International Covenant on Civil and Political Rights and**  
20       **Article 19 of the Universal Declaration of Human Rights.**
- d) A permanent injunction does issue against the**  
**Respondents.**
- e) Costs of the cause be paid by the Respondents.**

5 The grounds of the application are as set out in the Notice of Motion  
and amplified in the affidavit in support of the application, sworn by  
one Geoffrey Wokulira Ssebagala, but are briefly that;

10 a) *On or around 17<sup>th</sup> of February 2016, Social Media was  
blocked and/or shut down across the country and kept  
Twitter, Facebook, Viber, What Sapp, You Tube, and other  
online platforms inaccessible for at least four days.*

15 b) *The blackout adversely affected the ability of people to  
communicate, socialize, remain informed, keep abreast  
with, and address through social media, various affairs  
of both private significance and public importance.*

20 c) *At around the same time, financial transactions through  
mobile money transfers were blocked across the county,  
which affected the livelihoods of those who depended on  
it as a business, and those who needed the system to  
make financial transfers for various purposes.*

d) *On or about 11<sup>th</sup>-12<sup>th</sup> May 2016, internet users in Uganda  
experienced another internet outage affecting Twitter,  
Facebook, What Sapp, YouTube, Viber and other internet  
platforms, which again affected the ability of the people*

5            *to communicate, socialize and remain educated about a  
range of critical and non-critical, private and public  
matters.*

The Applicant's contention is thus essentially that the UCC (2<sup>nd</sup>  
Respondent) directed telecommunication companies to shut down  
10 or limit access to social media and money transfer services around  
21<sup>st</sup> Feb 2016 in the context of elections and then again around 11<sup>th</sup>  
-12<sup>th</sup> May 2016 during the inauguration of the President elect. That  
this limited access to services and affected the ability of telecom  
users to communicate effectively or even at all, as would be  
15 expected in a democracy, and that the blocking and/ or limiting of  
money transfer systems affected the livelihood of those that  
depended on it as a source of income and survival; hence the orders  
and declarations sought to that effect as above stated.

The Respondents denied the allegations levied against them by the  
20 Applicant and maintained that their actions were within their  
respective Constitutional/legal mandates, and were justifiable and  
did not violate any rights. The Respondents prayed that the  
application be dismissed with costs.

The following issues were agreed for determination;

- 5 1) *Whether the Respondents limited access to any social media platforms.*
- 2) *If so, whether the limitation to the social media platform was in violation of Article 29(1)(a) of the Constitution, Article 9 of the African Charter on Human and People's*
- 10 *Rights, Article 19(2) of the International Covenant on Civil and Political Rights, and Article 19 of the Universal Declarations of Human Rights.*
- 3) *Whether the Respondent limited access to mobile money platforms, and if so, whether the limitation of access to*
- 15 *mobile money platforms was in violation of Article 20(2), 40(2) and 45 of the Constitution of Uganda, Article 14 of the African Charter on Human and People's Rights, Article 6 & 11 of the International Covenant on Economic, Social and Cultural Rights, and Article 23 and*
- 20 *25 of the Universal Declaration of Human Rights.*
- 4) *What remedies are available to the parties?*

On 25<sup>th</sup> February 2019, Mr. Martin Masiga, learned counsel for the Applicants, asked court to allow them to resubmit their written submissions. Court granted the prayer and in addition issued

5 directions for counsel for the Applicants file and serve their written submissions on or by 29<sup>th</sup> March 2019. The reply thereto would be filed and served on or by 29<sup>th</sup> April 2019, and the rejoinder by 29<sup>th</sup> May 2019. Only counsel for the 2<sup>nd</sup> Respondent filed their submissions on the 29<sup>th</sup> of May 2019.

10 ***Preliminary objections:***

In their submissions, counsel for the 2<sup>nd</sup> Respondent raised an objection with regards to the propriety of this application. The same shall be dealt with before delving into the merits of the application, if any. Counsel for the 2<sup>nd</sup> Respondent primarily submitted that the  
15 affidavit in support of the application is defective and is based on hearsay evidence contrary to Order 19 r.3 the Civil Procedure Rules, and that the defect renders the affidavit and entire application defective. Counsel specifically referred to paragraphs 3, 4,5,6,7 and  
8 of the affidavit in support of the application as the offending  
20 parts, and cited the case of ***Julius Maganda vs. National Resistance Movement, HCMA No. 154 of 2010*** to buttress his objection.

*Black's law Dictionary 8<sup>th</sup> Edition*, at page 739, defines "hearsay evidence" as that information that is gathered by one person from

5 another person concerning some event, condition or thing of which the first person had no direct experience. A statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. The general rule is that hearsay evidence is inadmissible.

10 In the impugned paragraphs, the Applicant states that the social media blackout was widely reported and condemned in and by both international and local media and human rights organizations and agencies. As proof, the Applicant attached annexures marked "Shutdown 1 and condemnations respectively, under paragraphs 3  
15 and 4 of the affidavit in support. Under paragraph 5, the Applicant states that notifications were sent out by the 3<sup>rd</sup> and 4<sup>th</sup> Respondents (before the application was withdrawn against them) and as proof attached the annexure showing the notifications.

Order 19 r.3 CPR provides for matters to which affidavits shall be  
20 confined as follows;

*(1) Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted,*



5            *provided that the grounds thereof are  
stated.*[Underlined for emphasis].

In the instant application, in addition to making the statements, the deponent to the affidavit in support attached the evidence in proof of the said statements. The particular statements are also not  
10 denied or rebutted by the Respondents. Accordingly, the affidavit does not offend provisions of Order 19 r.3 CPR. The objection in that regard lacks merit and it is dismissed.

Counsel for the 2<sup>nd</sup> Respondent also submitted that the grounds in the motion have not been proved, and that the Applicant committed  
15 further infringements in relation to rules of affidavit evidence when dealing with a notice of motion under Order 52 r.3 CPR. That in regards to ground 3 and 4 contained in the notice of motion, no evidence by way of affidavit evidence or at all, was led or adduced by the Applicant to substantiate or prove the grounds, and that not  
20 a single witness was proved to have been affected by the alleged temporary shutdown.

In the contested ground 3 and 4 of the notice of motion, the Applicant states as follows;

5 **3. The blackout adversely affected the ability of people to communicate, socialize, remain informed, keep abreast with, and address through social media, various affairs of both private significance and public importance.**

10 **4. At around the same time, financial transactions through mobile money transfers were blocked across the country, which affected the livelihoods of those who depended on it as a business; and those who needed the system to make financial transfers for various purposes.”**

This court agrees with submissions of learned counsel for the  
15 2<sup>nd</sup> Respondent, that the application does not show as proof of the allegation, any single person who was affected by the shutdown in the mobile money or social media, and no evidence was adduced either by affidavit or otherwise by any witness, to show that persons, if any, were affected by the shutdown on mobile money  
20 and social media. Much as the Applicant seeks declaratory orders regarding the alleged acts of the Respondents jointly and severally that those acts are a violation of the right to freedom of speech and expression, a right to work, and the right to livelihood and adequate standard of living, the Applicant ought to have adduced evidence in

5 support of the allegations that some people's rights were violated  
and/or that some people were affected by the suspension. It is  
observed that the Applicant withdrew its claim against the 3<sup>rd</sup> to 9<sup>th</sup>  
Respondents, and when counsel for the parties were directed to file  
in their respective submissions to argue the application, the  
10 Applicant to date has not brought any submissions to substantiate  
on its claim. It leaves a lot of explaining to do as to whose rights  
were violated, and by whom. It cannot be concluded that all citizens  
and residents of Uganda or that just a few persons who were  
accessing social media and mobile money services on that  
15 particular day were affected. That would be over presumptuous of  
any one let alone a court of law. There must be cogent evidence to  
buttress the allegations. All these are questions that cannot be  
answered by a mere look at the application and come to the  
conclusion that the shutdown;

20 ***"...adversely affected the ability of people to  
communicate, socialize, remain informed, keep abreast  
with, and address through social media, various affairs  
of both private significance and public importance."***

5 Which people, and how? Similarly, it cannot be known, as it is not demonstrated as to how the blocking of mobile money services affected the livelihood of people; which people are also unknown. Quite to the contrary, it has been shown that some people in fact resorted to using VPN to access social media, and as such, it could  
10 not be established as to who was affected by the shut down and how in that regard.

It is also shown that only the MTN provider suspended its mobile money service. The Applicant ought to have shown a nexus between the livelihoods of the persons he was referring to in the allegations,  
15 and how they were affected by the suspension of the mobile money services. Neither the Applicant nor its counsel addressed these serious concerns, and no evidence to that effect was submitted. The grounds in the application in that respect are not supported, which renders the application purely moot and academic.

20 In *Joseph Borowski vs. Attorney General of Canada (1989)* 1 S.C.R , cited in *Pine Pharmacy Ltd & O'rs vs. National Drug Authority, HCMA No. 142 of 2016*, it was held that;

***“The doctrine of mootness is part of a general policy that a court may decline to decide a case which raises merely***

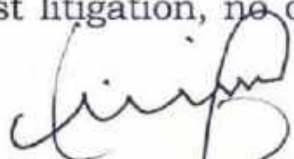
5        *a hypothetical or abstract question. An appeal is moot*  
*when a decision will not have the effect of resolving some*  
*controversy affecting or potentially affecting the rights of*  
*the parties. Such a live controversy must be present not*  
*only when the action or proceeding is commenced, but*  
10        *also when the court is called upon to reach a decision.*  
*Accordingly if, subsequent to the initiation of the action*  
*or proceeding, events occur which affect the relationship*  
*of the parties so that no present live controversy exists*  
*which affects the rights of the parties, the case is said to*  
15        *be moot.*”[Emphasis mine].

Applying similar reasoning, the instant application is moot in as far  
as it seeks to obtain mainly declaratory orders and an injunction  
especially having already found that the grounds in the application  
are not proved. It is also the established law that a permanent  
20        injunction is a remedy for preventing wrongs and preserving rights  
so that by single exercise of equitable power, an injury is both  
restrained and repaired, for the purpose of dispensing complete  
justice between the parties. As was held in *Akena & Others vs.*  
*Opwonya, HCCAppeal No. 35 of 2016*, permanent or final

5 injunctions are granted as a remedy against an infringement or violation which has been proven at trial. As already observed, the Applicant dismally failed to prove any violation attributable to the Respondents, and as such the remedy of a permanent injunction is unobtainable in the circumstances as against the Respondents.

10 It must be emphasized that the jurisdiction of the court is not to declare the law generally or to give advisory opinions. It is confined to declaring contested legal rights subsisting or future, of the parties represented in the litigation before it and not of anyone else.

See: *Gourmet vs. Union of Post Office Workers (1978)AC 434 at*  
15 *501*;per Lord Diplock. In absence of any evidence in support of the claims, or any evidence as to the nexus of the suspensions and the rights alleged to have been violated, the whole application is rendered moot. Court is precluded from determining a case where there is no live dispute between the parties, In the premises, the  
20 application is incompetent and it is dismissed. Since the application was filed as public interest litigation, no orders as to costs shall be made.

  
**BASHAIJA K. ANDREW**  
**JUDGE**  
**16/08/2019**