

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
[CIVIL DIVISION]  
MISC. CAUSE NO. 54 OF 2016

1. SHEILLAH NYANZI  
2. SUSAN NYANZI  
3. DR. STELLA NYANZI

APPLICANTS

V

NEW VISION PRINTING AND PUBLISHING  
COMPANY LTD

RESPONDENT

BEFORE: HON. LADY JUSTICE P. BASAZA - WASSWA

R U L I N G

Representation:

Mr. Ssemakadde Isaac for the Applicants

Mr. Sozi Roscoe and Ms. Nabagala Maureen for the Respondent

Background:

[1] The three Applicants; Ms. Sheillah Nyanzi, Ms. Susan Nyanzi and Dr. Stella Nyanzi (the Applicants) brought the present action against the New Vision Printing and Publishing Company Ltd (the Respondent) under the provisions of **Article 50 of the 1995 Constitution and Section 98 of the Civil Procedure Act.**

[2] It is not in dispute that between April 18 and 26, 2016, the Respondent published and telecast in its print, broadcast and electronic media, to wit; in its Bukedde Newspaper and Bukedde TV (both luganda media platforms), as well as in its online editions and YouTube Channels, a bundle of articles and video footages whose copies and transcriptions, with their

translations, are attached to the affidavit of the 1<sup>st</sup> Applicant as SN-1, SN-2 & SN-3. Hereinafter referred to as; *'the impugned publications / broadcasts'*.

[3] The impugned publications / broadcasts are bulky and it is impossible to reproduce them here. Only the titles and subtitles of the print component will be reproduced here, while only the gist of the translated transcriptions of the TV video recordings will be reproduced.

[4] The titles and subtitles of the print component were *inter alia* that;

'DR. NYANZI'S COUSIN RECOUNTS ABOUT HOW SHE UNDRESSED BEFORE HER FATHER'S CORPSE'.

'DR. NYANZI HAS TAKEN HER CHILDREN TO THE CEMETERIES OF HER LATE PARENTS'

'SHE HAS INSULTED FAMILY MEMBERS'

'MAKEREREANS WATCH OUT FOR ME- DR. NYANZI'

'SHE HAS CAUTIONED RELATIVES WHO ARE 'CASTIGATING HER'

'I RAISED DR. NYANZI - BIDANDI SSALI'

'YOU SHOULD APOLOGISE'...'THE PARENTS OF THE MAKERERE LECTURER WHO UNDRESSED HERSELF HAVE TURNED AGAINST HER- P.6'

'DR. NYANZI'S PARENTS HAVE ORDERED HER TO APOLOGISE'

[5] The gist of the translated transcriptions of the TV video recording, is;

A story as told by the Bukedde reporters, that the 3<sup>rd</sup> Applicant, Dr. Stella Nyanzi undressed in public, in protest, as an expression of her dissatisfaction that her office at Makerere University, Institute of Social Research (MISR) had been locked by the MISR administration for three (3) days, for her refusal to teach students for four (4) years since 2012.

According to the reporters, there was a battle between Dr. Nyanzi (the 3<sup>rd</sup> Applicant) and Prof. Mahmood Mamdani; the Director of MISR, over Dr. Nyanzi's work at MISR. Dr. Nyanzi was reported to have said she is a researcher and not a teacher, while Prof. Mamdani was reported to have said Dr. Nyanzi refused to teach and that she spends much of her time doing personal work and that they see no reason why she occupies an office at MISR. That he was not ready to work with her and that the University should identify another department where she should work.

Bukedde reporters stated in the story that they captured the views of the following persons; Dr. Nyanzi's (the 3<sup>rd</sup> Applicant's) Cousin a one Emmanuel Kato Batemyetto), her Caretaker and Paternal Uncle a one Andrew Lwenswa, her Auntie Susan Bidandi and her husband, former Minister Jaberu Bidandi Ssali, and her grandmother a one Anna Maria Nayanje.

The reporters also stated that they captured the views of sections of Makerere University Administration and leadership, including the views of Prof. Ddumba Ssentamu, the views of the then Chairman Makerere University Staff Association; Dr. Tanga Odoi, the views of

Prof. Mahmood Mamdani of MISR, the views of the Joint Christian Council, the views of the Police and the views of Dr. Stella Nyanzi (the 3<sup>rd</sup> Applicant).

In sum, the reported various views, including Dr. Nyanzi's view, appeared to be an explanation offered or some form of genesis of why Dr. Nyanzi behaved the way she did and what the University administration was going to do or had thus far done in their handling of the matter.

The reporters continued that the appointments Board of Makerere University suspended Dr. Nyanzi from work until investigations were carried out, following a report about the findings thus far, from the Committee set up by the then Vice Chancellor of the University; Prof. Ddumba Ssentamu.

They also stated that another Committee headed by the Commissioner Human Resource in the Ministry of Labour & Social Development was set up to investigate how PhDs are handled at MISR.

The reporters stated that Dr. Nyanzi was allowed to regain access to her office. They continued that the Police informed Bukedde that they had dispatched a team of experts to Makerere University to investigate the affairs of Dr. Nyanzi to establish why she behaved the way she did and to investigate the possibility that some officers could be abusing their offices.

The reporters also stated that they captured cultural views and views of a one Gashumba.

#### The Applicants' Case:

[6] The gist of the Applicants' case as stated in their application and three (3) supporting affidavits, two (2) of which were sworn by the 1<sup>st</sup> Applicant and the other by the Buganda Kingdom Deputy Minister in Charge of Culture, is;

- a) That without their consent, notice, warning, nor the opportunity of consultation, the Respondent took and collected unauthorized photographs of their late father, and photographs and video footage of their late father's and grandfather's houses and ancestral burial grounds and published and telecast them in the impugned publications / broadcasts.
- b) That the Respondent illegally, without authorization from the Applicants or their immediate family or the '*Omutaka akuuma Ekiggya*' (custodian of burial site), entered upon their family home and family business under the name; 'Lakes High School' and searched the

compound for their ancestral burial grounds at Kalinga, Masaka District.

- c) That the impugned publications contain inherently private information about their ancestral burial grounds, the marital affairs and health status of their deceased biological parents and their home and childhood.
- d) That the Applicants are independent women, the 1<sup>st</sup> Applicant is an Advocate of the High Court and a PHD student, the 2<sup>nd</sup> Applicant is a tourism marketing consultant while the 3<sup>rd</sup> Applicant is a leading anthropologist and a postdoctoral researcher and they are the biological children of the late Dr. Joseph S. Nyanzi and the late Mrs. Harriet Nyanzi.
- e) That their father, who was *the Ssabalangira ow'esiga Iya Kyagambiddwa* in the *Mbogo* Clan in Buganda, passed away in August 2014 and their mother passed away in August 2015.
- f) That for commercial gain and without being sensitive to the Applicants' recent grief, the Respondent isolated their father's resting place and interrogated his particulars by focusing its lens on the patriarch's tomb, in a manner that is repugnant to the cultural heritage of the Baganda and also deeply painful to the Applicants' family and members of the *Essiga Iya Kyagambiddwa* in the *Mbogo* clan.
- g) That in the cultural heritage of the Baganda, burial sites are revered and must be jealously safeguarded. The cemeteries of the clan or its many subdivisions are unique repositories of the history of the Baganda and witness the continuity of human life. Trespass into burial sites, desecration of graves and relocation of cemeteries is an abomination and is forbidden.

- h) That the Respondent disturbed the Applicants' staff and learners at 'Lakes High School' and sought opinions and commentary and solicited opinions about the school from unconcerned villagers and aired them / broadcast them for commercial gain.
- i) That the Respondent interfered with the privacy of the Applicants' deceased Parents' marital affairs and their lineage and published falsities and misrepresentations and took from the 3<sup>rd</sup> Applicant's facebook an old photograph of the Applicants and their children, without their approval and published them for commercial gain.
- j) That the impugned publications depict their family as loose cannon who suffer from hereditary or genetic mental illness, ineptitude, lunacy and the odd offspring of an unstable, dysfunctional family.
- k) That the actions of the Respondent dealt a shattering blow to the confidence of the public in the Applicants' respective professional acumen and personal suitability as marriage or business partners
- l) That as a result of the impugned publications / broadcasts, the Applicants and their immediate family have suffered an invasion of privacy, disrespect and indignity to their departed relatives, violation of their cultural norms and customary values, humiliation, distress, ridicule, loss of dignity, pain, damage to their long-established school and family relationships and tranquility of family life. The Respondent thereby infringed on their fundamental rights and freedoms protected by **Articles 24, 27 and 37**.
- m) That the Respondent had no right to publish and broadcast the impugned publications / broadcasts and its conduct is manifestly intrusive, unacceptable and demonstrably unjustifiable and goes beyond the permissible exercise of freedom of the press.

### The Respondent's Case:

[7] In answer to the Applicants' complaint, the gist of the Respondent's contention, as shown in its three (3) affidavits in reply, two (2) of which were sworn by its Managing Editor in charge of Regional Newspapers, and the third by a former Deputy Head of the Mamba Clan and Chairman of an association described as '*Ekibiina Ky'Olulimi Oluganda (EKO)*', is;

- a) That it did not attack, disrespect, desecrate or cause indignity to the Applicants or in any way violate their rights to their culture and customs or other fundamental or human rights, their parents or their burial grounds or ancestry.
- b) That it is entitled to repeat, print, publish and broadcast in its media whatever it receives as information or news including posting on its social media platforms, as long as it meets the test of authenticity and public interest.
- c) That the impugned publications / broadcasts were published and broadcast following a self-thrust into the public limelight by the 3<sup>rd</sup> Applicant on April 18, 2016 when she undertook a protest against alleged harassment at her work place, Makerere Institute of Social Research (MISR), Makerere University, by undressing and exposing her nudity to the general Public as shown by photocopies of publications marked as 'A1' & 'A2' to the affidavit in reply sworn by Mr. Kulubya.
- d) That the 3<sup>rd</sup> Applicant's nudity protest caused enormous uproar, awe, scorn and alarm amongst the general public and her nude pictures spread like wild fire both in print and on-line social media and she became a figure of public attention.

- e) That the 3<sup>rd</sup> Applicant's actions including her facebook and other social media postings of pictures of her nude protest, her parents and their burial grounds and use of language largely considered foul and vulgar, made her a magnet of public attention as shown by copies of pictures posted and statements uttered by the 3<sup>rd</sup> Applicant marked 'B1', 'B2', & 'B3' to the affidavit in reply sworn by Mr. Kulubya.
- f) That several close relatives of the 3<sup>rd</sup> Applicant volunteered explanations for her conduct on behalf of the family while others demanded an apology from her as shown by a copy of a publication marked 'C', and further volunteered information to the press about her upbringing, mannerisms, her family and parentage.
- g) That matters pertaining to the Applicants' family, childhood, upbringing and parentage were thrust into the public purview by the 3<sup>rd</sup> Applicant's actions, without the aid of the Respondent or any of its holdings or employees. The 3<sup>rd</sup> Applicant's actions were unquestionably immoral and an affront to the minimum acceptable standards of our society.
- h) That the impugned publications / broadcasts originated from the general public through video clips or from postings on facebook by the 3<sup>rd</sup> Applicant herself and from postings on social media by the general public to the Respondent's platforms.
- i) That the Respondent did not collect any photographs or video footage from the Applicants' home or business and have not in any way or manner violated the Applicants' cultural norms or customary values, nor prevented the Applicants or any of them from celebrating and enjoying any of the cultural or other freedoms and rights.

- j) That in justifying her actions in interviews and commentaries to the media, the 3<sup>rd</sup> Applicant emphatically made reference to her family by voluntarily disclosing that her nude protest had received prior approval from her children, repeatedly mentioning her mother and the names of her siblings, including the 1<sup>st</sup> & 2<sup>nd</sup> Applicants, and posting pictures of her family on social media alongside her fierce rebuttals to public criticism of her protest.
- k) That in her interviews, the 3<sup>rd</sup> Applicant used explicit sexual and vulgar language and used her Kiganda customs and culture as the excuse or justification for the vulgarity and sexism.
- l) That contrary to her utterances, use of explicit sexist language and connotations is an affront to custom when uttered in public and is strictly restricted to private family ceremonies specific to the inauguration of twin children. Parentage of twins in the Kiganda culture is considered a great honour and a heavier responsibility to respect and uphold cultural norms
- m) That the Applicants' childhood, parentage and demise of their parents having been raised to the media by the 3<sup>rd</sup> Applicant at briefings and commentaries attended by the Respondent's staffers, and having posted pictures of her entire family at their parents' burial grounds on social media, it was pertinent and reasonable that the Respondent's authenticates the 3<sup>rd</sup> Applicant's comments and postings by visiting the actual burial grounds of the Applicants' parents as part of its primary duty to disseminate information and news to the general public on public matters.
- n) That entry upon burial grounds by itself, even without the permission of the family member residing at the burial grounds, is not desecration or an affront to Kiganda culture or customs, nor does

the taking of pictures or footage of tombstones for artistic, journalistic or craftsmanship purposes amount to desecration of the graveyard or burial site.

- o) That the pictures and footage taken of the Applicants' parents' burial grounds did not amount to disrespect or desecration of their burial grounds in Kiganda culture or at all.
- p) That no injury, harm or prejudice could have been suffered by the Applicants as pictures and footage of their burial grounds were already in the public purview on account of the postings on social media by the 3<sup>rd</sup> Applicant.
- q) That the learners and staff of Lake High School were never subject to any inquiries by the Respondent.
- r) That at no time did the Respondent exercise its journalistic role in bad faith or maliciously. In all reports and articles published and telecast by the Respondent, it gave ample opportunity to the 3<sup>rd</sup> Applicant to respond and clarify on every matter that arose, which she freely did.
- s) That the Respondent has a fundamental constitutional right to free expression and a legal duty to make accessible to the general public information and commentary about the Applicants' or any other person's utterances and conduct which may be of public interest and relevance.
- t) That no specific fundamental human rights of the Applicants have been infringed by the Respondent.

[9] In an affidavit in rejoinder sworn by the 1<sup>st</sup> Applicant, the Applicants further contend (the gist):

- a) That the affidavits in reply of the Respondent contain falsehoods, contradictions, exaggerations, are diversionary and are unsubstantiated denials to cover up its unjustifiable wrongs.
- b) That by digressing to the 3<sup>rd</sup> Applicant's protest of April 18, 2016, which was her personal demonstration as an aggrieved employee, the Respondent is skirting away from the real gravamen in the notice of motion of; trespassing on the Applicants' home, family burial grounds and the graves of their deceased kin and of; giving unsought, unauthorized and unwarranted publicity to inherently private information about their deceased parents, family home, family relationships, ancestral burial grounds and family business.
- c) That whatever the 3<sup>rd</sup> Applicant may have done did not invite, authorize and or justify the Respondent's trespass upon the Kalinga Estate and the desecration of the Applicants' ancestral burial grounds nor violate their fundamental rights to privacy, cultural norms and customary values.
- d) That neither the 1<sup>st</sup> or 2<sup>nd</sup> Applicant nor other members of their nuclear family nor the staff and clientele of their family home and school at Kalinga village in Masaka district had any hand in the 3<sup>rd</sup> Applicant's protest. The Respondent had no right to drag the Applicants into the impugned publications / broadcasts and desecrate their family's burial grounds and invade their privacy or violate their rights.
- e) That the Respondent recklessly published the impugned publications / broadcasts without taking any care to balance the public's need for information against the potential harm or distress to any of the Applicants and their nuclear family.

- f) The Respondent is not entitled to repeat, print, publish and broadcast in its media, information that violates the Applicants' fundamental rights and those of their nuclear family.
- g) That the Respondent made no attempt to solicit the views of the many vocal and highly visible members of the Uganda public who sympathized with the 3<sup>rd</sup> Applicant's protest and perceived it as a legitimate exercise of her constitutionally guaranteed rights to protest. Prof. Sylvia Tamale of Makerere University celebrated the 3<sup>rd</sup> Applicant's protest in the course of delivering her inaugural lecture on October 28, 2016 a copy whereof is marked SN – 4 to the affidavit in rejoinder.
- h) As a result of the Respondent's actions, the Applicants have incurred expense of constructing a mausoleum around the final resting place of their ancestors, a boundary wall on their 10 acre home estate in Kalinga, a boundary wall around the 50 acre estate on which Lakes High School and their bequeathed properties are located, to prevent a repeat of the intrusion complained of and safeguard them against negative consequences of the disclosures by the Respondent.

Issues for determination:

[10] The following issues arise for determination:

1. Whether the impugned publications / broadcasts by the Respondent infringed or threatened the Applicants' fundamental rights and freedoms guaranteed under Articles 24, 27 and 37 of the Constitution, as alleged?
2. Whether the impugned publications / broadcasts by the Respondent were justified and protected under Article 29 (1) (a) of the Constitution.

3. What remedies, if any, are available to the parties?

Submissions of Counsel:

[11] In support of and in opposition to this application, learned Counsel for each party made their respective written submissions. I shall not re-capture their submissions here, but shall refer to relevant portions where and when necessary.

Analysis:

Issues Nos. 1 & 2 (jointly)

[12] The fundamental and other human rights and freedoms that are the subject of the present application are the rights and freedoms guaranteed under **Articles 24, 27, 29 (1) (a) and 37 of the Constitution**. These rights and freedoms are inherent and not granted by the State (see Art. 20 (1)).

To wit;

- Respect for human dignity and protection from inhuman treatment (Art. 24);
- The right to privacy of person home and other property (Art. 27);
- Protection of freedom of speech, expression and freedom of the press and other media (Art. 29 (1) (a), and
- The right to culture and similar rights (Art. 37).

[13] While the Applicants complain that their fundamental and other rights under **Articles 24, 27 & 37** were infringed or threatened by the actions of the Respondent, the Respondent on the other hand contends that its actions were justified and protected under **Article 29 (1) (a)**.

[14] It is trite that the right to freedom of speech, expression and of the press and other media that is protected under Article 29 (1) (a) of the Constitution is not boundless or absolute.

[15] In Charles Onyango Obbo & Anor v. Attorney General<sup>1</sup>, Odoki, C J (as he then was), stated that;

‘The general standard set for testing the permissible limitations of freedom of expression and of the press and other media is contained in Article 43 of the Constitution. No restriction on that freedom is permissible unless it is intended to protect the rights of others or the public interests. As regards public interest, the limitation must not go beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in the Constitution’.

[16] The right to freedom of expression was also defined in the same Judgment of Odoki, C J (as he then was), that;

‘...it entails the freedom to hold opinions and to seek, receive and impart information and ideas of all kinds, either orally, in writing, in print, in the form of art, or through other chosen media, without interference by public authority...’

‘Freedom of the press is a special freedom within the scope of freedom of expression. Freedom of the press is considered as the right to investigate and publish freely...’

‘...Freedom of the press covers not only the right of the press to impart information of general interest or concern but also the right of the public to receive it’

[17] By virtue of Article 43 of the Constitution and guided by the above authority, the Respondent’s right to freedom of expression under Article 29 (1) (a) of the Constitution, that entails the right to publish, broadcast and investigate and impart information is protected and can only be denied where it can be shown that the rights of others or the public interests would be infringed or prejudiced.

(Also see Article 9 of the African Charter on Human and People’s Rights to the effect that every individual shall have the right to receive information and to express and disseminate his opinions within the law).

[18] The onus is as such on the Applicants to show that their rights as alleged, were indeed infringed or threatened. (Sec. 101–103 of the Civil Procedure Act<sup>2</sup>, applied)

[19] Learned Counsel for the Applicants’ Mr. Semakadde argued;

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<sup>1</sup> SC Constitutional Appeal No. 2 of 2002

<sup>2</sup> Cap 71

- a) That all the information in the impugned publications / broadcasts is obviously private and confidential and that the Respondent was duty bound by Article 20 (2), 27 and 45 of the Constitution not to republish it to the whole world.
- b) That a prior confidential relationship is immaterial. 3<sup>rd</sup> parties are bound to uphold ones interest in privacy. He relied on *inter alia*, **Noami Campbell v MGN Ltd**<sup>3</sup>.
- c) That where it is not obvious whether the information disclosed was private or public, the broad test, per **Gleeson CJ in Australian Broadcasting Corporation v Lenah Meats**<sup>4</sup>, is whether the disclosure of the information about the individual 'A', would give substantial offence to 'A', assuming that 'A' was a reasonable person of ordinary sensibilities or susceptibilities placed in similar circumstances. That the simpler test is the test of a reasonable expectation of privacy.
- d) That by the unauthorized entry of the Respondent's agents unto the Applicants' country home at Kalinga and broadcasting covertly filmed images of properties bequeathed to the Applicants, including the family home, ancestral burial grounds and the Lakes High School, the Respondent violated the Applicants' territorial privacy.
- e) That the Respondent's media activity revealed many intimate details of the Applicants home which were not in plain view, especially the final resting places of the Applicants' patriarch and other ancestors, which are in the backyard of the country house.
- f) That by revealing to the whole world;

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<sup>3</sup> [2004] UKHL 22

<sup>4</sup> [2001] 185 ALR 1

- i) Emmanuel Kato Batemyetto's unpublished observations at a private family event and cultural ceremony (the vigil of the Applicants' father), and
- ii) the observations of Andrew Lwenswa and Anna Maria Nayange regarding the marital affairs, family life and home environment of the Applicants' deceased parents,
- iii) the observations of Susan and Jaber Bidandi Ssali regarding how the 3<sup>rd</sup> Applicant was raised in their home;

the Respondent intruded upon the Applicants' grief which tended to degrade the rites and respect accorded to their deceased patriarch, which is a violation of their personal privacy and of the 3<sup>rd</sup> Applicant's informational privacy.

- g) That by invading the Applicants' Country home at Kalinga and telecasting images to the whole world, the Respondent invaded the Applicants' rights under Art. 37 of the Constitution.
- h) That the impugned publications / broadcasts by the Respondent violated the Applicants' right to dignity contrary to Article 24 of the Constitution. For his proposition, Counsel relied on *inter alia*, the Judgment of Oder, JSC in **Attorney General v Salvatori Abuki**<sup>5</sup>
- i) That the conduct of the Respondent is manifestly unacceptable and demonstrably unjustified in a free and democratic society and goes beyond the permissible exercise of freedom of the press.

[20] In his submissions in answer, Mr. Sozi argued for the Respondent;

- a) That the impugned publications / broadcasts were in reasonable exercise by the Respondent of its duty to report, investigate and

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<sup>5</sup> SC Constitutional Appeal No 1 of 1998.

inform the general public about a contemporary event and its aftermath and the public had a corresponding duty to receive it.

- b) That the Respondent exercised its duty without malice or ill will and in its own right to free speech and press freedom under Art. 29 of the Constitution.
- c) That all the information and facts used by the Respondent in the impugned publications / broadcasts were thrust into the public purview by the 3<sup>rd</sup> Applicant and only happened to relate to the other Applicants as well.
- d) That not every infringement of any right, potential or actual is remedied by or premised in an action under Art. 50 of the Constitution. An action based on privacy may best give rise to an action in tort under common law privacy.
- e) That the 3<sup>rd</sup> Applicant's nudity protest was the highest embodiment of exposure of privacy.
- f) That pictures of the Applicants' parents' graves were already on social media as shown in Annexures B3 & Group D3 of the affidavit in reply of Mr. Kulubya.
- g) That the Respondent has denied entry upon any of the Applicants' premises as alleged and the Applicants did not adduce evidence to show that the Respondent had ever entered upon their premises, home or business property.
- h) That a threat to culture contrary to Art. 37 must indicate what aspects of culture one is being prevented from enjoying or practicing. A video recording of burial grounds does not offend the cultural rights of the Applicants.

- i) That the impugned publications / broadcasts by the Respondent were a reasonably contemplated result or consequence of the 3<sup>rd</sup> Applicants' actions and were not outside or excessively blown out of proportion of the actions and utterances of the public.

[21] In rejoinder, Mr. Ssemakadde largely repeated his earlier submissions and answered further; (the gist)

- a) That there is no law that absolutely bars the bringing of a claim under Art. 50 of the Constitution for compensation through a notice of motion.
- b) That the Respondent's plea under Art. 29 (1) (a) is untenable. The impugned publications and broadcasts were unreasonably gathered and disseminated and unrelated to a matter of legitimate concern to the public.

[22] Before I delve into the merits of this application, I shall first point out that under **Art. 50 of the Constitution**, any person who claims that a fundamental or other right or freedom guaranteed under the Constitution has been violated or threatened, *is entitled to apply* to a competent court for redress. To this end, contrary to the submissions by Mr. Sozi, this application brought under Article 50, is brought appropriately.

[23] Turning to the merits of the application, it is apparent from the averments and arguments of / for each party that the debate in this matter narrows down to the simple question; *whether the impugned publications / broadcasts were private or public at the time they were published and or telecast by the Respondent?*

[24] Learned Counsel for the Applicants argued that it was private and confidential information for which the Applicants had a reasonable expectation of privacy. While on the other hand, learned Counsel for the Respondent argued that the information was already out there in the public

purview having been thrust there by the actions and utterances of the 3<sup>rd</sup> Applicant.

[25] Before I determine whether the impugned publications / broadcasts was public or private information, I will first lay out the difference between the two terms. Black's Law Dictionary<sup>6</sup> defines each term as follows:

**'Private'** means:

'Relating or belonging to an individual as opposed to the public or government, or confidential or secret'

**'Public'** means:

'Relating or belonging to an entire community, state, or nation. Open or available for all to use, share, or enjoy'

[26] It is not in dispute that the 3<sup>rd</sup> Applicant carried out a nude protest. The Applicants don't deny that she carried out the nude protest but contend in their affidavit in rejoinder, that neither the 1<sup>st</sup> or 2<sup>nd</sup> Applicants nor other members of their nuclear family nor their staff and clientele of their family home and school at Kalinga village in Masaka district had any hand in the 3<sup>rd</sup> Applicant's protest.

They further contend that the Respondent had no right therefore to drag them into the impugned publications / broadcasts and desecrate their family's burial grounds and invade their privacy or violate their rights.

[27] I will make reference here, to the South African Constitutional Court case of Bernstein v Bester<sup>7</sup>. In that case, Ackermann J put it succinctly that;

'the scope of a person's privacy extends *a fortiori*<sup>8</sup> only to those aspects in regard to which a legitimate expectation of privacy can be harboured. A 'legitimate expectation of privacy' has two components 'a subjective expectation of privacy...that the society has recognized...as objectively reasonable. The subjective expectation component does more than say that privacy feels private. It provides an explanation for the permissibility of waivers of privacy. One can have no expectation of privacy if one has consented explicitly or implicitly to having one's privacy invaded'. It is the second part of the

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<sup>6</sup> 9<sup>th</sup> ed. at pages 1315 & 1348

<sup>7</sup> No. 1996 (2) SA 751 (CC) [71]

<sup>8</sup> (formal or law, from Latin) meaning for or with an even stronger reason. See Oxford Advanced Learner's Dictionary 9<sup>th</sup> ed.

definition –the objective component–that does more work. One's subjective privacy intuitions must be reasonable to qualify for the protection of that right. What is reasonable, of course, depends on the set of values to which one ties the standard of reasonableness'.

Underlining added for emphasis.

[28] When one looks again at the content of the impugned publications / broadcasts (see paras. [4] & [5] of this Ruling), it is clear that the actions of the Respondent were preceded by the 3<sup>rd</sup> Applicant's nude protest. The content is a coverage of that incident and a continuum thereof that covered the circumstances surrounding that incident.

The content shows *inter alia*, pictures and articles of the nude protest and explanations offered by the Applicants' family members, by the Makerere University Administration, by the 3<sup>rd</sup> Applicant's department head and others, including the 3<sup>rd</sup> Applicant herself, as to why, she carried out her nude protest.

[29] By its very nature, a nude protest is used as a tactic to attract media and public attention to a cause.

From the social media posts on facebook and other platforms used by the 3<sup>rd</sup> Applicant, and from the explanation that she personally offered as to why she carried out her nude protest, (see *inter alia*; annexures A1, A2, B2, B3 and Group D of the affidavit in reply of Mr. Kulubya), it is apparent that the objective of the 3<sup>rd</sup> Applicant's nude protest was precisely to attract media and public attention. The Applicants did not deny nor rebut the said annexures to Mr. Kulubya's affidavit.

[30] The 3<sup>rd</sup> Applicant having succeeded in attracting the media and public attention, in the manner and with the language she used, I cannot agree more with the Respondent's Counsel; Mr. Sozi, that the information complained about was already out there in the public purview. What Mr. Semakadde referred to as 'private and confidential information', was

already, but public. Open and available for all and sundry to use and share.

[31] Being as highly educated as the 3<sup>rd</sup> Applicant is, as shown in the affidavits of the Applicants, and holding the senior position that she did at Makerere University, as shown in the impugned publications / broadcasts, it is safe to rely on the averment of Mr. Kulubya; that the 3<sup>rd</sup> Applicant's nude protest caused her to become a magnet and figure of public attention with her pictures spreading like wild fire on social media and other forums.

[32] Applying the **Ackermann J** holding in the Bernstein case (supra) to this case, the question arises; 'are the subjective – privacy – intuitions of the Applicants reasonable in the circumstances? Is their expectation of privacy legitimate? The clear answer is NO.

By her said public actions, briefs and utterances, the 3<sup>rd</sup> Applicant explicitly and implicitly consented to having her own privacy invaded, and by extension, the 1<sup>st</sup> and 2<sup>nd</sup> Applicants' and her family's privacy invaded.

The explanations offered to the public by her elderly relatives also supplemented in 'the drawing – in' of the Applicants' ancestry, aspects of the burial and resting places of some of their deceased family members, their childhood and livelihoods and other intimate aspects.

[33] In the Charles Onyango Obbo case (supra) Odoki CJ (as he then was), citing Thornhill v Alabama<sup>9</sup> stated that the right to freedom of speech or of the Press should be identified with 'the liberty to discuss publicly and truthfully all matters of public concern without the fear of subsequent punishment'

[34] In my view, the nude protest by the 3<sup>rd</sup> Applicant was one such matter of public concern. I therefore find that there is no justification in offering the

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<sup>9</sup> US Supreme Court 310US 88 pages 101-102

Applicants any protection from interference of what would have hitherto been their privacy.

- [35] Similarly, by the same token, I find no merit in the Applicants' complaint that the Respondent sought opinions and commentary about their home and the school from unconcerned villagers and family members and published falsities and misrepresentations.

In the Onyango Obbo case (supra), Mulenga, JSC (RIP) observed that:

'the right to freedom of expression and of the press, extends to holding, receiving and imparting all forms of opinions, ideas and information, which is not confined to categories such as correct opinions, sound ideas or truthful information. That subject to Art. 43 a person's expression or statement is not precluded from constitutional protection simply because it is thought by another or others to be false, erroneous or unpleasant. Everyone is free to express his or her views...'

Underlining added.

- [36] Guided by that authority, the Respondent's actions; to wit; its investigation and collection of views and opinions, photographs, video footage and other forms of information, involving the Applicants' inner sanctum of their family, parents and home environment and childhood, was within permissible exercise of their right to freedom of expression and of the press.

#### Decision and Orders of this Court:

- [37] Following my conclusions above, this application fails. Issues Nos. 1 and 2 are answered in the negative and in the affirmative respectively.

The Applicants have not succeeded in proving that the Respondent infringed or threatened their fundamental rights and freedoms protected under **Articles 24, 27 and 37 of the Constitution.**

The Respondent was justified in publishing the impugned publications / broadcasts and is protected under **Article 29 (1) (a) of the Constitution.**

[38] This application stands dismissed. Each party shall bear its / their own costs.

I have carefully considered that while the Respondent gained commercially out of the impugned publications / broadcasts, the Applicants, particularly the 1<sup>st</sup> and 2<sup>nd</sup> Applicants suffered grossly as shown in their affidavits. It is only just therefore that each party should bear their own costs.

I so Order,

**P. BASAZA - WASSWA  
JUDGE**

May 29, 2020

Ruling dated, signed and delivered by email on May 29, 2020.