

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[CIVIL DIVISION]
MISCELLANEOUS CAUSE NO. 0009 OF 2018

RENE RUTAGUNGIRA
APPLICANT

VERSUS

- 1. ATTORNEY GENERAL**
- 2. BRIGADIER ABEL KANDIHO**
- 3. LT. GEN. HENRY TUMUKUNDE**
- 4. CAPT. AGABA DAVID.....RESPONDENTS**

BEFORE: HON. LADY JUSTICE LYDIA MUGAMBE

RULING

1. This is my ruling on the preliminary objection raised by the Attorney General. In the preliminary objection, the Attorney General contends that the 2nd to 4th Defendants were wrongly added as Defendants. The Attorney General contends that by virtue of Article 119(4) (c) and 250 of the Constitution and Sections 3, 10 and 11 of the Government Proceedings Act, it's the Attorney General to be sued and not the 2nd – 4th Defendants since the actions complained of were in the course of official work. By virtue of these provisions it is therefore the Attorney General to be sued on behalf of Government and not the individuals. The Attorney General adduces authorities to support his position. The Attorney General also contends that the Plaintiff's suit is vexatious and bad in fact and law and should be dismissed.

2. The Plaintiff objects to these submissions arguing that all the Defendants could be sued for human rights violations. Further that the legal authorities adduced by the Attorney General are for claims in tort which cannot be used for violations of human rights.
3. The Plaintiff insists that all the Defendants could be sued in individual capacity and relies on **Constitutional Petition No. 53 of 2010 – Behangana Domaro & Anor v. Attorney General** where the Constitutional Court held *inter alia*: “...Lastly perhaps the time has come for legal practitioners to consider in cases of this nature adding as parties the perpetrators and their supervisors, of impugned actions in their personal capacity so that they can face civil consequences for their willful disregard of the fundamental rights and freedoms of the people of this country.” The Plaintiff also relies on Article 23(7) of the Constitution which provides that “a persona unlawfully arrested, restricted or detained by any other person or authority shall be entitled to compensation from that other person or authority whether it is the state or an agency of the state or other person or authority.”
4. The parties raised 2 issues for resolution: Whether the 2nd to 4th Respondents were wrongly added as parties and ii) whether the Plaintiff’s claim is vexatious, full of irregularities and bad in law.
5. I have carefully considered all the submissions of the parties. First of all, I wish to clarify that I don’t consider this to be a contest between claims in tort and human rights violations. If I did, it would be an erroneous comparison of the pot and the kettle. This is because both tortious and human rights violations concern human rights in one way or another.
6. There is nothing in Articles 119 and 250 and Sections .3, 10 and 11 that the Attorney General cites, that bars the Plaintiff from bringing an action for human rights violations against individuals involved in the alleged violations, in my discernment.
7. However, such Plaintiff has to demonstrate to the Court’s satisfaction that the said Defendants have a clear nexus, in individual, and not official capacity, to the human rights violations alleged.

8. In the case before me, the Plaintiff does not at this stage, demonstrate to my satisfaction this individual/personal nexus of the 2nd – 4th Defendants to the alleged human rights violations. A reading of the Plaintiff's pleadings seems to present that the violations alleged were not in individual capacity, but official capacity. If at a later stage he demonstrates this nexus he can seek to join any of the 2nd – 4th Defendants in individual capacity.
9. Moreover, excluding the 2nd – 4th Defendants doesn't vitiate the Plaintiff's cause of action or prejudice him in any way. I am therefore disinclined to consider the Plaintiff's objections to the preliminary objection as valid.
10. I am also mindful that this Court in its discretionary powers has the option to lift the veil when determining liability if the need arises and the justice of the case so requires, to make the said individuals personally liable for the violations of human rights alleged if satisfied that they are personally liable for the same.
11. For the above reasons, at this stage, issue one is resolved in the affirmative. The 2nd – 4th Respondents were wrongly added as parties and are hereby struck off.
12. For the 2nd issue, I'm not satisfied that the Plaintiff's claim is vexatious, full of irregularities and bad at law. It would be an injustice to throw out a claim of human rights violations without substantively hearing the parties out. Issue 2 is therefore resolved in the negative. The preliminary objection succeeds only partially.

Each party shall bear its own costs for the same.

I so order.

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LYDIA MUGAMBE

JUDGE

28/9/2018

