

CIVIL SOCIETY COALITION ON HUMAN RIGHTS & CONSTITUTIONAL LAW

Court rules that all Ugandans have a right to privacy and dignity: Tremendous boost to constitutional rights and protection of sexual and other minorities

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The Civil Society Coalition on Human Rights and Constitutional Law in Uganda warmly welcomes and applauds today's decision by High Court judge, Justice V.F. Kibuuka Musoke in the case of Kasha Jacqueline, Pepe Onziema & David Kato v. Giles Muhame and The Rolling Stone Publications Ltd.

Through its members Kasha Jacqueline, David Kato and Patience Onziema, the Coalition filed a complaint in the High Court against the Rolling Stone. The Court issued an interim order restraining the editors of the newspaper from any further publication of information about anyone alleged to be gay, lesbian, bisexual or transgender until the case could be finally determined. After an initial postponement, the merits of the case were heard on **23 November, 2010**. The final ruling was read today, **3rd January 2011**.

In considering whether the Rolling Stone's publication of alleged homosexuals' names, addresses and preferred social hang-outs constituted a violation of the applicant's constitutional rights, the Court, ruled that:

- 1) The motion is not about homosexuality per se, but '...it is about fundamental rights and freedoms,' in particular about whether 'the publication infringed the rights of the applicants or threatened to do so'.
- 2) The jurisdiction of Article 50 (1) of the Constitution is dual in nature, in that it extends not just to any person 'whose fundamental rights or other rights or freedoms have been infringed in the first place,' but also to 'persons whose fundamental rights or other rights or freedoms are threatened to be infringed.'
- 3) Inciting people to hang homosexuals is an attack on the right to dignity of those thus threatened: 'the call to hang gays in dozens tends to tremendously threaten their right to human dignity.'
- 4) Homosexuals are as entitled to the right to privacy as any other citizens. Against the 'objective test', 'the exposure of the identities of the persons and homes of the applicants for the purposes of fighting gayism and the activities of gays...threaten the rights of the applicants to privacy of the person and their homes.'
- 5) Section 145 of the Penal Code Act cannot be used to punish persons who themselves acknowledge being, or who are perceived by others to be homosexual. Court ruled that 'One has to commit an act prohibited under section 145 in order to be regarded as a criminal.' Clearly this applies only to a person who has been found guilty by a court of law.

In terms of the relief sought by the applicants, court issued a permanent injunction preventing The Rolling Stone and their managing editor, Mr. Giles Muhame, from 'any further publications of the identities of the persons and homes of the applicants and homosexuals generally.' The injunction thus provides broad protection to other Ugandans who are, or who are perceived to be homosexual, and the ruling provides an important precedent should any other media attempt to publish similar information. The court further awarded UGX. 1,500,000/= to each of the applicants, as well as ordering that the applicant shall recover their costs from the respondents.

The human rights community welcomes this ruling as a landmark in the struggle for the protection of human dignity and the right to privacy irrespective of one's sexual orientation. According to Professor J. Oloka-Onyango, Director of the Human Rights & Peace Centre at the Faculty of Law, Makerere University, "This ruling serves as an important warning to anyone—Minister, Pastor or Boda-Boda rider—who believes that they can abuse, or threaten to abuse, the fundamental rights of fellow citizens with impunity. It also serves as a wake-up call to media houses that are making a mockery of the principles of freedom of speech and responsible reporting."

According to Adrian Jjuuko, Coordinator of the Coalition on Human Rights & Constitutional Law which sponsored the case, "The ruling also builds on the earlier High Court decision in Victor Mukasa & Another vs. Attorney General (High Court Miscellaneous Cause No 24 of 2006), and firmly establishes the principle that constitutionally protected rights belong to all Ugandans, whatever their perceived sexuality."

"While this injunction is a positive step for gay people in Uganda, the fact remains that the government of Uganda has for long been mute about the discrimination, threats and violence faced by LGBTI people in Uganda," said Kasha Jacqueline, one of the applicants and also Director of Freedom & Roam Uganda.

The Rolling Stone is a tabloid which issued its fifth publication on 2 October, 2010. Its front page carried the headline "100 Pictures of Uganda's Top Homos Leak" which included the words "Hang Them!" Bullet points under the headline read, "We Shall Recruit 100,000 Innocent Kids by 2012: Homos" and "Parents Now Face Heart-Breaks [sic] as Homos Raid Schools." The paper contained the names and in some cases the pictures and description of where certain activists and human rights defenders live. A later edition of the newspaper published on 31 October contained a further 17 photos of alleged LGBT people, with personal details of those identified, including where they lived. The Ugandan government made no response following either publication.

The Coalition believes that these developments are not accidental: "The climate of fear created by the simple tabling of the Anti-Homosexuality Bill in 2009 has already adversely affected not just Ugandan nationals, but also LGBTI asylum seekers. It is really time for the Government to explicitly reassure all people in Uganda, wherever they come from, that they intend to protect people against threats and violence regardless of their real or alleged sexual orientation," said Dr Chris Dolan, Director of the Refugee Law Project at Makerere University. "This important ruling goes at least some way in the right direction".

This ruling is a landmark not only for sexual and other minorities living in Uganda, but also an important precedent for other countries facing similar issues of state and media sponsored homophobia. As a Coalition concerned with human rights and constitutional law, we applaud the High Court for taking this principled step. In standing up for the rights of Uganda's most marginalised they have at the same time strengthened the protection by the law of all people in Uganda.

For further information on the work of the Coalition, please go to www.ugandans4rights.org or write to us on info@ugandans4rights.org