

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

**MISCELLANEOUS CAUSE NO. 0021 OF 2023**

**1. NAMALE DESIRE  
2. MUYINGO MUTASA CHARLES ::: APPLICANTS**

**VERSUS**

**1. HOREB SERVICES UGANDA LIMITED  
2. EZRA MUGISHA ::: RESPONDENTS**

**BEFORE: HON. JUSTICE BONIFACE WAMALA**

**RULING**

**Introduction**

[1] This application was brought by Notice of Motion under Articles 22, 24, 26, 27, 33, 44(a), 50, and 126(2)(c) of the Constitution of Uganda; The Human Rights Enforcement Act 2019; The Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement) Procedure Rules 2019; and Section 33 of the Judicature Act; seeking the following declarations and orders:

a) Declarations that;

(i) The actions of the respondents infringed on Namutamba Milly’s right to life.

(ii) The actions of the respondents infringed on Namutamba Milly’s rights to dignity and freedom from inhuman and degrading treatment protected by Articles 24 and 44(a) of the Constitution of Uganda.

(iii) The actions of the 2<sup>nd</sup> respondent infringed on the applicants’ right to information.

b) Orders that;

(i) The remains of Namutamba Milly be returned from Saudi Arabia so that she can be accorded a decent send off.

- (ii) General damages of UGX 700,000,000/= for Namutamba Milly's death while in Saudi Arabia and for the inconvenience caused throughout the time the family started engaging the respondents over her whereabouts.
- (iii) Punitive/ exemplary damages to deter the respondents from ever carrying out such acts.
- (iv) The costs of the application.

[2] The grounds upon which the application is based are set out in the affidavit in support of the application deposed by **Namale Desire**, the 1<sup>st</sup> applicant, in which she stated that she is a biological daughter of the late Milly Namutamba who died in Saudi Arabia in early 2019. She stated that her mother was externalised by the 1<sup>st</sup> respondent on 19<sup>th</sup> August 2018 as a domestic service worker. At the time of leaving the country, Milly Namutamba was in perfect health and was subjected to a medical check-up by the 1<sup>st</sup> respondent. While her mother was in Saudi Arabia, they kept in constant communication for about five months before she unceremoniously went silent. After one month of no communication, the deponent got worried and contacted her relatives including the 2<sup>nd</sup> applicant who advised her to go to the offices of the 1<sup>st</sup> respondent and raise the matter. She stated that she kept frequenting the 1<sup>st</sup> respondent company for two years seeking to know what had happened to her mother but the company was non-responsive.

[3] The deponent stated that later on in September 2022, the 2<sup>nd</sup> applicant (her uncle) through sources unknown to her discovered that her mother had died. The 2<sup>nd</sup> applicant and herself approached the respondents' offices and on this occasion, the respondents confirmed the death of her mother and promised to formally update them on the cause of death which they have never done. The respondents invited them as a family for a meeting where they promised compensation and facilitating some of the family members to go and pay their last respects to their relative in Saudi Arabia. But after the meeting, no further

communication was made and the applicants sought help from legal aid providers who wrote to the 1<sup>st</sup> respondent stating their demands. The 1<sup>st</sup> respondent replied by advising that the company was answerable to the Ministry of Gender, Labour and Social Development and that if the applicants wanted any information, they should get it from the Ministry and not the company. The deponent averred that the applicants have neither received any post mortem report nor been compensated and, up to the date of the suit, the respondents had remained non-responsive. The family had therefore been left traumatised and reduced to destitute orphans. She concluded that it is just and equitable that the court grants the application.

[4] The respondents opposed the application through an affidavit in reply deposed by **Ezra Mugisha**, the Managing Director of the 1<sup>st</sup> respondent. He stated that the 1<sup>st</sup> respondent entered into a contract for recruitment of migrant workers with Al Manasa Recruitment Agency of Saudi Arabia which laid out the obligations of the parties among others being that the foreign recruitment agency would be responsible for the domestic worker throughout the period of the contract and that in case of death, it would facilitate the repatriation of the remains and pay a compensation package to the worker's family. He averred that the Ministry of Gender, Labour and Social Development approved a job order permitting the 1<sup>st</sup> respondent to deploy housemaids to Al Manasa Alzahabia Recruitment Agency Saudi Arabia and the late Namutamba Milly was one of the candidates for the above order. The late Namutamba was cleared by the Ministry to work as a maid in Saudi Arabia and signed a contract with the employer represented by the Saudi Arabia recruitment agency. The contract provided that in case of death, the Saudi recruitment agency had the obligation to inform the Ugandan authorities and the migrant worker's next of kin.

[5] The deponent stated that in April 2019, the respondents were informed by the family members that they were no longer in communication with Namutamba Milly. The respondents immediately sent a complaint to the recruitment agency and a follow up email on 20<sup>th</sup> September 2019 and another email regarding Milly's non-communication to which the Ugandan attaché in Saudi Arabia was copied. On 20<sup>th</sup> November 2020, the respondents sent another email to the recruitment agency copied to the Ugandan Embassy for further follow up but they still did not get any response. On 4<sup>th</sup> May 2021, the 1<sup>st</sup> respondent cancelled its contract with the Saudi recruitment agency due to communication gaps and failure to respect the terms and conditions of the contract and the bilateral agreement.

[6] The deponent further averred that on 14<sup>th</sup> September 2022, the 1<sup>st</sup> respondent received communication from the Ugandan Embassy in Saudi Arabia informing the Permanent Secretary Ministry of Foreign Affairs that Namutamba Milly had died on 21<sup>st</sup> January 2019 and was buried without any permission granted and without informing her family members. The 1<sup>st</sup> respondent immediately informed the family members and a meeting was convened wherein the family members requested for USD 35,000 as compensation and for facilitation to five persons to travel to Saudi Arabia and pay final respects to the deceased. The 1<sup>st</sup> respondent communicated the demands to the foreign recruitment agency but got no response. Later on, however, the 1<sup>st</sup> respondent was informed by the 1<sup>st</sup> applicant that the family had sat and revised their demands and now claimed for USD 70,000 as compensation and still for five family members to be sent to Saudi Arabia to pay their last respects. The deponent concluded that the late Namutamba Milly was legally externalised and the respondents never violated any of her rights. As such, any compensation could only be gotten from the employer (in Saudi Arabia) with the assistance of the Ugandan Embassy and not the respondents.

[7] The applicants filed two affidavits in rejoinder whose contents I have taken into consideration.

### **Representation and Hearing**

[8] At the hearing, the applicants were represented by **Ms. Rose Wakikona** from M/s The Women's Probono Initiative (WPI) while the respondents were represented by **Mr. Ferdinand Tumuhaise** from M/s Kampala Associated Advocates. It was agreed that the hearing proceeds by way of written submissions which were duly filed by both counsel and have been taken into consideration in the course of determination of this matter.

### **Issues for Determination by the Court**

[9] Four issues were agreed upon for determination by the Court, namely;

- a) *Whether the applicants have locus standi to bring this application?*
- b) *Whether the applicants have a cause of action against the respondents?*
- c) *Whether the respondents infringed on the rights alleged in the application?*
- d) *Whether the applicants are entitled to the remedies prayed for?*

### **Resolution of the Issues**

**Issue 1: Whether the applicants have locus standi to bring this application?**

#### **Submissions by Counsel for the Applicants**

[10] Counsel for the applicants submitted that *locus standi* is defined to mean a place of standing and it is available in cases where the law expressly states so. Counsel cited the case of *Dima Domnis Poro v Inyani Godfrey & Anor, HC Civil Appeal No. 17 of 2016 [2017] UGHCCD 154*. Counsel submitted that Article 50 (2) of the Constitution of the Republic of Uganda confers on any person the right to bring an action for the violation of human rights on behalf of themselves or on behalf of another person. Counsel stated that Namutamba Milly is currently deceased and the applicants as her surviving relatives are

bringing this suit to enforce her rights as granted under the Constitution. Counsel argued that the present application has been brought under Article 50 of the Constitution and the Human Rights (Enforcement) Act, 2019. Counsel also stated that the applicants are persons whose rights have also been infringed and are bringing an action against the infringement of their own rights at the same time. Counsel concluded that the applicants therefore have *locus standi* to bring this application.

### **Submissions by Counsel for the Respondents**

[11] In response, Counsel for the respondents submitted that the 2<sup>nd</sup> applicant has no *locus standi* to institute the instant application. Counsel submitted that having stated that he was a brother in law to the deceased, the 2<sup>nd</sup> applicant had not shown any of his fundamental human rights that was breached by the respondents. Counsel argued that Article 50(2) of the Constitution requires a person to show sufficient interest in the matter and that the same would be determined by the degree of consanguinity. Counsel argued that since the 1<sup>st</sup> applicant had sued in the capacity of a relative to the deceased, the 2<sup>nd</sup> applicant lacked the requisite *locus standi* to be heard in that capacity.

### **Determination by the Court**

[12] *Locus standi* is defined as the right to bring an action or be heard in a specific forum. See: The Black's Law Dictionary, 8<sup>th</sup> Edition, page 2754. Under Article 50(1) and (2) of the Constitution of Uganda, it is provided as follows;

*“(1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.*

*(2) Any person or organisation may bring an action against the violation of another person's or group's human rights.”*

[13] Under Section 3(1) and (2) of the Human Rights (Enforcement) Act Cap 12, it is provided as follows;

*“(1) In accordance with article 50 of the Constitution, a person or organisation who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened may, without prejudice to any other action with respect to the same matter that is lawfully available, apply for redress to a competent court in accordance with this Act. [Emphasis added]*

*(2) Court proceedings under sub-section (1) may be instituted by;*

- a) a person acting on behalf of another person who cannot act in their own name;*
- b) a person acting as a member of, or in the interest of a group or class of persons;*
- c) a person acting in public interest;*
- d) an association acting in the interest of one or more of its members.”*

[14] In this case, the respondents challenged the *locus standi* of the 2<sup>nd</sup> applicant to bring this application jointly with the 1<sup>st</sup> applicant who is a daughter of the deceased Milly Namutamba. The argument is that while closeness of the 1<sup>st</sup> applicant’s relationship with the deceased is clear, that of the 2<sup>nd</sup> applicant, being a brother in law, is far-fetched. Counsel for the respondents suggested that for a person in the 2<sup>nd</sup> applicant’s position, they had to show that they are possessed of sufficient interest in the matter in order to have locus standi.

[15] With all due respect to learned counsel for the respondents, the above highlighted argument is misconceived and ignores the clear provisions of the Constitution and the Human Rights (Enforcement) Act as set out above. According to both legal instruments, *“any person who claims that a fundamental or other right or freedom ... has been infringed or threatened”* is entitled to bring an action for human rights enforcement. Clearly, therefore, the

locus standi is based on the ‘claim of violation’ and ‘existence of the person of the claimant’. Issues of contract, privity, relationship, direct or sufficient interest are inapplicable to a cause of action for human rights enforcement. Clause (2) of Article 50 of the Constitution and sub-section (2) of Section 3 of the Human Rights (Enforcement) Act even further bring the point homelier by stating that any person or organisation may bring an action against the violation of another person’s or group’s human rights.

[16] In view of the above clear provisions of the law, it would be totally erroneous to introduce the test of sufficient interest in an application for human rights enforcement. In any case, the said test got its entry into our law in form of legislation specifically in the area of judicial review by virtue of *rule 3A of the Judicature (Judicial Review) (Amendment) Rules, No. 32 of 2019*. The test cannot be imported in an area that is well covered by constitutional and statutory provisions. Clearly, therefore, the 2<sup>nd</sup> applicant was vested with the requisite *locus standi* to bring the present application jointly with the 1<sup>st</sup> applicant. Issue 1 is therefore answered in the affirmative.

## **Issue 2: Whether the applicants have a cause of action against the respondents?**

### **Submissions by Counsel for the Applicants**

[17] Counsel for the applicants submitted that Article 50(1) & (2) of the Constitution allows any person or organisation to file suits where there is violation of the rights of another. It does not require the person or organisation filing to have suffered injury from the violation complained of. Counsel cited the case of *The Women’s Probono Initiative (WPI) & Anor v Transcend Agencies International Ltd & Anor, HC Miscellaneous Cause No. 190 of 2020*. Counsel disputed the respondents’ contention that the instant suit was a compensation claim that should have been brought under the Law Reform Miscellaneous Provision Act in the event of death of a victim. Counsel submitted that the



action is a proper case against violations of the fundamental rights and freedoms of both the deceased Namutamba Milly and the applicants. Counsel concluded that the cause of action was therefore established as a human rights violation.

### **Submissions by Counsel for the Respondents**

[18] Counsel for the respondents challenged the action as brought against the 2<sup>nd</sup> respondent who is a director of the 1<sup>st</sup> respondent. Counsel argued that the 1<sup>st</sup> respondent being a corporate entity, it is under the law a separate personality from its directors. Counsel argued that such being the case, the 2<sup>nd</sup> respondent could not be sued for acts of the company except either upon an order for lifting the corporate veil or where the order is sought for in the suit that is before the Court. Counsel cited the provisions of Section 20 of the Companies Act 2012 and the decision in *Zalwango Margret Nalongo & 2 Ors v Ladha Kassam & Co. Ltd, HCMA No. 1088 of 2021* and *Salim Jamal & 2 Others v Uganda Oxygen Limited & 2 Others [1997] 11 KALR 30*. Counsel submitted that none of the conditions are satisfied in the present application and, as such, an action could not lay against the 2<sup>nd</sup> respondent.

[19] Counsel further submitted that even against the 1<sup>st</sup> respondent, there were no facts to establish the essential elements of a cause of action, namely, a right that was violated by the 1<sup>st</sup> respondent, making the company liable. Counsel argued that the recruitment of migrant workers to Saudi Arabia was governed by a bilateral agreement between Uganda and the Kingdom of Saudi Arabia and the 1<sup>st</sup> respondent had complied with all the guidelines and the Government of Uganda had approved Namutamba's externalisation. Counsel stated that the late Namutamba had signed a contract with the employer (in Saudi Arabia) represented by Al –Manasa Recruitment Agency which placed obligations upon the employer in case of death to inform the migrant worker's next of kin and the Ugandan authorities, repatriation costs and where not possible seek

approval of the migrant worker's family or Ugandan Embassy before burial. The employer was also responsible for the compensation of the migrant worker's family. Counsel argued that the 1<sup>st</sup> respondent had no obligation to compensate the applicants stating that they should pursue their compensation from the Saudi Arabian Government. Counsel therefore concluded that the applicants have no cause of action against the respondents at all.

### **Determination by the Court**

[20] In law, for a suit to disclose a cause of action, it must show that the plaintiff enjoyed a right, the right was violated and it is the defendant who violated the right. See: *Auto Garage v Motokov No.3 [1971] EA 514*. However, like it was held by my learned sister in *The Women's Probono Initiative (WPI) & Anor v Transcend Agencies International Ltd & Anor, HC Miscellaneous Cause No. 190 of 2020* (Nambayo J.), in an application for human rights enforcement, the elements of a cause of action as traditionally known are not to be considered in the same way. Provided the action fits within the ambit of Article 50 of the Constitution and the provisions of the Human Rights (Enforcement) Act, such would suffice to disclose a cause of action. As has been highlighted herein above, Article 50(1) & (2) of the Constitution allows any person or organisation to file a suit where their rights or those of any other person are alleged to have been violated. It does not require the person or organisation filing the action to have personally suffered any injury from the violation complained of. I find this the true position of the law on the matter.

[21] In this case, it is alleged by the applicants in the pleadings that the named rights of the late Namutamba Milly and of the applicants themselves were violated by the respondents. Whether the evidence available is sufficient to prove the alleged violations is not a question to be considered at the stage of determining existence of a cause of action. What is to be considered by the court at this stage is whether the allegations in the pleadings constitute a

cause of action in light of the relevant law. On the case before me, I am satisfied that the pleadings disclose a cause of action against the respondents. It should be noted that under Section 3(1) of the Human Rights (Enforcement) Act, an action may be brought in human rights enforcement “without prejudice to any other action with respect to the same matter that is lawfully available”. As such, the argument that the applicants ought to have brought an action by way of the Law Reform Miscellaneous Provisions Act is devoid of merit.

[22] The other point specifically raised by the respondents was that no cause of action was raised as against the 2<sup>nd</sup> respondent who was simply a director of the 1<sup>st</sup> respondent company; who could not be sued in absence of proceedings for lifting the corporate veil. This contention is to be addressed by looking at the flexibility that is engendered by the Human Rights (Enforcement) Act. Section 6(2) of the Human Rights (Enforcement) Act provides that where a person is in doubt as to the person from whom he or she is entitled to obtain redress, he or she may join two or more persons in order for the question as to which person is liable for the violation to be determined by the competent court. Under Section 6(5) of the Act, no “suit instituted under this Act shall be rejected or otherwise dismissed by the competent court merely for failure to comply with any procedure, form or on any technicality”.

[23] The facts adduced by the applicants show that in all their dealings with the respondents, it is the 2<sup>nd</sup> respondent that they made contact with. It is not obvious that the applicants knew the capacity in which the 2<sup>nd</sup> applicant was acting. Furthermore, one of the allegations is that the applicants’ right of access to information was violated. Since the applicants interacted with the 2<sup>nd</sup> respondent at all times when they sought information, laying the claim against the 2<sup>nd</sup> applicant personally was in order in light of the provision of sub-section (2) of section 6 of the Act above cited. By statutory enactment, an applicant in a case such as this was permitted to join two or more persons in

an action where the applicant is in doubt as to the person from whom he or she is entitled to obtain redress from. This statutory permission cannot be taken away by having recourse to general principles of the law or procedure.

[24] In all, therefore, on this issue, I am satisfied that the application discloses a cause of action against the respondents. Issue 2 is answered in the affirmative.

### **Issue 3: Whether the respondents infringed on the rights alleged in the application?**

[25] The allegations by the applicants herein are that the right to life, the right to dignity and freedom from torture, cruel, inhuman or degrading treatment of the late Namutamba Milly were violated by the respondents. It is also alleged that the applicants' right of access to information was violated. The said rights are provided for under Articles 22, 24 and 41 of the Constitution of Uganda. Article 20 of the Constitution of Uganda makes provision for the sacrosanct and fundamental nature of human rights and freedoms. It provides that;

- 1) *Fundamental rights and freedoms of the individual are inherent and not granted by the state.*
- 2) *The rights and freedoms of the individual and groups enshrined in this chapter shall be respected, upheld and promoted by all agencies of government and all persons.*

[26] I will proceed to consider each alleged violation separately as raised by the applicants.

### **The right to life**

#### **Submissions by Counsel for the Applicants**

[27] Counsel cited the provision under Article 22(1) of the Constitution of the Republic of Uganda and submitted that Namutamba Milly was deprived of her

right to life when she died in Saudi Arabia where she had been externalised for domestic work by the respondents. Counsel cited Regulation 7(6)(f) of the Employment (Recruitment of Ugandan Migrant Workers) Regulations, 2021 to the effect that the licensed company was fully responsible for all claims and liabilities which might arise because of the licence and asserted that the late Namutamba Milly died under the watch of the respondents. Counsel stated that the employment contract for domestic work in Saudi Arabia that was signed by the late Namutamba Milly with the respondents in clause 12 obliges the respondents to repatriate the body of the deceased Namutamba Milly and inform the next of kin in a timely manner which was not done. Instead, the respondents took over 3 years to confirm the death of Namutamba Milly to her family; and even then, they have since not provided information regarding the cause of her death.

[28] Counsel for the applicants further submitted that although the respondents in their reply rely on clause 12 of the contract to say that the Saudi Recruitment Agency bore the obligations to inform the Ugandan authorities and was responsible for the repatriation costs, it was pertinent to note that the 1<sup>st</sup> respondent was the entity that contracted on behalf of the late Namutamba Milly as indicated on page 2 of the contract. Counsel stated that it was the 1<sup>st</sup> respondent that engaged with the Saudi Recruitment Agency and in cases where the agency cannot compensate the family of the deceased, the Employment (Recruitment of Ugandan Migrant Workers) Regulations, 2021 squarely placed the duty and obligation on the Ugandan recruitment agency.

[29] Counsel further stated that in the letter marked “Annexure R” to the respondents’ affidavit in reply, the Ugandan Embassy in Saudi Arabia pointed out how Ms. Namutamba Milly was buried illegally without the knowledge and consent of the Embassy. It was also pointed out in the letter that Namutamba Milly did not appear on the Saudi Tracking system just like all the workers that

had been externalised by the 1<sup>st</sup> respondent to Al Manasa, the foreign recruitment agency. Counsel argued that the 1<sup>st</sup> respondent had some shady dealings with Al Manasa that they ought to answer for; which led to their failure to guarantee the protection of all Ugandan workers that they externalised. Counsel concluded that the 1<sup>st</sup> respondent violated the late Namutamba Milly's right to life by failing to protect her after externalising her for labour and failing to account for the cause of her death.

### **Submissions by Counsel for the Respondents**

[30] In reply, Counsel for the respondents submitted that the respondents did not in any way violate the deceased's right to life and that if at all her right was violated, recourse was to be had against the employer, its representative agency and the governments of Uganda and Saudi Arabia, and not the respondents. Counsel stated that according to available information, the deceased died of cardiopulmonary arrest while in Saudi Arabia and the respondents were not responsible for the promotion and protection of the welfare and rights of migrant workers while in Saudi Arabia. Counsel further stated that the duty to repatriate the body and inform the next of kin was placed upon the employer and the Saudi Arabian Recruitment Agency under paragraph 12 of the Employment Contract and in line with the bilateral agreement between the Governments of Uganda and of Saudi Arabia.

### **Determination by the Court**

[31] The fact of the death of Namutamba Milly while in Saudi Arabia as a migrant worker is not in dispute. According to the letter from the Ugandan Embassy in Saudi Arabia, attached as annexure "R" to the affidavit in reply, dated 23<sup>rd</sup> August 2022, Namutamba Milly was said to have died on 21<sup>st</sup> January 2019 and was buried in Saudi Arabia; without the consent of either the embassy or the worker's family. The place of burial was not identified or known at the time the said information was given; a period of over two years

from the time of the said death. The cause of death according to the available report was cardiopulmonary arrest. The question, therefore, is whether upon the available facts the respondents bear responsibility for the said loss of life.

[32] The respondents denied responsibility for the death of the migrant worker or for any compensation arising from the said occurrence. The respondents rely on the existence of a 2019 bilateral agreement between the governments of Uganda and the Kingdom of Saudi Arabia which placed the responsibility on the foreign recruitment company. The respondents also relied on the contract entered into between the employer in Saudi Arabia, represented by the foreign recruitment agency on the one hand; and Namutamba Milly represented by the 1<sup>st</sup> respondent on the other hand. According to the contract, annexure “B” to the affidavit in reply, upon demise of the worker, the employer bore the responsibility to inform the Ugandan authorities and the worker’s family, expatriate her remains and compensate her family.

[33] Let me begin by pointing out that at the time of externalisation of the late Milly Namutamba in 2018, the recruitment of Ugandan migrant workers was governed by the Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, 2005. Regulation 7(3)(f) of the Regulations provided that the licensed recruitment companies “shall assume full and complete responsibility for all acts of its officials, employees and representatives done in connection with recruitment and placement”. It is clear to me that responsibility of the respondents in relation to the externalisation of Milly Namutamba arose out of the licence issued to the 1<sup>st</sup> respondent under the said regulations. The existence of a bilateral agreement between the States of Uganda and Saudi Arabia or the contract referred to above did not extinguish the responsibility of the 1<sup>st</sup> respondent as a recruitment agency which contracted with the Saudi Arabian recruitment agency for the externalisation of the deceased worker.

[34] Although the 1<sup>st</sup> respondent attempted to distance themselves from responsibility over the safety and welfare of the deceased migrant worker, the facts and the law reveal otherwise. In paragraph 6 of the affidavit in reply, the 2<sup>nd</sup> respondent stated that the 1<sup>st</sup> respondent entered into a contract for recruitment of migrant workers with Al Manasa Recruitment Agency of Saudi Arabia which laid out the obligations of the parties among others being that the foreign recruitment agency would be responsible for the domestic worker throughout the period of the contract and that in case of death, it would facilitate the repatriation of the remains and pay a compensation package to the worker's family. This averment shows that the 1<sup>st</sup> respondent was the recognised party to the contract and that in case of breach of any of the terms of the agreement, it was the 1<sup>st</sup> respondent company that was vested with the capacity to enforce against the breach and not the worker's family that had no privity over such a contract. This inference is further brought out by the fact that when a breach occurred, it was the 1<sup>st</sup> respondent that terminated the contract with the foreign recruitment agency as averred in paragraph 17 of the affidavit in reply. Such being the case, the apparent argument on behalf of the respondents that the family would have proceeded against the foreign recruitment agency or the Government of Saudi Arabia is therefore strange and legally flawed.

[35] It is thus clear that as far as the deceased worker's family was concerned, the entities with responsibility over the life and safety of their family member were the 1<sup>st</sup> respondent company and the Uganda Government. It is not disputed that the Uganda Government delegated this function through the Ministry of Gender, Labour and Social Development to the 1<sup>st</sup> respondent. The Government put in place a legal framework by way of the Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations. It was under this framework that the 1<sup>st</sup> respondent was licensed. The 1<sup>st</sup> respondent was



bound to abide by the terms of the licence and the governing regulations. Under regulation 7(3)(f) of the 2005 regulations that were applicable at the time of externalisation of the deceased worker, the licensed recruitment company was obligated to assume full and complete responsibility for all acts of its officials, employees and representatives done in connection with recruitment and placement.

[36] That being the case, it is wrong on the part of the respondents to argue that the responsibility over Namutamba Milly lay against the other stakeholders and not on themselves. The legal framework clearly indicates that the 1<sup>st</sup> respondent bore the primary responsibility over the safety and life of the deceased migrant worker. The 1<sup>st</sup> respondent was also the entity vested with locus to enforce against any breach of the agreed terms against either the foreign recruitment agency or the Kingdom of Saudi Arabia.

[37] There is evidence on record that the 1<sup>st</sup> respondent externalised the deceased off the Saudi tracking system (MUSANED) which was irregular and made it hard for the deceased to be tracked by the Ugandan authorities in Saudi Arabia. This correspondence has already been referred to herein. The said letter also stated that “all workers externalised by M/s Horeb Services Uganda Ltd to M/s Al Manasa do not appear anywhere in our records. The Ministry of Gender Labour and Social Development may interest itself into the actual dealings between the two companies – at least up to the time they ceased to collaborate”.

[38] The decision, failure or omission by the respondents to operate off the tracking system was a grave flaw. Looking at clause 17(f) of the standard employment contract, it states that the “DSW [Domestic Service Worker] shall be allowed to own a phone and freely communicate with his/her family and the Uganda Embassy or Consulate on his/her personal expense or account”. This

provision gives an insight into the impact of the decision, failure or omission by the respondents to put the late Namutamba Milly on the tracking system. I am able to draw an inference to the effect that had she been on the system, she would have been able to reach out to the Ugandan Embassy/ Consulate when she fell sick; which Embassy/ Consulate would, in turn, have either offered assistance or reached out to her relatives. Such a move was capable of saving the life of the late Namutamba Milly. Further, it would also have been possible for the 1<sup>st</sup> respondent to pick clues regarding her ailment or at the very worst, her death immediately it occurred. As it appears on record, while Namutamba Milly is said to have died in January 2019, the 1<sup>st</sup> respondent (being the entity with primary responsibility) came to learn of the loss of communication with the worker in April 2019; and this was from a family member, not from their own sources. They then came to learn of her death in September 2022, a period of two years and eight months from the time of her death. This means that the 1<sup>st</sup> respondent had no sources concerning the safety and welfare of the migrant workers that they externalised. This was in breach of the terms of the licence and the governing regulations.

[39] It ought to be noted that the respondents opted to keep total silence over the matter of having operated off the official system. They thus offered no explanation as to how the same came to be. The court is not able to tell with certainty as to whether the same was on account of negligence, deliberate omission or deceit. What is clear, however, is that the same was in breach of their responsibility under the operating licence and the legal framework; which makes them liable for any consequential damage or loss. In this case, I am convinced that such conduct heavily contributed to the unexplained loss of the life of the late Milly Namutamba. The respondents are clearly responsible for the said loss of life. The applicants have therefore proved on a balance of probabilities that the respondents by their conduct violated the right to life of the late Namutamba Milly.

**The right to dignity and freedom from cruel, inhuman and degrading treatment.**

**Submissions by Counsel for the Applicants**

[40] Counsel for the applicants relied on the provisions under Article 24 and 44(a) of the Constitution of Uganda and submitted that denial or failure to accord the late Namutamba Milly proper treatment when she fell sick and denying her a proper and decent burial by her family infringed on her right to freedom from cruel, inhuman, and degrading treatment. Counsel argued that the respondents were responsible for the late Namutamba Milly and their omission to do anything as she suffered was a violation of her right to be free from cruel, inhuman, and degrading treatment. Counsel cited the case of *Centre for Health, Human Rights and Development (CEHURD) & Anor v The Executive Director, Mulago National Referral Hospital & Anor, HC Civil Suit No. 212 of 2013* to the effect that denial of an opportunity to bury a loved one compounded the pain of the plaintiffs in that case and amounted to a violation of the right to dignity and freedom from cruel, inhuman, and degrading treatment. Counsel submitted that the respondents' failure to repatriate the body of the deceased Namutamba Milly or provide a satisfactory reason for her death have inflicted immeasurable pain on her family members thus causing them mental torture and violating their right to dignity.

**Submissions by Counsel the Respondents**

[41] In response, Counsel for the respondents submitted that the applicants have not adduced any evidence to show that the late Namutamba Milly was denied treatment or in any way treated cruelly while she was in Saudi Arabia. Counsel submitted that, in any case, the obligations over the said worker were squarely placed upon the employer and the Saudi Arabian Agency. Counsel further submitted that in their pleadings, the applicants never sought a declaration that the right to bury their loved one was violated and raising it in

their submissions amounted to a departure from pleadings yet the applicants are bound by their pleadings. Counsel prayed that such argument ought to be struck out.

### **Determination by the Court**

[42] Article 24 of the Constitution guarantees freedom from torture, cruel, inhuman or degrading treatment or punishment. This right is non-derogable and is absolute according to Article 44(a) of the Constitution. In 2012, the Parliament of Uganda passed the Prevention and Prohibition of Torture Act, which is currently Cap 130 of the Laws of Uganda. According to the long title of the Act, the Act was passed, in part, to give effect, in accordance with Articles 24 and 44(a) of the Constitution, to the respect of human dignity and protection from inhuman treatment by prohibiting and preventing any form of torture or cruel, inhuman or degrading treatment or punishment.

[43] Section 7(1) and (2) of the Act (Cap 130) makes a provision relating to cruel, inhuman or degrading treatment or punishment. It provides as follows;

*“(1) Cruel, inhuman or degrading treatment or punishment committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official or private capacity, which does not amount to torture as defined in section 2, is a criminal offence and shall be liable on conviction to imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty-eight currency points or both.*

*(2) For the purposes of determining what amounts to cruel, inhuman or degrading treatment or punishment, the court or any other body considering the matter shall have regard to the definition of torture as set out in section 2 and the circumstances of the case.”*

[44] Under Section 2 of the Prevention and Prohibition of Torture Act Cap 130, torture is defined as *“any act or omission by which severe pain or suffering*

*whether physical or mental, is intentionally inflicted on a person by or at the instigation of or with consent or acquiescence of any person whether a public official or other person acting in an official or private capacity for such purposes as – (a) obtaining information or a confession from the person or any other person; b) punishing that person for an act he or she or any other person has committed, or is suspected of having committed or of planning to commit; or intimidating or coercing the person or any other person to do, or to refrain from doing, any act”.*

[45] According to Section 2(2) of the Act, “severe pain or suffering” means the prolonged harm caused by or resulting from the intentional infliction or threatened infliction of physical pain or suffering; or the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; or the threat of imminent death; among others. Under section 2(3) of the Act, the acts constituting torture shall include the acts set out in the second schedule to the Act. These include physical acts such as systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts; electric shocks; being tied or forced to assume a fixed and stressful body position; harmful exposure to the elements such as sunlight and extreme cold; among others. They also include mental or psychological kind of torture such as blindfolding; threatening the victim or his or her family with bodily harm, execution or other wrongful acts; confining a victim incommunicado, in a secret detention place or other form of detention; confining the victim in a solitary cell; among others.

[46] On the case before me, there is no evidence pointing to any intentional affliction of pain or harm upon the late Namutamba Milly. Apart from the information that she fell sick and died, no facts exist to point out as to how she was treated before and after she fell ill. It cannot be assumed that she was not

treated or that she was ill-treated. There had to be facts showing commission or omission on the part of the employer in Saudi Arabia or the foreign recruitment agency in order to lead to any inference of wrongful conduct. In absence of any such facts, this claim cannot be sustained by the applicants. The argument by the applicants that denying the late Namutamba Milly a decent burial amounted to a violation of her right to dignity and freedom from cruel, inhuman, and degrading treatment is flawed since the right is only available to a living individual.

[47] In their submissions, it was further claimed by the applicants that they and the other family members, owing to the ordeal over the loss of their relative and failure to bury her, suffered both mental and psychological pain which amounted to inhuman and degrading treatment. Nevertheless, as submitted by Counsel for the respondents, this claim was not included in the applicants' pleadings. As such, it cannot be considered by the Court as it would amount to departure from their pleadings which is prohibited under the law.

[48] In all, therefore, on the allegation of violation of the right to dignity and the freedom from cruel, inhuman or degrading treatment, no evidence has been adduced by the applicants to establish the alleged violation. This ground of the application therefore fails.

### **The right of access to information**

#### **Submissions by Counsel for the Applicants**

[49] Counsel cited Article 41(1) of the Constitution of the Republic of Uganda and Section 5(1) of the Access to Information Act Cap 95 and submitted that when the family was no longer in communication with the deceased, they informed the respondents and, in their reply, they claimed to have reached out to Al Manasa Recruiting Agency about the non-communication of Namutamba Milly but got no response. Counsel stated that even when the respondents

received communication from the Ugandan Embassy in Saudi Arabia about the death of Namutamba Milly, they did not divulge the same to the applicants or any of her immediate family members. It was only after the 2<sup>nd</sup> applicant, through his sources in the Embassy received information of Namutamba Milly's death, that they confronted the respondents who then asked for a meeting over the matter. Counsel concluded that the respondents violated the applicants' right to information when they refused to provide them with information concerning the death of their relative, which the respondents were aware of.

### **Submissions by Counsel for the Respondents**

[50] In reply, Counsel for the respondents submitted that Article 41 of the Constitution restricts the right of access to information against either the state or any other organ of the state and not against private entities or individuals. Counsel distinguished the decision in *Centre for Health, Human Rights and Development (CEHURD) & Anor v The Executive Director, Mulago National Referral Hospital & Anor*, HC Civil Suit No. 212 of 2013 which was relied on by the applicants on the ground that the information was being sought against a public body which is different from the instant respondents. Counsel further submitted that, in any case, the respondents were not in possession of the information that was being sought and were not in position to provide the same. Counsel prayed that the court finds that the right of access to information is a limited right and that the respondents were not in possession of the information that was sought by the applicants.

### **Determination by the Court**

[51] Article 41(1) of the Constitution of the Republic of Uganda provides that "Every citizen has a right of access to information in possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person". Section 4 of the

Access to Information Act Cap 95 is similarly worded. Like it was submitted by learned Counsel for the respondents, it is clear from the above cited provisions that the right of access to information is restricted to such information as is in possession of the State, organs or agencies of the State. The respondents in the present case are private individuals and are not duty bearers under the provisions of the law relied upon by the applicants under this ground. As such, the allegation regarding violation of the right of access to information is not made out.

[52] In all therefore, on issue 3, the applicants have proved one violation against the respondents; which is the violation of the right to life of the late Namutamba Milly. Issue 3 is accordingly answered as such.

**Issue 4: Whether the applicants are entitled to the remedies prayed for?**

[53] The applicants prayed for a number of declarations and orders as set out in paragraph 1 of this ruling. Given my finding on Issue 3 above, the applicants are entitled to the declaration that the actions of the respondents infringed on Namutamba Milly's right to life.

[54] The applicants prayed for an order for the return of the remains of the deceased Namutamba Milly from Saudi Arabia so that she could be accorded a decent send off. Although I have found that the respondents were responsible for the circumstances that led to the loss of Milly Namutamba's life and a declaration has issued in that regard, it is indicated in evidence that the place of the said deceased's burial was not known or identified. As such, passing an order for return of the body would be in vain. Courts do not pass orders that are incapable of performance as such would be an order in vain. In the circumstances, it appears to me that the family of the said Milly Namutamba will have to come to terms with the reality that attempts to locate the remains of their 'loved one' have failed; and that they are unable to either obtain the



remains for a decent burial or to reach her grave to pay their last respects. To that end, the applicants and the family will have to make do with any award of damages that the court may make in that regard. As such, the order for return of the deceased's remains is unavailable and is not issued by the Court.

[55] Regarding the claim for general damages, the law is that general damages are the direct natural or probable consequence of the act complained of and are awarded at the discretion of the court. The damages are compensatory in nature with the purpose of restoring the aggrieved person to the position they would have been in had the breach or wrong not occurred. See: *Hadley v Baxendale (1894) 9 Exch 341* and *Kibimba Rice Ltd v Umar Salim, SC Civil Appeal No. 17 of 1992*. In the assessment of general damages, the court should be guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered. See: *Uganda Commercial Bank v Kigozi [2002] 1 EA 305*. Under the law, general damages are implied in every breach of contract and every infringement of a given right.

[56] On the facts of the present case, having found that the respondents committed a violation of the late Milly Namutamba's right to life, it follows that the applicants are entitled to damages owing to the wrongful acts of the respondents. What remains is for the court to determine the extent of harm occasioned to the applicants and making an assessment of the appropriate damages to be awarded to the applicants. The applicants showed in evidence that they suffered from mental anguish, inconveniences, grief and pain while trying to find out the whereabouts of the deceased. They further suffered mental and psychological pain upon learning that their family member had fallen sick, died and buried in Saudi Arabia, without the consent or consultation with the family members in Uganda. The situation is aggravated by the fact that the place of burial of the deceased was not known or identified.

As such, the applicants and other family members will have to live with the fact that the place of burial of their 'loved one' is unknown. This is a serious aggravating factor in the circumstances.

[57] While attempting to get to a decision on a sum that constitutes fair and reasonable compensation in the present circumstances, I take cognisance of the fact that damages for death, pain and suffering present serious difficulty in assessment with precision. I am equally aware that comparing the magnitude of pain and suffering in concrete terms with comparable past cases is sometimes difficult to assess on the strength of monetary awards. Nevertheless, in the present circumstances, I am faced with a claim made on behalf of various family members who have had to come to terms with the death of their relative in a foreign country; coupled with all the circumstances I have pointed out above. Taking all the facts and circumstances into consideration, I find a sum of UGX 200,00,0000/= (Uganda Shillings Two Hundred Million only) an appropriate award in general damages against the respondents jointly and severally.

[58] The applicants also made a claim for exemplary/ punitive damages. Exemplary damages represent a sum of money of a penal nature in addition to the compensatory damages given the loss or suffering occasioned to a plaintiff. The rationale behind the award of exemplary damages is to punish the defendant and deter them from repeating the particular wrongful act. According to Lord Devlin in the land mark case of *Rookes v Barnard [1946] ALLER 367 at 410, 411* there are only three categories of cases in which exemplary damages are awarded, namely;

- a) Where there has been oppressive, arbitrary, or unconstitutional action by the servants of the government;

- b) Where the defendant's conduct has been calculated by him to make a profit which may well exceed the compensation payable to the plaintiff;  
or
- c) Where some law for the time being in force authorises the award of exemplary damages.

[59] On the case before me, the applicants have shown that it was the conduct of the respondents that led to the loss of life of the deceased Milly Namutamba. As I have indicated herein above, the decision, act or omission by the respondents to operate off the Saudi tracking system was a grave flaw on the part of the respondents. Evidence has shown that the same did not happen only in regard to Milly Namutamba but for all the migrant workers that had been externalised by the 1<sup>st</sup> respondent in collaboration with the Al Manasa Saudi recruitment agency. In absence of any explanation by the respondents as to how this grave error was allowed to occur, I find it safe to make an inference that the same was calculated by the respondents for purpose of profit making at the expense of the other persons involved. Consequently, a life that could possibly have been saved was lost. Such conduct ought never to be repeated and makes this case an appropriate one for award of exemplary damages. In the circumstances, I find a sum of UGX 50,000,000/= (Uganda Shillings Fifty Million only) appropriate as exemplary damages against the respondents and I award the same to the applicants.

[60] Regarding costs, in accordance with Section 27 of the Civil Procedure Act, costs of a suit follow the event unless the court for good cause decides otherwise. The applicants herein are entitled to the costs of the suit and the same are awarded to them.

[61] In all, therefore, the application succeeds and is allowed with the following declaration and orders, jointly and severally, against the respondents;

- a) A declaration that the actions of the respondents infringed on Namutamba Milly's right to life.
- b) Orders that;
  - (i) The respondents shall pay to the applicants a sum of UGX 200,000,000/= (Uganda Shillings Two Hundred Million only) as general damages.
  - (ii) The respondents shall pay to the applicants a sum of UGX 50,000,000/= (Uganda Shillings Fifty Million only) in exemplary damages.
  - (iii) The respondents shall pay the taxed costs of the application to the applicants.

It is so ordered.

***Dated, signed and delivered by email this 7<sup>th</sup> day of October, 2024.***



**Boniface Wamala**  
**JUDGE**