

THE HIGH COURT OF UGANDA DISMISSES THE TAALA FOUNDATION'S COURT APPLICATION TO JOIN MISC. CAUSE No. 179 of 2020

Authors: Ruth Atuheire, Severus Hama-Owamparo

Introduction

On the 21st day of July 2020, Mukibi Henry and 20 others filed Misc. Cause No. 179 of 2020 against Prisons Officer Waniala Philemon, the LC III of Kyengera Town Council, and the Attorney General of Uganda seeking to enforce; their rights not to be subjected to any form of torture or cruel, inhumane and degrading treatment or punishment under Article 24 and 44 (a) of the Constitution of the Republic of Uganda, their right to privacy under Article 27 and the right not to be discriminated against under Article 21. All the preliminary steps in Misc. Cause No. 179 of 2020 was concluded and the case was ready to be heard.

However, on the 16th day of November 2020, The Taala Foundation filed an [application](#); The Taala Foundation Limited V Hajji Abdul Kiyimba, Principal Officer Philimon Woniata, Kyengera Town Council, Attorney General, Mukibi Henry and 20 others Misc. Application No. 1045 of 2020, to join the case, Misc. Cause No.179 of 2020 as a party through the [Ubuntu Law and Justice Centre](#). The application was heard on the 12th day of April 2022 in the High Court of Uganda Civil Division.

The rationale behind the application

Taala's application was based on findings from the Mental Health intervention carried out at the Children Of the Sun Foundation shelter that was conducted between July and October 2020. The [post-incident psychological report](#) revealed Post Traumatic Stress Disorder(PTSD), anxiety, depression, and other mental health challenges among the 16 of the 19 individuals as a direct result of the torture, cruel, inhuman, and degrading treatment they endured at the hands of state officials during the lockdown.

This is the first evidence of its kind that draws a direct link between state-sponsored violence and health outcomes of gender and sexual minorities. It is for this reason that The Taala Foundation applied to be joined as a party to the case under Order 1 Rule 10 (2) of the Civil Procedure Rules which states that; “the court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

Secondly, we believe that the orders sought by applicants in Misc. Cause No. 179/2020 would legally affect our interest in the case because it is within our mandate as the only community-led organisation that posits ourselves as leaders in the field of Mental Health and well-being for

gender and sexual diverse youth, to advocate for the highest attainable standard of mental health and well-being. What this entails in part, is the use of the law as a tool to address the upstream social, political, and structural determinants that contribute more to health inequities among the gender and sexual diverse persons. This was not addressed by the judge and he ended up suggesting that we should come in as witnesses, not as a party. Our take on this is that, , being added as a witness instead of a party to the case would limit our ability to elucidate our findings—which clearly depict the detrimental harm that systemic violence and discrimination have on a historically marginalised and vulnerable populace— from a psychological perspective.

Reflections

Taala's application provided an avenue for a broader and in-depth comprehension of the effects of state-sponsored violence on the mental health and wellbeing of gender and sexual diverse persons in the country. The application also provided an opportunity for the Courts of Law to obtain greater nuance around the issues that advance or diminish mental health which would in turn play a role in reducing the bias and stigma associated with it thereof.

The judge's ruling while very dismissive begs the question: How much more harm must ensue before mental health is understood and treated with the severity it warrants? Especially considering the global disease of mental illness?

Further, can strategic litigation be used as a tool to mobilise and effect structural change for gender and sexual minorities in Uganda when all attempts to address the larger inequities at play are subdued and the law is continuously abused to persecute these individuals as opposed to protecting them— with the understanding that underlying this violence, inhumane and degrading treatment the innate unacceptance, intolerance and hatred of perceived gender and sexual minorities in the country.

Finally, allies continue to represent and speak on behalf of the communities they claim to serve yet fail to support the work of organisations whose goal is to change the status quo both within and outside the courts of law. The current funding patterns also continue to give credibility to these institutions as opposed to actually investing in building the capacity of the communities that are leading and propelling this work, thus the futility of grassroots community-led mobilisation will continue to prevail.

[DOWNLOAD THE COURT RULING HERE](#)

References

[An Initial General Psychological Assessment Report Depicting the Effects of an Arbitrary Arrest on The Mental Health of 16 Gender and Sexual Diverse Youth Residing in a Shelter The Taala Foundation](#)

[PRESS STATEMENT. – The Taala Foundation](#)

<https://www.hrapf.org/index.php/resources/other-publications/159-20-07-20-press-statement-on-filing-of-the-cosf-case-7/file>

[Uganda Online Law Library \(ugandalawlibrary.net\)](#)