THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL SUIT NO. 094 OF 2015

1. THE CENTRE FOR HEALTH,
HUMAN RIGHTS & DEV'T (CEHURD) } ::::::::::::::PLAINTIFFS
2. KABALE BENON

Versus

ATTORNEY GENERAL :: DEFENDANT

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

JUDGMENT:

This is a suit brought by plaint against the defendant for redress under ***Article 50 of the Constitution of the Republic of Uganda.***

I must observe that the choice of procedure by the plaintiffs was wrong. They should have filed a notice of motion supported by an affidavit because the complaints contained in the plaint are about enforcement of human rights. There is a specific law on the enforcement of human rights which is ***The Judicature (fundamental rights and freedoms) (Enforcement procedure) Rules, S.I No.***

55 of 2008. However, since this court has jurisdiction to entertain the applications under those rules and this being a matter of public interest I will entertain this application in the interest of justice.

In the plaint the plaintiffs seek the following orders:-

1. *Declaration that the lack of a toilet and other sanitation facilities in the seclusion rooms in Butabika National Mental Referral Hospital is a violation of the freedom from cruel, inhuman and degrading treatment under Articles 24 and 44, right to a clean and health environment under Article 39 and right to health under Articles 8A, 45, and objectives XX and XIV (b) of the Constitution of the Republic of Uganda;*

2. *A declaration that the lack of appropriate beddings in the seclusion rooms in Butabika National Mental Referral Hospital is a violation of the freedom from cruel, inhuman and degrading treatment under Articles 24 and 44 of the Constitution and the right to freedom from torture under section 3 of the Prevention and Prohibition of Torture Act No. 3 of 2012.*

3. *A declaration that the act of undressing patients before detention in a seclusion room is a violation of the right to privacy under Article 26, the freedom from cruel, inhuman and degrading treatment under Articles 24 and 44 of the Constitution and the*

right to freedom from torture under section 3 of the Prevention and Prohibition of Torture Act No. 3 of 2012.

4. *A declaration that seclusion on the grounds of disability is a violation of the freedom from cruel, inhuman and degrading treatment under Articles 24 and 44 of the Constitution, right to personal liberty under Article 23 of the Constitution, and the right to freedom from torture under section 3 of the Prevention and Prohibition of Torture Act No. 3 of 2012.*

5. *A declaration that the detention of patients in seclusion rooms for long hours without supervision is cruel, inhuman and degrading treatment under Articles 24 and 44 of the Constitution and is a violation of their right to personal liberty under Article 23 of the Constitution, and the right to freedom from torture under section 3 of the Prevention and Prohibition of Torture Act No. 3 of 2012.*

6. *A declaration that locking patients in sealed off dark seclusion rooms without any visual or audio interaction with any person or the environment around them is a punitively unjust deprivation of personal liberty and is cruel, degrading and inhumane to the extent that it violates the right to personal liberty under Article 23 of the Constitution, and the right to freedom from torture under section 3 of the Prevention and Prohibition of Torture Act No. 3 of 2012.*

7. *An order compelling the defendant to develop Standard Operating Procedures for prevention and minimization of seclusion in handling of patients and violation of their rights.*

The plaintiff's case in summary is that Butabika Hospital is a Public Psychiatric Hospital under the Ministry of Health and is the only National Mental Referral Hospital in Uganda serving all the health facilities in the country. Cases referred to the hospital from other health facilities include cases of acute mental health illness necessitating specialized psychiatric care and management. As part of the procedures in the hospital applied to patients of acute mental health illness is to lock them up in seclusion rooms until the relapse has subsided. In October and November 2010 the 2nd plaintiff a patient at Butabika Hospital then was locked up in a seclusion room for more than Twenty Four hours without any supervision whatsoever. The 2nd plaintiff was locked in room measuring about 2 square metres and it had not toilet and a urinal which forced him to urinate and excrete in the same room and then endured sharing the room with such excreta for the whole time he was in seclusion. He was also undressed before he was placed in the seclusion room on two occasions and had to endure suffering the whole time he was in the rooms while stark naked regardless of the weather conditions. The seclusion room did not have beddings and the 2nd plaintiff had to lie on the concrete raised platform during the period in which he was under seclusion posing a great risk of other infections to him. The plaintiffs as such feel that the defendant has not adequately acted to protect the

rights of the parties like the 2nd plaintiff who are subjected to seclusion at the facility. The 1st plaintiff is a non-profit making company limited by guarantee working toward an effective, equitable health care system.

The defendant's case in summary is that the seclusion rooms are only used and were designed for temporary holding of the patients as treatment is being initiated. That the rooms are located very close to the sanitary facilities which can be used from time to time by patients in seclusion rooms when the staff check on them. That after administering the medicine the patient is removed from the seclusion rooms so there is no need for beddings in the rooms as patients will have been moved to a bed in the ward the moment administered medicine takes effect. That the patients are changed from personal clothes into hospital uniforms prior to seclusion. This is to ensure hygiene and easy identification so the right to privacy is not infringed and the hospital does not seclude anyone on the basis of disability. It only does so for the severely ill and those who are a danger to others. This is intended to allow administered medication to take effect to calm down the patient. That side rooms as a practice are only used for a short time as they wait for the drugs to take effect and this does not last beyond 3 hours. That the nurses check on the patient every two hours. So it is not true that patients are in detention for long hours without supervision. Further that the standard procedure is already in place to guide the seclusion of patients. That seclusion is only the last resort rather that the routine in the control of the patients

to be a danger to others. That seclusion is needed only when it is deemed necessary.

The following issues arise from this suit and were agree upon by the parties:

1. ***Whether the administration of seclusion as a method of treatment and rehabilitation to mental health patients in Butabika National Mental Hospital violated the patient's right to freedom from torture and cruel, inhuman or degrading treatment contrary to Articles 24 and 44 of the Constitution of the Republic of Uganda 1995 and section 3 of the Prevention and Prohibition of Torture Act No. 3 of 2012.***

2. ***Whether the acts of the defendant complained of by the plaintiffs violated the mental health patient's right to personal liberty, right to privacy, right to clean and safe environment and right to health contrary to Articles 23, 26, 39, 45, 8A, Objective XIV (b) and XX of the Constitution of the Republic of Uganda 1995.***

3. ***What remedies are available.***

At the hearing of this suit James Zeere and Kabanda David appeared for the plaintiffs, and Gorrette Arinaitwe appeared for the Attorney General. The matter proceeded interparty and each party had a chance to make their case and produce witnesses.

I shall deal with the issues raised seriatim but before I proceed I must state that it is trite law that the burden of proof of a civil case lies on the claimants to prove their case on a balance of probabilities.

1. ***Whether the administration of seclusion as a method of treatment and rehabilitation to mental health patients in Butabika National Mental Hospital violated the patient's right to freedom from torture and cruel, inhuman or degrading treatment contrary to Articles 24 and 44 of the Constitution of the Republic of Uganda 1995 and section 3 of the Prevention and Prohibition of Torture Act No. 3 of 2012.***

On this issue counsel for the plaintiffs submitted that the defendant created circumstances that violated the rights of patients including the 2nd plaintiff and repeatedly subjected them to seclusion contrary to *sections 5 (c) and (j) of the Prevention and Prohibition of Torture Act and Article 21 and 35 and Objective XVI of the Constitution.* That the defendant presented only one witness who is the in-charge of the hospital but his testimony should not be believed by this court. That he did not even know any of the medical workers who were in-charge of the 2nd plaintiff while he was at Butabika Hospital yet he claims that he had investigated the matter. That by subjecting patients to conditions of undressing them before and during seclusion, not providing food to them while in seclusion, maintaining them in seclusion for unreasonably long hours, not providing appropriate

beddings to them and not providing a toilet and other sanitation facilities to them in seclusion, the defendants created circumstances that aggravated the violation of the freedom from torture and cruel, inhuman and degrading treatment of the patients.

In reply the defendant's counsel submitted that during cross-examination PW1 in summary testified that the administration of treatment/injection is important as it contains patients during the early stages of recovery. That the plaintiff is a bi-polar patient and that the medication puts one to sleep and it helps the patient during the early stages recovery. That the seclusion rooms are within the wards and that the wards have toilets. That PW1 also testified that not every patient who goes to Butabika Hospital is put in seclusion rooms. That right now the plaintiff has recovered and he is better although still on treatment. That in cross-examination the plaintiff added that he was given medication to sleep and was very excited before it was given, and he knows that the injection is used to cool patient down.

Learned counsel for the defendant further submitted that PW2 Nixon Jurua during cross-examination stated that the reasons for seclusion are when the patient is aggressive, violent and restless and escape tendencies and is uncooperative to treatment and disruptive. He further stated that there is no particular model in the world while treating mental patients. Further in re-examination, he admitted that not every patient is put in seclusion rooms.

That the defendant's witness who is the Executive Director of Hospital; Dr. Basangwa testified that seclusion is standard psychiatric interaction, always short term and is used to give time for medication to take effect only to patients that are acutely disturbed. That it is for the patient's safety and sometimes or the safety of others. As such seclusion is part and parcel of treatment process. He stated that health workers are well trained and they use their discretion to determine who should be secluded. Further the defendant submitted that the reason why the hospital secludes a patient is to manage the patient in a place that reduces stimulation to the patient. He further added that when a patient is in seclusion, food is taken to the patient 3 times a day. In respect of sanitation, the Executive Director stated that the patients are in seclusion usually 2-3 hours and they are regularly checked on by health workers and that the toilets are adjacent to the seclusion rooms. That it is not true that the patients are undressed and are left naked. That on the contrary, patients who come to the hospital are changed into hospital clothes for easy identification and hygiene. That no bedding is put in seclusion rooms as it is a short term measure for medication to take effect. He further contends that there are guidelines which were tendered as Exhibit "D1."

That seclusion is a short term procedure and the alternative which is condemned as a means of containing patients is a straight bucket which paralyses a patient and it is condemned. That in respect of seclusion rooms he stated that seclusion rooms have adequate

ventilation and that the standard design for rooms have an observation door. That the toilets are adjacent to the seclusion rooms. That as such the defendant's submission is that the seclusion is temporary and medication is administered to calm down the patient. That as such the 2nd plaintiff was put in seclusion room because it was necessary and indeed when the former worker of Butabika PW2 removed him he exposed him to injury which he sustained when he escaped from hospital. That, it is the defendant's submission, that seclusion rooms are neither detention rooms nor are they a violation of the right to liberty and the right from the freedom from torture. That the Constitution recognizes as an exception to the right to liberty; medical care or treatment of *a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol.* That the Article states as follows;

"No person shall be deprived of personal liberty except in any of the following cases -

(a) .....

(b) .....

(c) .....

(d) .....

(e) .....

(f) ***in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of the care or treatment of that person or the protection of the community."***

That seclusion is not a form of punishment and does not violate the right to liberty nor is it a form of torture as the plaintiffs would want this court to believe. That the cases and authorities cited by the plaintiffs on pages 6-15 of their written submissions are not applicable to the case at hand and should be ignored by this court. That there is no evidence adduced to prove torture. That Butabika Hospital should be applauded for giving the 2nd plaintiff good treatment because the 2nd plaintiff admitted in cross-examination that he is now recovered and better yet he is bipolar.

In rejoinder the plaintiffs submitted that the submissions of the defendant are intended to mislead this court. That PW1 testified that he was put in seclusion room for over 24 hours. That as such, it is not true that the seclusion was applied for a short period of time. That even DW1 in cross-examination admitted that he did not know or remember what happened to PW2. That the uncontested evidence by PW1 and PW2 showed that PW1 was detained for more than 24 hours in a seclusion room. That PW4 also testified that they discovered in their investigations that patients were detained in seclusion rooms for more than 48 hours. That the evidence of DW1 in this case was hearsay and could not pass the criteria set in ***Evidence Act Cap 6 section 59*** that requires the witness to have seen, felt and perceived a fact. All these DW1 did not directly see or experience so his testimony is hearsay. That the defendant's witness also did not present to the court the record showing that the plaintiff was put in seclusion room for a specified period and stating the reasons for such

detention as required under the ***Section 16 of the Mental Health Act.***

That even the submissions that patients are always checked on every 15 minutes is false, because PW1 testified that after falling unconscious and he later became conscious, he was scared and cried out for help but no one responded. That PW2 corroborated the testimony of PW1 by stating that the 2nd plaintiff had already excreted and urinated in the seclusion room. That if there was monitoring as claimed by the defendant they would have noticed and removed the waste.

That the seclusion room's hygiene is not as good as the defendants seem to suggest. Because the Exhibit "P2", photographs of the seclusion rooms which were identified by the defendant, shows that the rooms are dirty, filthy and not fit for human habitation and these are the places where the 2nd plaintiff was detained for more than 24 hours. That although it is true that the 2nd plaintiff got better and recovered, it is also true that the treatment of patients at the hospital was deplorable and unfit for human beings and cannot be justified by the fact that the 2nd plaintiff recovered. That according to the testimony on PW3 and the report he exhibited as Exhibit "P1", seclusion is not the only method for mental treatment. That there are other methods such as reassurance, or de-escalation techniques but the defendant insists on seclusion. That the patients consent is never

sought on what sort of treatment they would be comfortable with and there is no emphasis on communication and long term care planning all of which would be important to prevent psychotic breaks and hence the need for seclusion.

In the alternative, counsel submitted for the plaintiffs that, if treatment of seclusion should continue then the patients need to be secluded under clearly approved Ministry of Health guidelines that follow the due process of law. They should be secluded in hygienic conditions with better ventilation and closer observation. That there is need to put toilets in those seclusion rooms, water and proper beddings given that most of the time during seclusion the patient is sedated and needs to lie down. That the one page document exhibited as the existing seclusion guidelines does not amount to guidelines and as such the hospital has no proper guidelines. That in the testimony of PW4, the director and the nurses did not know and could not locate the guidelines. That even if the regulations exist, the hospital staff are not following such guidelines. Their inability to comply with the rules should be pointed and stopped immediately as it led to the violation of the 2nd plaintiff's human rights and the rights of so many other individuals. That as such the 2nd plaintiff's and indeed other mentally ill patients right to freedom from torture and cruel in human or degrading treatment contrary to Articles 24 and 44 of the Constitution of the Republic of Uganda 1995 and section 5 of the Prevention and Prohibition of Torture Act No. 3 of 2012 have been violated by being

secluded for long periods of time in unhygienic conditions with no food and water.

I have considered the submissions of both parties and the evidence before this court. From the evidence on record the defendant showed this court that there is a standard procedure which is followed when dealing with patients at the Butabika hospital. On the other hand, the plaintiffs presented the 2nd plaintiff as their key witness. However, this court finds the value of his testimony reduced by the fact that he admitted to being mentally ill due to severe bi-polar and that he was still on treatment. Although he testified to being fine now after being treated at Butabika hospital his testimony appeared to me to be not entirely reliable. If he was mentally ill at that time in issue it is not believable that he could have recalled all that he went through.

The defendant presented the Executive Director who is in-charge of the hospital and who investigated the matter. In his testimony he demonstrated that he was very well conversant with the procedures at the hospital and submitted Exhibit "D1" which is a copy of the existing guidelines to a staff on seclusion. I am for those reasons inclined to believe the evidence and submissions of the defendants as ably submitted by the defendant than the plaintiffs and answer this issue in the negative.

I also find in favour of the defendants because it is clear that the right to liberty has exceptions one of which is in the case of mental treatment.

Whereas this court agrees with counsel for the plaintiffs that ***The Vienna Declarations and Program of Action 1993*** captured it aptly when it declared that:

> ***"All human rights are universal, indivisible, interdependent, and interrelated."***

In my view this means that the exception in the Constitution of Uganda does not waive all other rights of the patient. The patient will still deserve to be accorded such treatment that is human and not degrading. Even the right to freedom from torture must be respected.

In this case, however, this court has found that the defendant did not violate the rights of the 2nd plaintiff and acted in accordance with the law.

Article 24 of the Constitution provides that:

> ***"No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or unishment."***

This is one of the non-derogable rights under Article 44 of the Constitution which in this case the plaintiffs failed to prove was derogated from. The only injuries that the 2nd plaintiff sustained were those which he got when he was released from seclusion prematurely by the PW2 who is a former employee of the hospital. For that reason I find that the 2nd plaintiff was never tortured.

Further this court agrees that with the position in ***Centre for Health, Human Rights and Development & Anor Vs Attorney General (Constitutional Petition No. 64 of 2011)*** where the court of appeal in reaching its decision drew inspiration from the case of ***Purohit and Moore Vs The Gambia, African Commission on Human and Peoples Rights, Communication No. 241/2001 (2003)*** where the applicants in that case challenged the Lunatics Detention Act (LDA) of the Gambia, one of the grounds for their complaint was that the provisions of the LDA condemning any person described as a lunatic to automatic and indefinite institutionalization are incompatible with and violate Articles 2 and 3 of the African Charter. Section 2 of the LDA defines a "lunatic" as including "an idiot or person of unsound mind." The complainants in that case argued that since mental illness is a disability, the practice of detaining persons regarded as mentally ill indefinitely and without due process constitutes discrimination on the analogous ground of disability.

The African Commission held that human dignity is an inherent basic right to which all human beings, regardless of their mental capabilities or disabilities, as the case may be, are entitled to without discrimination.

However, when the matter comes to court the burden of proof is on the claimant and in this case the plaintiff did not put up a convincing case so as to warrant the grant of sweeping orders they seek on this issue.

In this case this court finds that the plaintiff did not prove on a balance of probabilities that the 2nd plaintiff was kept in seclusion for 24 hours without medical attention, without sanitation facilities. Further, this court finds that seclusion parse is not a violation of the rights of patients. The defendant convincingly explained circumstances under which a patient is put in a seclusion room and also proved by providing Exhibit "D1" that the Hospital has guidelines for staff on the rules governing the procedure of seclusion of patients.

This court also agrees with counsel for the defendant that treatment by seclusion cannot be said to be a violation of the rights of patients parse. Counsel for the plaintiff's submission that the patients need to be secluded under clearly approved Ministry of Health guidelines that are compliant with the modern laws of Uganda and follow the due process of law is good but it can best be done through engaging the Ministry and not the hospital and when that fails then an application for judicial review of the failure and refusal would be proper procedure.
For the reasons given herein I am inclined to answer issue 1 in the negative.

Issue 2 - Whether the acts of the defendant complained of by the plaintiffs violated the mental health patient's right to personal liberty, right to privacy, right to clean and safe environment and right to health contrary to Articles 23, 26, 39, 45, 8A, Objective XIV (b) and XX of the Constitution of the Republic of Uganda 1995?

On this issue counsel for the plaintiffs submitted that the acts of the defendant complained of by the plaintiffs violated the mental health patients' right to personal liberty, right to privacy, a right to clean and safe environment and right to health contrary to Articles 23, 26, 39, 45, 8A, Objective XIV (b) and XX of the Constitution of the Republic of Uganda 1995.

On the right to personal liberty, learned counsel submitted that although Article 23 (f) of the Constitution of Uganda prohibits deprivation of personal liberty except in case of persons suspected to be of unsound mind for purpose of care or treatment of that person or protection of community, the exception does not extend to seclusion of patients or person with mental disabilities that this amounts to torture inhuman and degrading treatment. That the reason for this submission is that the work of the UN Special Rapporteur makes clear that the use of seclusion and restraint of people with mental disabilities is not a form of medical treatment, but rather a form of

torture inhuman and degrading treatment. That there is no derogation permitted to the right to freedom from such treatment. That even PW1 Jurua Nixon testified that seclusion is not necessary as a form of treatment of persons with mental disabilities. Counsel also relied on the UN Special Rapporteur on Torture, and the Istanbul Statement on the Use and effects of Solitary Confinement.

Counsel further submitted that the Constitution does not define what amounts to unsound mind and the interpretation and application of the term can be biased, arbitrary and subjective by the individual making the determination as to unsoundness or soundness. That for one to be justified as to be of unsound mind one has to be incapable of being treated, cared for or being maintained in the community in which he was at the time of losing such reason. That Article 14 of the United Nations Convention on Persons with Disabilities 2006 requires that deprivation of liberty of the person with mental disabilities should be conducted with respect of their human rights and with provision of reasonable accommodation.

That seclusion is applied at Butabika hospital to all patients under the presumption that all the mentally ill patients are a threat to themselves and others and it is convenient to the medical workers. That it is an abuse of the human rights of the patient. Further that seclusion is not the standard method of treatment as alleged by the defendant. That the committee on the rights of

persons with disabilities has called on states to protect the personality integrity and security of persons with mental disabilities by among others eliminating the use of forced treatment, seclusion and various methods of restraint in medical facilities including physical, chemical and mechanic restraints.

Counsel then submits that there are measures which are not focused on demonizing patients as possible threats or dangers but are focused on providing a supportive environment for the care and management of a patient which minimize the need for seclusion and involves the patient in determining and understanding the course of action to be taken in the very special circumstances in which all options will fail and seclusion will be required. That the defendant simply apply seclusion as a matter of procedure and have not ventured into to explore these other patient centered strategies which could minimize the deprivation of patients' rights to personal liberty through seclusion.

I am not convinced by the submissions of counsel for the plaintiffs on this issue of liberty. I do think that the discretion of the medical doctor should be overridden by a court order. The medical doctors at the mental treatment hospital should be able to make the judgment on what is the most appropriate form of treatment that will help recover the patient. In all the methods of treatment in the medical field there is some inconvenience suffered by the patient. I also find that asking for the opinion of a person who has been determined to have mental problems is

not a wise suggestion at all. The 2nd plaintiff was taken to the hospital and admitted and in this case he was determined to be bipolar and in ten years has been admitted twice. It is therefore not believable that the defendant is unable to properly determine whether or not a person is mentally ill. Although counsel for the plaintiffs submits that there is international urge to modify the methods of treatment, this court has not been furnished with enough information on different methods of treatment so as to decide and direct the defendant to use a certain method as opposed to the other. It is unfortunate that counsel for the plaintiff has confused people with mental disabilities with people who are mentally disturbed. The two situations are not the same. As such I find that the plaintiff's right to liberty was not violated.

On the right to privacy, counsel for the plaintiff submitted that **Article 27 (3) of the Constitution** prohibits unlawful search of a person or the interference with the privacy of a person's home, correspondence, communication or other property. Further counsel submitted that the right to privacy is specifically protected under **Section 35 of The Persons with Disabilities Act 2006.** That **Black's Law Dictionary 8th Edition** defines privacy as the condition or state of being free from public attention to intrusion into or interference with one's acts or decisions as per page 3783 Bryan A Garner 2004. Further counsel submitted that Article 22 of the UN CRPD also protects the right to privacy of persons with disabilities. That Article 43 (2) of the Constitution provides a limitation on the enjoyment of a

human right is only justifiable if it is rationally connected to the objective it seeks to fulfill and sufficiently proportional to the objective it seeks to fulfill per Justice Mulenga in Charles **Onyango Obbo & Ors Vs AG SC Const. Appeal No. 2 of 2002.** That in this case there is no proof that indeed the undressing of patients prior to seclusion is rationally connected to the objective of preventing them from harming themselves. That undressing the patients is a violation of the right to privacy and exposes them to harsh conditions. Those patients are undressed only as a matter of convenience by clinical workers who do not want to supervise.

That undressing patients as evidenced by the case of PW1 at Butabika Referral Hospital before and during seclusion is in violation of their right to privacy because it interferes with their bodily integrity and dignity and is not justifiable for the purposes of preventing harm to themselves.

In reply the defendant submitted that patients are not undressed and left naked as testified by the Executive Director. When patients are admitted in the hospital they are changed into light clothes to avoid causing harm to one another and themselves. Further he stated that patients are changed to the hospital clothes for hygiene and easy identification. That therefore it is not true that patients are undressed and left naked unless they themselves remove the clothes because of their mental illness. That therefore there is no violation of the right to privacy.

In rejoinder the plaintiffs' counsel submitted that PW1 testified that on three occasions he was naked and kept in seclusion room. That PW2 corroborated this and stated that he found the 2nd plaintiff naked and shivering. That PW4 also testified that patients interviewed confirmed that they locked them in cold rooms naked and when the rooms need cleaning they are taken outside naked until cleaning is done. That it is clear violation of the right to privacy.

I have considered the submissions of both counsel and the evidence presented. I find that if a patient is undressed and left naked this would be a violation of the right to privacy. It however has been proved by the defendant through the testimony of the Executive Director of Butabika Hospital that this is not standard procedure at the hospital and there is no way it could have happened. When patients are admitted, they are changed into light clothes to avoid causing harm to one another and themselves. All patients are given light material hospital clothes when they get to the hospital for hygiene and easy identification. I therefore find that it is not true that patients are undressed deliberately and are left naked unless they themselves remove the clothes because of their mental illness. For those reasons I do not find that the rights of patients to privacy are violated generally as proposed by the plaintiffs.

On the right to a clean and health environment counsel for the plaintiff submitted that Article 39 of the Constitution protects the right of every one to enjoy clean and health environment. That and I agree, in placing the patients at the Butabika Hospital in seclusion, the hospital assumes the responsibility to ensure and maintain them in conditions which are clean and healthy enough for them to enjoy their right to a clean and health environment.

That by denying the patients sanitary facilities which forces them to excrete in their rooms such that the urine flows into corridors and compelling the patients to endure those rooms together with the excreta which is smeared on the walls the management of Butabika violates the right to a clean and health environment.

In reply the defendant submitted that the executive director testified that the toilets are adjacent to the seclusion rooms and the health workers check on the patients regularly and patients are put in seclusion rooms temporarily just for administering medication and to calm them down, thereafter patients are referred to the ward. That as such the patients are kept in a clean and health environment.

In rejoinder the plaintiff submitted that the submissions of the defendant are dishonest. That DW1 identified the photographs attached to the plaint as the seclusion rooms in Butabika Hospital National Mental Referral Hospital and they are a true reflection of the state of the seclusion rooms. That they are clearly showing a dirty and

filthy environment with moulds growing over the walls and excreta smeared on the wall and it has two small holes in the wall which are supposed to be ventilation. That in the investigation report PW3, it was observed that urine would seep through the seclusion rooms into the corridors of the hospital thus compromising the health of not just the people in seclusion but also the ones in the wards. Further that the lack of toilets is a clear violation of the right to a clean and safe environment.

I have considered the evidence and submissions of both parties. I am inclined to agree with the case put forward by the plaintiffs on this point. The photographs tell the whole story and were never challenged. However, this court finds that the seclusion rooms are not as hygienic as to ensure the patients' right to a clean and health environment. However, this court is unable on the basis of the limited evidence and lack of expert opinion in the plaintiffs' evidence, to make the decision on whether or not there should be a toilet in the seclusion room for mental patients. This is a judgment that can best be done by the doctors.

On right to health, counsel for the plaintiff submitted that by failing to provide an appropriate quality of care and to recognize medical ethics in the practice of seclusion as evidenced by PW1's experience the defendants are in violation of the right to the highest attainable standard of health.

In rejoinder the defendant submitted that the patients are availed with quality health care, indeed the 2nd plaintiff testified that he has been a patient since 2005 and in cross-examination confirmed that he has recovered and is better. That certainly this cannot be said to be a violation of the right to health.

I agree with the submissions of counsel for the defendant that the 2nd plaintiff was accorded the access to health care that allowed him to recover and feel better although he is still on medication. It can therefore not be said that his right to health was violated. In the process of administering the treatment there may have been uncomfortable situations but this does not mean that his right to health was completely violated or disregarded. As such I find that the patients' right to health at Butabika Hospital was promoted rather than abused.

Issue 3 – What remedies are available to the parties?

The plaintiff in plaint seek the following orders:

1. ***Declaration that the lack of a toilet and other sanitation facilities in the seclusion rooms in Butabika National Mental Referral Hospital is a violation of the freedom from cruel, inhuman and degrading treatment under Articles 24 and 44, right to a clean and health environment under Article 39 and right to health under Articles 8A, 45, and objectives XX and XIV (b) of the Constitution of the Republic of Uganda;***

2. ***A declaration that the lack of appropriate beddings in the seclusion rooms in Butabika National Mental Referral Hospital is a violation of the freedom from cruel, inhuman and degrading treatment under Articles 24 and 44 of the Constitution and the right to freedom from torture under section 3 of the Prevention and Prohibition of Torture Act No. 3 of 2012.***

3. ***A declaration that the act of undressing patients before detention in a seclusion room is a violation of the right to privacy under Article 26, the freedom from cruel, inhuman and degrading treatment under Articles 24 and 44 of the Constitution and the right to freedom from torture under section 3 of the Prevention and Prohibition of Torture Act No. 3 of 2012.***

4. ***A declaration that seclusion on the grounds of disability is a violation of the freedom from cruel, inhuman and degrading treatment under Articles 24 and 44 of the Constitution, right to personal liberty under Article 23 of the Constitution, and the right to freedom from torture under section 3 of the Prevention and Prohibition of Torture Act No. 3 of 2012.***

5. ***A declaration that the detention of patients in seclusion rooms for long hours without supervision is cruel, inhuman and degrading treatment under Articles 24 and 44 of the Constitution and is a violation of their right to personal liberty under Article 23 of the Constitution, and the right to freedom from torture under section 3 of the Prevention and Prohibition of Torture Act No. 3 of 2012.***

6. ***A declaration that locking patients in sealed off dark seclusion rooms without any visual or audio interaction with any person or the environment around them is a punitively unjust deprivation of personal liberty and is cruel, degrading and inhumane to the extent that it violates the right to personal liberty under Article 23 of the Constitution, and the right to freedom from torture under section 3 of the Prevention and Prohibition of Torture Act No. 3 of 2012.***

7. ***An order compelling the defendant to develop Standard Operating Procedures for prevention and minimization of seclusion in handling of patients and violation of their rights.***

It is important to note that the plaintiffs only had one victim so the claims that it is done to every patient is not believable because even the evidence presented by the plaintiffs was lacking to warrant the

grant of the orders sought. The application is based on the alleged violation of the rights of one patient but the plaintiffs seek orders that are too wide and too generalized which this court cannot grant.

Although in the submissions counsel for the plaintiffs prayed for damages the same was not prayed for in the plaint. On that ground I decline to award damaged to the plaintiffs.

In the final result, I order that this suit be dismissed.

Since this case is a public interest litigation, this court shall make no order as to costs.

I so order.

Stephen Musota
J U D G E
15.03.2018

15.03.2018:-

Ms. Gorrett Arinaitwe for Attorney General in Court.

Plaintiffs were not in court.

Jolly Court Clerk/Interpreter in Court.

Court:-

Judgment delivered in open court in presence of:

1. Ms. Arinaitwe Gorrett Counsel for the respondent.
2. Jolly Court Clerk

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Joy Bahinguza Kabagye

ASSISTANT REGISTRAR

15.03.2018