

THE REPUBLIC OF UGANDA

EQUAL OPPORTUNITIES COMMISSION

EOC REF NO. EOC/CR/123/2019



IN THE MATTER OF A COMPLAINT BY CENTRE FOR HEALTH HUMAN RIGHTS AND DEVELOPMENT (CEHURD)

CEHURD:..... COMPLAINANT

VERSUS

PASTOR DR. MARTIN SSEMPA :..... RESPONDENT

BEFORE HON. MEMBER JOEL COX OJUKU

DECISION

This is a decision arising from a complaint brought under Section 23 of the Equal Opportunities Commission Act No.2 of 2007 by Centre for Health, Human Rights and Development (CEHURD).

BRIEF FACTS;

Centre for Health, Human Rights and Development (CEHURD) lodged a complaint against Pastor Martin Ssempe on grounds of discrimination and stigmatization against people living with HIV and AIDs based on posts he made on his tweeter page on 24th July 2019. “Beauty contest of the prettiest girl with HIV is a campaign to sexualize and make normal having a deadly and contagious virus stigma is necessary to discourage non infected from getting it”. It was stated by the complainant that the Y+ pageant had been organized to eliminate stigma from young people, living with AIDS; to disclose their health status; and seek medication without fear of stigmatization. In reply to the allegations, the respondent claimed that his posts were in the exercise of his freedom of expression. He further claimed that he is a fighter of HIV /AIDS. In support of their claims during the hearing, the complainant presented one witness Ms. Nawanyanga Gloria while the respondent presented Bernard Mawejeje as witness.

ISSUES FOR DETERMINATION;

1. Whether the social media posts by The Respondent were discriminatory and stigmatizing to the participants in the Y+ pageant and people living with HIV and AIDS generally?
2. What are the available remedies?

The issues for determination are resolved as follows;



1. Whether the social media posts by The Respondent amounted to discrimination and stigmatization to people living with HIV and AIDS?

The enjoyment of human rights is grounded on five fundamental principles which include; Human Rights are universal, Human rights are inalienable, Human Rights are interdependent and indivisible, Human rights have to be applied in an equal and non-discriminatory manner, Rights come with obligations to respect, protect and fulfil for the state.

The constitution of Uganda guarantees that;

Everyone is Equal and has a right of freedom from discrimination. Article 21(1) of the 1995 Constitution of the Republic of Uganda provides that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and every other respect and shall enjoy equal protection of the law. A person shall not be discriminated against on the ground of sex, race, color, ethnic origin, tribe, social or economic standing, political opinion or disability.

The National policy Guidelines on Ending HIV Stigma and Discrimination 2020 states under paragraph 35.19 that people living with HIV shall have the right to assemble and associate among themselves in order to (a) enable them express their needs and wishes. (b) Support and help one another (c) effectively participate in the formulation of HIV and AIDS related policies and laws.

Complainant's witness GLORIA NAWANYAGA testifies that, the objective of the Y+ pageant is to empower young people living with HIV/AIDS and to get rid of stigma. Consequently, the Beauty Pageant was within the Policy Guidelines on ending HIV Stigma.

Under Article 21(3) of the Constitution of Uganda "Discriminate means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed, or religion or social or economic standing political opinion or disability".

According to Section 1 of the HIV and AIDS Prevention and Control Act 2015, discrimination means an act of alienation, refusal, isolation, maltreatment, disgrace, prejudice or restriction of rights towards another person because of the awareness or suspicion that such person is living with HIV or suspected HIV living person.

Section 1 of The Equal Opportunities Act 2007 defines Discrimination as any act, omission, policy, law, rule, practice, distinction, condition, situation, exclusion or preference which, directly or indirectly, has the effect of nullifying or impairing Equal Opportunities or marginalizing a section of society or resulting in unequal treatment of persons in employment or in the enjoyment of rights and freedoms on the basis of sex, race, colour, ethnic origin, tribe, birth, creed, religion, health status, social or economic standing, political opinion or disability. This was authoritatively decided in the case of *Bwengye Deus Dedit v Bishop Stuart University* [2018] UGEOC 1.

Further, section 1 of the HIV and AIDS Prevention and Control Act of 2015 defines discrimination to mean an act of alienation, refusal, isolation, maltreatment, disgrace, prejudice or restriction of rights towards another person because of the awareness or suspicion that such a person is living with HIV and AIDS or has a close relationship with a person living with HIV.

Dr. Eddie Mukooyo, Chairman Uganda Aids Commission, writing in his foreword to the National Policy Guidelines on Ending HIV Stigma and Discrimination, 2020 emphasizes thus;

“In Uganda, stigma and the resulting shame, denial, discrimination, and violation of other human rights are major barriers to effective national response to HIV.”

“Ending the AIDS epidemic is now seen as a feasible and achievable target. The Presidential Fast Tract Initiative on Ending AIDS as a public health threat is targeting elimination of HIV related stigma and discrimination. Thus, it’s clear that the only way to achieve the above ambitious target is through approaches grounded in principles of human rights, mutual respect and inclusion that are critical in addressing stigma and discrimination.”

The question is whether The Respondent is responsive or compliant with the letter and spirit of The Constitution of Uganda, The HIV/AIDS Prevention and Control Act, the relevant policy and the Equal Opportunities Act of 2007; and whether he is truly a crusader against the spread of AIDS as he claims to be. Or a saboteur of all efforts aimed at eliminating the AIDS pandemic in this Country? My reading of The Respondent’s conduct and testimonies throughout the proceedings in this complaint seems to suggest that he is stuck to his own perception which is diametrically opposed to the well-intended policies, laws, and practices aimed at curbing the deadly AIDS pandemic. This in effect is a violation of Article 21(I) of The Constitution of the Republic of Uganda which provides that;

“All persons are equal before and under the law ... and shall enjoy equal protection of the law”

Consequently, this Tribunal cannot allow perception and whims to override the well-intended Constitution, Laws, Policies and Guidelines that seek to fight stigma and discrimination against persons living with HIV and AIDS. Ipso facto, The Respondent is enjoined to treat victims of HIV humanely and with dignity and indeed provide an enabling environment for the elimination of all forms of HIV and AIDS related stigma and discrimination.

According to the Respondents social media post “Every disease must have a stigma to make it undesirable for the uninfected. This competition is trying to make it a desirable disease. I lost both my sister and brother to HIV. It’s a deadly disease. This is not to deny that some people who carry the virus are sexy and pretty.” He also states in his examination in chief that awards to participants of HIV Beauty pageants is wrong.

In his defense, The Respondent and his counsel produced evidence that he is a crusader against HIV and AIDS, certificates of recognition presented to him in appreciation of the illustrious, selfless, unprecedented and pivotal contribution to the fight against HIV and AIDS. However, the issue before this Tribunal is not with his past accomplishments but whether or not his social media posts were discriminatory and stigmatizing to the participants in Y+ beauty pageant and people living with HIV and AIDS generally. Consequently, the respondent’s refusal to appreciate the Y+ pageant on the grounds that the participants are people living with HIV and AIDS amounts to discrimination as defined in section 1 of the EOC Act to mean unequal treatment in the enjoyment of rights or freedom on the basis of health status.

No person shall be subjected to any form of torture or cruel, inhuman or degrading Treatment under Article 24 of the constitution of the Republic of Uganda.

The law on degrading treatment is also found in a number of international treaties, including Article one and five of the Universal Declaration of Human Rights, Article 1 & 2 of the United Nations Convention against Torture and other cruel, inhuman or degrading treatment or punishment. Article 7 of the international convention of civil and political rights.

Courts have variously stated that torture is 'deliberate inhuman treatment causing very serious and cruel suffering'. It attaches to such treatment a 'special stigma and extreme unhappiness or anxiety resulting from negative demoralizing statements such as those uttered by The Respondent.

Human dignity

Human dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment

Human dignity is inherent to every human being, and it is inalienable and independent of the state.

In the Canadian case of Law v. Canada (Minister of Employment and Immigration), [1999] 1 SCR 497, Justice Iacobucci wrote, on behalf of a unanimous majority of Canada's Supreme Court, at 53: "The purpose of S15(1) is to prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration.

From the facts on file, it's established that the respondent posted on his twitter page statements that stigma is necessary for some diseases and that pageant competition is sexualization of HIV/AIDS which is a contagious disease. Furthermore, his publication refers to stigma as a token of disgrace. This was also highlighted in The New Vision Newspaper of 28th July 2005 under the Title: "UAC BLOCKS HIV BEAUTY CONTEST"

This statement is inhuman and degrading to people living with HIV/AIDS because they demean and defeat efforts in the fight against AIDS and also amounts to violation of freedom from inhuman and degrading treatment.

Stigmatization

Stigmatization is not defined in the law. However according to the Cambridge Dictionary, Stigmatization is the act of treating someone or something unfairly by publicly disapproving of them. Stigma is categorized into physical, social, verbal and institutional stigma as highlighted in The National Policy Guidelines on Ending HIV Stigma and Discrimination 2020.

According to Respondent's social media post "Every disease must have a stigma to make it undesirable for the uninflected. This competition is trying to make it a desirable disease. I lost both my sister and brother to HIV. It's a deadly disease. This is not to deny that some people who carry the virus are sexy and pretty." He further states that "here is the problem with this whole issue A beauty contest of the prettiest girl with HIV is a campaign to sexualize and make normal having a deadly and contagious

virus. 2. Stigma is NECESSARY to discourage none infected from getting it...This is to make HIV sexy!" Pastor Ssempe posted this information on his social media with a huge following, warning "Stigma is NECESSARY." The Complainant testifies that she was indeed stigmatized by this statement because of the huge Social Media following of the Respondent.

I am alive to the fact that The Respondent has right to freedom of expression under Article 29(1) (a) of the constitution which include freedom of the press and other media and Freedom of thought, conscience and belief.

However, the above right is limited by Article 43 of the constitution which is to the effect that no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest. Both international and domestic legal frameworks have "carefully drawn and limited restrictions on freedom of expression to take into account the values of individual dignity and democracy. "Article 43(2)(c) of the constitution of the Republic of Uganda states that public interest shall not permit any limitation of enjoyment of the rights and freedoms prescribed by chapter 4 beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this constitution.

The standard set by article 43 here above was well enunciated by the supreme court of Uganda in the case of Charles Onyango Obbo & Andrew Mujuni Mwenda v. Attorney General, Constitutional Appeal No.2 of 2002, where it was stated that, the yardstick is that the limitation must be acceptable and demonstrably justifiable in a free and democratic society. The limitation on the enjoyment of a protected right in defense of public interest is in turn limited to the measure of that yardstick. In other words, such limitation, however rationalized, is not valid unless its restriction on a protected right is acceptable and demonstrably justifiable in a free and democratic society.

The Respondent while expressing his right to freedom of expression prejudiced the right to freedom of association and the right to freedom from discrimination for people living with HIV and AIDS, and he cannot therefore be given unlimited latitude to use his Twitter posts on social media as a channel of abuse and promotion and discrimination against persons living with HIV/AIDS referred to herein for which there is no demonstrable justification whatsoever in his tweet which failed on all fronts to prove that the beauty pageant was a means of spreading HIV. The Complainant minced no words when she stated that she was indeed grievously traumatized by The Respondent's social media post which was read by hundreds of followers.

1. What are the available remedies?

Affirmative action in favour of marginalized groups is well expressed in Article 32 of the Constitution.

32(1) "Notwithstanding anything in the constitution, the state shall take affirmative action in favour of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them."

(2) "Laws, cultures, customs, and traditions which are against the dignity, welfare or interest of women or any other marginalized groups to which Clause (1) relates or which undermine their status, are prohibited by this Constitution."

It was held by Hon. Lady Justice HENRIETTA WOLAYO in the case of GUARANTEE TRUST BANK (U) LTD VS ACAYE FRED P'AVANI CANO. 51/2018 (Arising from EOC complaint No.CR/074/74/2015) that;

“It could not have been the intention of the legislature to create a tribunal to determine complaints against discriminatory treatment and then withhold the powers to grant effective remedies.”

Premised on the above, and having decided the first issue in the affirmative, The Complainant is therefore entitled to damages as deemed appropriate by this tribunal in accordance with section 15(3)(4)(b) of the Equal Opportunities Commission Act.

The Equal Opportunities Commission has powers under section 14(3) of the Equal Opportunities Act 2007, to rectify settle and remedy any act or omission that is found to constitute discrimination. Similarly, section 40 of the HIV and AIDS Prevention and Control Act 2015 provides for liability for discriminatory acts and practices and states that a person who contravenes any of the provisions of part 7 of the HIV and AIDS Prevention and Control Act 2015 shall be liable to a civil wrong.

Consequently, having resolved ISSUE 1 in the affirmative, the Respondent is culpable for having committed a Civil wrong under Part 7 of the HIV and AIDS prevention and Control Act, 2015. Furthermore, Section 46 of the HIV and AIDS Prevention and control Act, 2015 states that a person who contravenes the provisions of this Act, where no specific punishment is prescribed shall be liable on conviction to a fine of not more than two hundred forty currency points or to imprisonment for a term of not more than ten years or to both.

Be this as it may, the Equal Opportunities Commission’s fundamental purpose is to handle social harmony and not custodial punishment for violators of human rights or equal opportunities principles. We are not here to convict but strike social equilibrium in our society through settlement and just dispute resolution mechanisms.

It is therefore ordered as follows:

1. The Respondent shall at all times comply with the provisions of The Constitution of the Republic of Uganda (1995) as amended; the Equal Opportunities Commission Act, 2007; The HIV and AIDS Prevention and Control Act, 2015; The National Policy Guidelines on Ending HIV Stigma and Discrimination 2020, and or any other relevant Laws, Regulations, and Instructions when addressing issues pertaining to HIV/AIDS in Uganda.
2. The Respondent shall forthwith desist from uttering or posting on social media or the main stream media any statements that have the effect of causing stigma against people living with or affected by HIV/AIDS.
3. The Respondent shall within a period not exceeding 14 days effectively withdraw any discriminating and stigmatizing statements posted on his twitter page against The Complainant and all persons living with or affected by HIV/AIDS.
4. No damages or costs awarded against either party.
5. Any dissatisfied party is at liberty to appeal within a period of 30 days from the date of this decision.

I so order.

Dated, Signed and Sealed this 27 day of SEPT. 2023.


JOEL COX OJUKO

Vice Chairperson/Presiding Member