

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

**MISCELLANEOUS CAUSE NO. 75 OF 2020**

**CENTER FOR FOOD AND ADEQUATE LIVING RIGHTS**

**[CEFROHT].....APPLICANT**

**VERSUS**

**ATTORNEY GENERAL.....RESPONDENT**

**BEFORE: THE HON. JUSTICE ESTA NAMBAYO**

**RULING**

Center for Food and Adequate Living Rights[CEFROHT] (hereinafter referred to as the Applicant) brought this application against the Attorney General (hereinafter referred to as the Respondent) under **Articles 50(1), (2), 8A, 20, 45 and the National Objectives and Directive Principles of State Policy No. XXII and XXIII of the Constitution, Sections 3 & 4 of the Human Rights (Enforcement) Act 2019, and Rules 5 and 6 of the Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules, 2019, Section 98 of the Civil Procedure Act and Order 52 Rules 1 & 2 of the Civil Procedure Rules (as amended)** seeking for declarations that:

**1. The Respondent's failure and omission to issue guidance on the access to and availability of food during the corona virus (COVID 19) pandemic is a violation of and a threat to the National Objective and Directive Principles of State Policy No. XXII & XXIII and Articles 20, 45 and 8A of the Constitution of Uganda.**

**2. The Respondent's failure and omission to regulate the prices of food during the COVID- 19 pandemic and guidance on food reserves in the Country is a violation of and threat to rights guaranteed under the National Objectives and Directive Principles of State Policy No. XXII, XXIII, Article 20, 8A and 45 of the Constitution of Uganda (as amended).**

**3. The Respondent issues guidance on access and availability of food during the government directives on social distancing, ban on public transport within two days after passing this judgement.**

**4. The Respondent issues guidance on access to food from government strategic food reserves to stabilize the rising food prices on the market and enable easy access to food by all.**

**5. The Respondent issues guidance on food prices and other commodities necessary for realization of the right to adequate living.**

**6. The Respondent makes regulations under the food and Drugs Act for the above purposes within 5(five) days from the passing of judgement in this matter**

The grounds for this application are premised on the affidavits of **Obbo Geoffrey** but briefly are that;

1. The Respondent is duty bound to protect, promote and fulfill the rights of its citizens in Uganda, including establishing and maintaining national food reserves for food security and nutrition.

2. The country is currently faced with a pandemic of the corona virus (**COVID 19**).

3. H.E the President in response to the pandemic on the 8th day of March, 2020, gave directives closing all schools, all students were sent back to their homes and businesses shut down for 32 days.

4. It was also stated by H.E the president in his state of the Nation address on the 22<sup>nd</sup> of March 2020, that people should limit their movements and rather stay in their homes in order to limit the spread of the virus. This, he called social distancing.

5. Ugandans have complied with the above directives and stopped carrying out their daily activities and are spending most of the time in their homes staying safe.

6. On the 25<sup>th</sup> of March, 2020 the government issued other directives and banned all public transport and markets where many people are delving their livelihood.

7. Prices of food and other commodities such as salt, sugar, and beans have increased drastically since the government directives were issued.

8. The pandemic is happening in Uganda at a time when planting has already happened and people only get food stuffs from shops

9. The Respondent's omissions and failures to issue guidance on access and availability of food during the government directives are unconstitutional, a violation of and a threat to the constitutional guarantees to the right to food and livelihood for which the applicant is seeking declarations, orders and redress.

10. It is fair and just that this application is allowed.

11. This being a public interest case the applicants have not sought for costs.

The Respondent filed its affidavits in reply opposing this Application on grounds that the Government has put in place guidelines to curb the spread of Corona virus in accordance with the recommendations made by the World Health Organization (WHO), which include social distancing, surveillance and contact tracing, restriction on movement and stay at home orders among others.

Uganda being a State party to the WHO, is duty bound to implement the International Health Regulation recommendations of WHO in fighting a Public Health emergency of international concern such as the COVID-19 pandemic. The Government of Uganda, through the Office of the Prime Minister has already commenced and is in the process of distributing food items to wit, maize flour, beans, sugar and powdered milk to the most vulnerable members of the public across the country

which is intended to ensure food availability during this COVID-19 pandemic; thus safeguarding the right to food and livelihood for all Ugandans.

The Government has neither failed nor omitted to regulate the prices of food during the COVID-19 pandemic and that the Applicant's assertion that there is a likelihood of famine around Uganda due to the restrictions set down by the Government is baseless and merely speculative.

When the matter came up for hearing, the Applicant was represented by Counsel David Kabanda of M/s Dalumba Advocates while the Respondent was represented by Ms. Kukunda Claire a State Attorney from the Attorney General's Chambers. Counsel filed written submissions and furnished this court with a number of authorities.

### **Issues for trial:**

- I. Whether the Respondent's failure and omission to issue guidance on food access and availability for vulnerable people around the whole country during the COVID-19 pandemic is a**

**violation and threat to Articles 20, 45 and 8A of the Constitution**

**II. Whether the omission by government to establish food reserves is a violation of the right to food and a violation of its duty to the National Objectives and Directive Principles of State Policy No. XXII, XXIII and Articles 20, 45 and 8A of the constitution**

### **Resolution of issues**

**Issue No. I: Whether the Respondent's failure and omission to issue guidance on food access and availability for vulnerable people around the whole country during the COVID-19 pandemic is a violation and threat to Articles 20, 45 and 8A of the Constitution**

### **Submissions**

Relying on the National Objective and Directive Principles of State Policy **No. XXII & XXIII**, articles **8A ,20** and **article 45** of the Constitution of Uganda, Counsel for the Applicant submitted that the government of Uganda has a duty to uphold and promote the right to livelihood, and all rights of everyone in Uganda. Counsel explained that the right to livelihood means the right to live or survive and that it survives in the womb of the right to food as the latter offers means for securing one's

survival. In this way, food not only remains a critical determinant of an individual's survival but also becomes a determinant of their right to life. To illustrate his point, Counsel relied on the case of **Attorney General Vs Salvatori Abuki Constitutional Appeal No. 1 of 1998**, where the Supreme Court discussed the right to livelihood and noting what may result if such a right is not observed, pointed out that:

*".....By banishing the offender from his locality after the prison term, untold harm is likely to ensue rendering him destitute. The court should not lose sight of the effect of this order on his family and dependants. This is likely to be very frustrating and would eventually turn him into a criminal once again. It would therefore be ruinous and counter productive. As we move into the next millennium we should bear in mind that in different parts of Africa clarion calls can be heard for greater attention to Human rights."*

Counsel then submitted that in the current situation, vulnerable people who have no food at all or means to get it may refuse to die and flout the COVID19 measures, which may lead to the spread of the virus if they run out of their homes to look for something to eat for survival which puts the whole nation in danger.

Counsel further relied on the case of **Hon. Okupa Elijah & 2020 Others Vs Attorney General & Ors; Misc. Cause No. 14 Of 2005**, and the Indian case of ***Olga Tellis & Ors -Vs- Bombay Municipal Council [1985] 2; SCR No. 51. (Supreme Court of India)***; where Batema, J,

while discussing the right to livelihood cited the case of **Attorney General Vs Salvatori Abuki (supra)** noting that:

*"..... This right is not expressly provided for in the constitution of the Republic of Uganda. It is however justifiable by virtue of the provisions of Articles 8A and 45 which recognize rights and freedoms not expressly provided for by the Constitution."*

In the **Olga Tellis (supra) case**, the Supreme Court of India held that;

*"The right to life includes protection of means of livelihood...the right to life, in Article 21 of the Constitution, encompassed means of livelihood since, if there is an obligation upon the State to secure to citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life."*

Counsel explained that relying on the above cases, Batema, J, observed that:

*"The impact of barring a human being from his home area or gardens (to access food) is to render him homeless and devastated...it is no answer that he can setup a home somewhere and live like any other peasant"*

Counsel further explained that 87.2% of Ugandans are in informal sector, living on a hand to mouth basis; 4500 companies have so far closed, 56 % of the rural income is spent on food and 54% in urban. There are 41 municipalities, 122 municipal divisions and 357 town councils, whose



biggest population are in the informal sector working and living on hand to mouth. This makes the vulnerable groups of people to cover a large proportion of the country's population with 48.1% being children below the age of 15, 1.6% being the elderly people and 5.7% being people living with HIV/AIDS within the age range of 14 to 59.

Basing on the above, Counsel submitted that on the 25<sup>th</sup> March, 2020, when Government issued directives banning all public transport thereby limiting avenues through which Ugandans can access food, all the above people in a lockdown with no access to food and no guidance from government on its (food) availability or to government's food reserves; is a violation of and a threat to human rights to livelihood guaranteed under the National Objectives and Directive Principles of State Policy XXII and XXIII; together with Articles 8A, 20 and 45 of the constitution of the Republic of Uganda.

It is Counsel's further submission that during the COVID19 pandemic all measures set by the government to prevent its spread, like the lockdown should at the minimum, guarantee the survival of all the vulnerable persons in the whole country. The right to food approach calls for a specific focus on categories of people that are vulnerable or marginalized, such as the landless, the unemployed, the elderly, indigenous peoples, women, children, and people with disabilities. These categories of people are spread all over the country in different areas however, as shown in the affidavits in support and the supplementary affidavit (**annexure "H", "I", " J" in the supplementary affidavit**), on

Saturday the 4th April, 2020, the Government of Uganda decided to only distribute food to vulnerable people in Kampala and Wakiso districts leaving out the rest of the Country. Counsel emphasized that Government programs like food support should be distributed without discrimination and with clear guidelines. He relied on **General Comment 22 of the International Covenant on Economic, Social and Cultural rights**, where the key principle stated is that there should be **no discrimination when distributing food aid relief**.

Further to the above Counsel submitted that **S.41 of the Food and Drug Act**, provides that the minister may make regulations for the better carrying out the purposes and provisions of the Act. He explained that in the current situation, there are no clear guidelines being followed to identify who should benefit from the relief food. The office of the prime minister following the presidential directive is giving food to those they think or believe to be vulnerable (poor), but this risks some other people who equally need the food missing out because they don't look poor or vulnerable. That the failure by the government to give directions and guidelines on how to access food by all persons throughout the whole country (see **Paragraph 23 and 24** of the Affidavit in Support and paragraph **15** of the supplementary affidavit) is violation of articles 8A, 20 and 45 of the Constitution of Uganda and other international instruments to which Uganda is a signatory.

Counsel prayed that the respondent be directed to make clear guidelines to be followed by the Task Force (including the District Task

Forces) in distribution of the food and the guidelines should indicate the different schedules of providing food around Uganda, taking into consideration and prioritizing the vulnerable persons in Uganda like children, the elderly and persons living with disability.

In reply Counsel for the respondent submitted that the state has not only provided guidance on food access and availability but it has also gone ahead to avail food to the most vulnerable Ugandans and as such the captioned provisions of the Constitution have not been violated or contravened in any way. Counsel explained that Violation according to Black's Law Dictionary means, "*an infraction or breach of the law*" or "*the act of breaking or dishonoring the law; the contravention of a right or duty*".

In other words, violation connotes failure and/or refusal to act. Going by this definition, the state would be held to be in contravention or in violation of the law if it did not take any steps to ensure that the right to food is upheld and safeguarded. Counsel further explained that the Constitution of Uganda does not expressly provide for the right to food. However, this right is enshrined within other rights such as the right to life since it is not in doubt that without food, a human being cannot live. The only provision in the Constitution that is close to expressly providing for the right to food is Objective XXII.

According to Counsel, Objective XII in a nutshell, requires the state to encourage people to grow and store food, establish food reserves and

encourage proper nutrition through mass education. The duty of the state as demanded by the constitution is to ensure access to and availability of food as well as safeguarding this right. Counsel submitted that considering the steps taken by the Ugandan Government to eliminate hunger and food scarcity during the COVID-19 pandemic, it cannot be said that it is in violation of the right to food. She explained that under Article 20 (2) of the Constitution, it is the duty of the state to respect, uphold and promote the rights of individuals and groups in Uganda. Therefore, with its duty in mind, the government had already foreseen that temporary closure of businesses and work during the COVID – 19 lock down would affect the earning trends of most Ugandans. As a relief measure, the Office of the Prime Minister was tasked to procure food stuffs such as beans, maize flour, sugar and powdered milk to avail food to the most vulnerable, having been granted a supplementary budget of 59billion shillings. (*Refer to paragraphs 5 (d) and (e) of the Respondent's supplementary affidavit*) and there are guidelines that were put in place to be followed to ensure fair distribution of relief food especially to the most vulnerable Ugandans. These are still being followed by the Office of the Prime Minister in execution of relief aid measures. In these guidelines, there is a clear criterion to follow to identify vulnerable Ugandans and the groups outlined include elderly persons, pregnant mothers, child-headed households, female headed households, the informally employed,

orphans, Counsel relied *on page 4, paragraph 3.03 of annexure A and page 5 of annexure C to the Respondent's supplementary affidavit.*

Regarding the allegation that there is discriminative distribution of food to Kampala and Wakiso, Counsel for the Respondent submitted that this is a fallacy. She explained that the Office of the Prime Minister has distributed food across the country especially to hospitals where the most vulnerable people are (see *annexure E to the Respondent's supplementary affidavit*). District task forces throughout the country have also been created to oversee and supervise distribution of relief food in their localities. (*Refer to paragraph 5(n) of the Respondent's supplementary affidavit*).

Further to the issue of discriminative distribution of food, Counsel for the respondent submitted that H.E the President of the Republic of Uganda in his address given on 30<sup>th</sup> March 2020, made it clear that farmers were free to continue farming since they would not be crowded in their farms or plantations at any one moment. (*Refer to annexure A, page 2, paragraph 9 to the Applicant's supplementary affidavit*). This is contrary to the Applicant's submission that the lockdown has completely stopped access to food and agriculture. She went on to explain that most Ugandans survive on subsistence agriculture and therefore, the fact that the state maintained open access to farmlands proves the upholding and promotion of the right to food.

On the submission that some vulnerable people may run out of their homes to look for food and thereby spread the virus as alleged by the applicant, Counsel for the Respondent submitted that this was merely speculative. There is no basis to such an allegation since the government is actually delivering the food directly to people's homes. *(Refer to annexure A and C to the Respondent's supplementary affidavit).*

In regard to the submission that there is need to issue guidance on food prices and other commodities, it was submitted for the respondent, that food prices in Uganda are determined by the forces of demand and supply; a fact which is admitted by the Applicant in paragraph 18 of the first affidavit in support of the Application. Therefore, this renders this prayer moot. Counsel for the respondent went on to submit that the Government by putting in place food distribution mechanisms and appropriating money from the contingencies fund is actually promoting and upholding the right to food. Contrary to the Applicant's submissions, Article 25 of the Universal Declaration of Human Rights and art. 11 of the International Covenant on Economic and Socio-Cultural rights are being observed and adhered to. Counsel explained that the Applicant in fact acknowledges the efforts of the state in its submissions at page 10, paragraph 2 where it is admitted that the government of Uganda decided to distribute food to the vulnerable in Wakiso and Kampala.

Based on the foregoing submissions, Counsel for the Respondent submitted that the measures taken by the state are a direct fulfillment of its obligations expected under Objectives XXIII of the Constitution

which provides that the state ought to put in place machinery to deal with natural disasters and hazards (such as the COVID-19 pandemic). The same measures are a fulfillment of the expectations under Articles 20, 45 and 8A of the Constitution and prayed that this issue be answered in the negative.

## **Court**

***Article 8A of the Constitution (as amended) provides that:***

***(1) Uganda shall be governed based on principles of national interest and Common good enshrined in the national objectives and directive principals of state policy.***

The National Objectives and Directive Principals of State Policy referred to in this case are National Objectives and Directive Principals of State Policy Nos. XXII and XXIII.

National Objective & Directive Principal of State Policy No. XXII provides that:

***The State shall—***

***(a) take appropriate steps to encourage people to grow and store adequate food;***

***(b) establish national food reserves; and***

***(c) encourage and promote proper nutrition through mass education and other appropriate means in order to build a healthy State.***

While National Objective & Directive Principal of State Policy No. XXIII provides that:

***The State shall institute an effective machinery for dealing with any hazard or disaster arising out of natural calamities or any situation resulting in general displacement of people or serious disruption of their normal life.***

Under Art. 20 (1) of the Constitution, it is provided that fundamental rights and freedoms of the individual are inherent and not granted by the State, and;

***Under Article 20 (2) - All organs and agencies of Government and all persons are enjoined to respect, uphold and promote all rights and freedoms enshrined in the Chapter. The Chapter referred to here is Chapter four which deals with protection and promotion of rights and other human rights and freedoms.***

***Art. 45 of the Constitution provides that:***

***“The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned.”*** This article also falls under Chapter 4 of the Constitution.

From the submissions of Counsel for both parties, it is not in dispute that the right to food is not directly catered for under the Constitution



of Uganda but it is an implied right under the right to livelihood. (the submissions of Counsel for the Applicant) that;

*"the right to livelihood means the right to live or survive and that the right to livelihood survives in the womb of the right to food as the latter offers means for securing one's survival. In this way, food not only remains a critical determinant of an individual's survival but also becomes a determinant of their right to life."*

This is in agreement with the submissions by Counsel for the respondent that:

*"the Constitution of Uganda does not expressly provide for the right to food. However, this right is enshrined within other rights such as the right to life since it is not in doubt that without food, a human being cannot live.*

In the case of **Hon. Okupa Ellijah & 2020 Others Vs Attorney General & Ors Misc. Cause No. 14 Of 2005**); Batema, J; while discussing the right to livelihood cited **Attorney General Vs Salvatori Abuki (supra)** noting that:

***"..... This right is not expressly provided for in the constitution of the Republic of Uganda. It is however justifiable by virtue of the provisions of Articles 8A and 45 which recognize rights and freedoms not expressly provided for by the Constitution."***

From the evidence on record, annexure "G" to the supplementary affidavit in support of the motion shows that on the 8<sup>th</sup> of April, 2020,

members of parliament raised an issue that the ongoing food distribution during the COVID – 19 pandemic was not catering for the entire country. Hon. Musa Echweru, the minister for disaster preparedness and refugees, in reply to the issue raised, informed the House that his Ministry is mandated to pick up distress calls across the country and make necessary lifesaving interventions. Hon. Ecweru explained that:

*“we can all agree that the magnitude of the challenges associated with the COVID- 19 are enormous and therefore, present a great challenge to the Country. Government recognizes the severe impact of the lock down that was instituted on all the people especially those who live on hand-to-mouth in all districts in the Country. Given the magnitude of the situation, we found it wise to commence the distribution with slum dwellers, hospitals, special needs homes and orphanages in Kampala, Wakiso and Mukono districts and these are special cases that have zero options. Any delay would have caused loss of lives.”*

Hon. Echweru made further clarifications that;

*“despite the inadequate resources that have posed a challenge to food distribution, deserving persons who had not been captured would be considered starting on Thursday, 9<sup>th</sup> April, 2020.”*

Annexure 'B' to the respondent's supplementary affidavit in reply is a letter from the Permanent Secretary – Prime minister's office to the Permanent Secretary/Secretary to the Treasury requesting for a

supplementary allocation of Ushs.65 billion for relief food to 2 million most vulnerable people - urban poor people living in Kampala, the municipalities of Wakiso district and other selected large urban municipalities. In the last paragraph, the PS, Ms. Christine Guwatudde Kintu states that:

*“the purpose of this letter, therefore, is to request you for a supplementary allocation of Ushs. 65,443,600,000/- for procurement of food relief to 2,000,000 people most vulnerable urban poor people living in Kampala Capital City, Municipalities of Wakiso, Gomba Sub county (seeta, Buto) of Mukono district, Arua and Mbale Municipalities”.*

Annexures 'A' & 'C' to the supplementary affidavit in reply is the relief distribution budget and plan respectively, for Kampala and Wakiso for the urban poor, while annexure 'E' is food distribution to hospitals. In this distribution schedule, nine regional referral hospitals including; Gulu, Lira, Mbale, Jinja, Mubende, Masaka, Mbarara, Kabale and Soroti are listed for consideration for distribution of food. There is also another schedule for food distribution for hospitals phase II. All this is from the Office of the Prime Minister.

In yet another communication, **annexure 'J' to the supplementary affidavit in support of the application**, the Permanent Secretary, Ministry of Local Government, Mr. Ben Kumumanya in his letter dated 14<sup>th</sup> April, 2020 wrote to all Chief Administrative Officers addressing

them on the **Management of resources received for the fight against the spread of COVID-19 Virus.**

In paragraph 2 of the communication, the PS states that in order to standardize the emergence response activities in this period, the Ministry of Local Government in consultation with the ministry of Health is providing the following guidelines.

**Guideline No. 2 (vi)** deals with the provision of food and other essential items for people under quarantine in the approved isolation centers.

**Paragraph 5n** of the respondent's supplementary affidavit in reply states that;

*"in addition to the existing mechanism of relief support during emergencies, gov't established district COVID -19 task forces empowered to not only respond in the management of a COVID spread, but also to plan and mobilize resources for food relief."*

Under **Paragraph 5(o) of this same affidavit in reply** it is stated that a number of well-wishers have donated food items and money and the task force is to help provide food to the masses.

Further, **paragraph 5 (q), of the supplementary affidavit in reply, clearly** states that the Government only puts in place a conducive environment for food accessibility and availability but cannot feed every individual.

From the above evidence, therefore one realizes that the COVID -19 Pandemic food distribution is not concentrated in Kampala and Wakiso Districts only but it is spread in other areas of the Country.

The other issue of concern that was raised by Counsel for the Applicant is that there are no guidelines for the distribution of food. Counsel submitted that **S.41 of the Food and Drug Act**, provides that the minister may make regulations for the better carrying out the purposes and provisions of the Act. He explained that in the current situation, there are no clear guidelines being followed to identify who should benefit from the relief food and prayed that the Minister be directed to come up with the regulations as soon as possible to guide on the whole process of access and distribution of food during the Pandemic.

I have referred to annexures "A", "C" & "E" to the supplementary affidavit in reply which is the relief distribution budget and plan for Kampala and Wakiso for the urban poor; and a distribution schedule for nine referral hospitals throughout the whole country.

Page 4 of annexure "C" is headed "Criteria for Selecting Vulnerable Persons". Details are then given on how to go about the identification process of who qualifies to be vulnerable.

In my view, those are guidelines to the office of the prime minister in as far as where to start the implementation of their activities, what areas to cover and who is to be considered to the relief food distribution.

Further to the above, when Hon. Echweru was responding to issues raised in Parliament about the distribution of food to Kampala and Wakiso only, he said that:

*"...we found it wise to commence the distribution with slum dwellers, hospitals, special needs homes and orphanages in Kampala, Wakiso and Mukono districts ... these are special cases that have zero options and so any delay would have caused loss of lives."*

In addition to the above there is The Food and Drugs (Food Fortification) Regulations, 2005, Statutory Instrument No. 2. Of 2005 brought under section 41 of the Food and Drugs Act, Cap 278) which regulate the fortification of food and the Uganda National Bureau of Standards Act, Cap 327, establishing the Uganda National Bureau of Standards, with the primary mandate of developing, promoting and enforcing standards and quality of products and services to facilitate fair trade and protect national consumers among other responsibilities. The Bureau also formulates national standards specifications for commodities (see S.3(1))

The above, in my view, shows that the office of Prime Minister had guidelines and there are regulations in place to guide the whole process of distribution and quality of food distributed.

It is also important to note that there was general guidance on access to food by all people. (see annexure 'E' to the affidavit in support of the application). This was the second presidential address on the 25<sup>th</sup> March,

2020 on COVID 19. Under paragraph 11 of this annexure, H.E the president states that:

*“with immediate effect, markets should only be used for sale of foodstuffs. We are talking of items like matooke, sweet potatoes, cassava, rice, beans, cowpeas, beef, chicken, vegetables etc. Trading of none food items in the markets is suspended immediately”*

In regard to the submission that there is need to issue guidance on food prices and other commodities for the realization of adequate living, it was submitted for the respondent, that food prices in Uganda are determined by the forces of demand and supply. Annexure 'F' to the affidavit in support of the application is a press statement by the Minister of Trade, Industry and Cooperatives, Hon. Amelia Kyambadde where she was addressing the concerns of the manufacturing and business community due to Corona Virus/ COVID- 19. Under paragraph 4 of her address, the Hon. Minister pays attention to **Hoarding of goods;** and states that traders should desist from hoarding of goods which result in hiking of prices. She then implores the Resident District Commissioners to head task forces comprising of District Internal Security Officers, District Coordination Officers, Local Councils, Security Committees and Local Defense Units to ensure that there is no hoarding of essential commodities. Where traders fail to comply; their licenses are to be revoked and their premises sealed off.

Uganda does not have price control laws to protect the citizens from price hikes arising from unethical conduct in business practices. By the minister of trade coming out to condemn the act of hoarding of essential goods so as to hike the price, in my view, is good effort in the circumstances to protect the consumers and the right of access to food.

Following the above, it is my view that the respondent has not failed and or omitted to issue guidance on food access and availability to the vulnerable people and the entire population around the whole country during the corona virus (COVID 19) pandemic and therefore there is no violation and or threat to the respondent's obligation to the people of Uganda under Articles 8A, 20 and 45 of the Constitution of Uganda.

**Issue No. II: Whether the omission by Government to establish food reserves is a violation of the right to food and violation of Objectives XXII, XXIII and Articles 20, 45 and 8A of the constitution?**

Counsel for the Applicant submitted that the right to food is protected under different international instruments namely; **The Universal Declaration of Human Rights (Article 25 (1))** which provides that:

*"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control"*



**Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides that:**

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programs, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

Counsel explained that **General Comment No. 12** helps to define the core content of the right to food, and how states could implement the right to food domestically. That the core content of the right to food is described by three A's – *accessibility*, *availability* and *adequacy*. While adequacy refers to the quality, nutritional and cultural value of food

consumed, accessibility and availability address the means of acquiring food.

**Accessibility** requires economic and physical access to food to be guaranteed. Economic accessibility means that food must be affordable. Individuals should be able to afford food for an adequate diet without compromising on any other basic needs, such as school fees, medicines or rent. Physical accessibility means that food should be accessible to all, including to the physically vulnerable, such as children, the sick, persons with disabilities or the elderly, for whom it may be difficult to go out to get food.

**Availability** requires on the one hand that food should be available from natural resources either through the production of food, by cultivating land or animal husbandry, or through other means of obtaining food, such as fishing, hunting or gathering. On the other hand, it means that food should be available for sale in markets and shops.

**Adequacy** means that the food must satisfy dietary needs, taking into account the individual's age, living conditions, health, occupation, sex, etc. For example, if children's food does not contain the nutrients necessary for their physical and mental development, it is not adequate. Food should also be safe for human consumption and free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs. Adequate food should also be culturally acceptable.

Relying on the *Convention on the Rights of the Child (Art. 24(2) (c) and 27(3)*, the *Convention on the Elimination of All Forms of Discrimination against Women (Art. 12(2))*, or the *Convention on the Rights of Persons with Disabilities (Art. 25(f) and 28(1))*, the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the Protocol of San Salvador (1988)*, the *African Charter on the Rights and Welfare of the Child (1990)* and the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)*; which recognise the right to adequate food, Counsel submitted that Uganda being a signatory to these international instruments, must ensure that the relevant human rights tools are domesticated and translated into law.

He explained that under **paragraph 10 and 11** of the affidavit in support of the application, it is shown that 33% of people in Uganda were suffering from hunger before the pandemic and 38% of children are already malnourished which makes them more vulnerable during the pandemic. Counsel submitted that **Paragraph 24 of the affidavit in support of the application**, shows that the government does not have any food reserves. He explained that the government is charged with a constitutional obligation under Objective XXII(b) and Articles 20, 45 and 8A of the Constitution to ensure food security by putting in place national food reserves. Failure to establish food reserves is a violation of the provisions of the Constitution mentioned above. He relied on the

case of **AMOOTI GODFREY NYAKAANA V. NEMA and 6 ORS CONSTITUTIONAL APPEAL NO 05 OF 2011**, where Katureebe, CJ referring to the National Objectives and Directive Principles of State Policy under the Constitution observed that;

***“to my mind, this means that these objectives have gone beyond merely guiding us in interpreting the Constitution, but may in themselves be justiciable.”***

Counsel explained that Uganda has been partially relying on food aid from developed countries and organizations like World Food Program but with the current pandemic that has led to panic in the whole world the countries that provided the food aid may also reduce or completely stop giving the same. This therefore threatens the right to adequate food during the pandemic as shown in **paragraph 4, paragraph 22, paragraph 23 and paragraph 24** of the affidavit in support and that the failure to establish food reserves leaves many Ugandans who are already dying of hunger or malnourished as shown in **paragraph 10 and 11** very vulnerable during the pandemic as they will not be able to easily get food aid support.

Lastly, Counsel submitted that according to the affidavit in rejoinder paragraph 5 (h-k) the food is contaminated with aflatoxins. All Ugandans have a right to safe food. Distributing food unworthy for human consumption, yet if government had established food reserves these would not happen, subjects all receiving and vulnerable Ugandans to

inhuman and degrading treatment which is contrary to Article 24 of the Constitution of Uganda.

According to WHO and FAO, aflatoxins and other contaminants in food are potent carcinogens and may affect all organ systems, especially the liver and kidneys; they cause liver cancer, and have been linked to other types of cancer – aflatoxin B1 is known to be carcinogenic in humans; the potency of aflatoxin to cause liver cancer is significantly enhanced in the presence of infection with hepatitis B virus (HBV); aflatoxins cause stunted among children, causes birth defects in children; and contributes to growth faltering e.g. low socioeconomic status, chronic diarrhoea, infectious diseases, malnutrition; aflatoxins cause immunosuppression, therefore may decrease resistance to infectious agents (e.g. HIV, tuberculosis), and these pose an imminent danger to the life of hunger-stricken people like those vulnerable under COVID19. Food contamination can be prevented if a government has a functioning food reserves system.

Counsel prayed that this Court finds that the failure by government to establish food reserves is a violation of government's constitutional duty under Objective XXII, XXIII and Article 20, 45 and 8A of the constitution.

In reply, Counsel for the respondent submitted that while there might not be food reserves in the country, the Government has not reneged on its duty to safeguard the right to food and to ensure that there is accessibility and availability of food. Counsel explained that Paragraph 5

(p) of the Respondent's supplementary affidavit is to the effect that Sections 26 and 27 of the *Public Finance Management Act 2015* (PFMA) deals with the availability of the contingencies fund which enables government to deal with emergencies such as the COVID-19. That the contingencies fund is the source of all the supplementary budgetary expenditure that has been incurred so far to combat the pandemic as well as the consequences it has caused such as food scarcity. (*annexure B to Respondent's supplementary affidavit*).

Counsel explained that Section 26 (4) of the PFA (which is in conformity with Objective XXIII of the Constitution) provides that;

*"The Contingencies Fund shall be used to provide funding for supplementary expenditure under section 25 and to respond to natural disaster, as specified in this Part."*

*Under S.26 (5) PFA - Eighty-five percent of the money of the Contingencies Fund shall be used to finance supplementary expenditure and fifteen percent shall be allocated to finance responses to natural disasters.*

*S. 26 (6) Where required, more than fifteen percent of the money may be used to finance disasters.*

Under S. 27 of the PFA,

*(3) In this Part "natural disaster" means an event that causes severe human suffering or material, economic or environmental damage and*

*which results in or is likely to result in the loss of essential services required to meet basic human needs and which—*

*(a) cannot be responded to with the resources available from the annual budget or other sources of funds; and*

*(b) creates a compelling need for funding that is in the public interest.*

Counsel submitted that the COVID-19 pandemic is by all means and purposes a natural disaster which falls within the ambit of the above provisions and it is being neutralised using funds out of the contingencies fund. The fact that Government is distributing food around the country shows that indeed, it is upholding the right to food and not violating it.

Counsel submitted that the absence of food reserves in the country would be a violation of the impugned provisions of the constitution only if the Government did not have alternative measures in place to ensure that the right to food is not violated. Therefore, considering the foregoing, the absence of food reserves in the country does not amount to a violation of the provisions of the Constitution outlined by the Applicant. Counsel prayed in the premises that this issue is also answered in the negative.

## **Court**

It is not in dispute that the Constitution of the Republic of Uganda, 1995 (as amended) recognizes the right to adequate food and other economic, social and cultural rights.

Under the National Objective and Directive Principle of State Policy No. XXII, the State Shall –

- (a) Take appropriate steps to encourage people to grow and store adequate food
- (b) Establish national food reserves

Currently there are no food reserves in Uganda. This was stated and clarified in Parliament on the 31<sup>st</sup> July, 2018. (see annexure "H" to the supplementary affidavit in support of the application.) It is however important to note that Hon. Ssempijja, the Minister of Agriculture informed the House on that day, that the government is behind the agenda of having national food reserves. He explained that the government has started supporting farmers to get hermetic bags to keep their produce at home, to get vacuum tanks and that on this, the government is working with the World Food Program. Hon. Ssempijja further explained that the government has contributed some money to subsidize farmers and there are intentions to expand this program. The minister went on to explain that the government has also started on community storage of food and that about ten stores have been opened across the Country in some districts. The minister further explained that apart from the community stores, the government was going into regional stores. The community stores are supposed to feed into the regional stores under the Ministry of Trade, Industry and cooperatives.



Taking into account the above evidence presented by Hon. Ssempijja, I would agree with the submissions of Counsel for the respondent that much as there are no food reserves in the Country, there are other systems that the government has put in place and is working on instead of the food reserves as shown above.

Counsel explained that Uganda has been partially relying on food aid from developed countries and organizations like World Food Program but with the current pandemic that has led to panic in the whole world the countries that provided the food aid may also reduce or completely stop giving the same. Counsel has not substantiated on this submission. There is no evidence for this court to base on to find that the World Food program will not be in position to support countries like Uganda after the pandemic. Counsel is only being speculative.

Regarding the quality of food and all the related hazards, I have already referred to the Food and Drugs (Food Fortification) Regulations, 2005, Statutory Instrument No. 2. Of 2005 brought under section 41 of the Food and Drugs Act, Cap 278) which regulate the fortification of food and the Uganda National Bureau of Standards Act, Cap 327, establishing the Uganda National Bureau of Standards, with the primary mandate of developing, promoting and enforcing standards and quality of products and services to facilitate fair trade and protect national consumers among other responsibilities.

It is therefore my finding that the government has not failed in fulfilment of its duty to the nation under the National Objective and Directive Principals of State Policy No. XXII(b) and Articles 8A, 20 and 45 of the Constitution.

Having found as above, I would therefore find no merit in this application which I now hereby dismiss.

### **Costs**

Counsel for the Applicant prayed that this being a public interest case, each party should bare its own costs. I agree because awarding costs in such cases in my view would deter good willed people from bringing public interest matters to court. In the circumstances, it is hereby ordered that each party will bare its own costs.

I so order.

**Dated, signed and delivered by email at Kampala this 4<sup>th</sup> day of June, 2020.**

**Esta Nambayo**

**JUDGE**

**4<sup>th</sup>/6/2020**

