



**PROBLEM FOR THE 7th ANNUAL NATIONAL INTER-UNIVERSITY CONSTITUTIONAL LAW MOOT
COURT COMPETITION**

PROPOSED TO TAKE PLACE ON 29TH AND 30TH OCTOBER 2020.

FACTS

1. Erute is an East African State with an estimated population of forty million (40,000,000) people. Its capital city, Vurra, is located in the East of the country and it has the largest freshwater body in Africa named Lake Nyongora. It became an independent state on 1st January 1986, after more than seven decades of colonization by Great Britain. This day has since been celebrated as “Independence Day”. Erute’s neighbor to the North is Ducata and Kame is its neighbor to the North-West. Kanga Island is found on Lake Nyongora. It has a population of about 2,000 people.
2. Erute has been relatively stable since independence, and has not experienced any political turmoil. As one of the most politically stable countries in the sub-region, it attracts many migrants and refugees from neighboring countries. Economically, Erute is a low-income country and it relies on agriculture as its main economic activity. It does not have a well-developed industrial sector and it imports manufactured goods like medicines, medical supplies, agricultural supplements and most consumer goods from its neighboring countries.
3. The State of Erute is a signatory to all International and African Human Rights and Accountability Treaties and Conventions including treaties and conventions that recognize Sexual and Reproductive Health and Rights. Erute is a dualist state and its Constitution, Laws and Court system are similar to those of the Republic of Uganda.
4. The Head of state is President Rose. She is vested with Executive power and is assisted by a Cabinet in her executive duties. The Government of the State of Erute has a centralized system of governance which recognizes principles of decentralization. To this end, the Government, in a bid to bring services closer to the people, enacted the Local Governments Act. Through the system of decentralization, the Central government handles the day to day operations and welfare of the state while the District Local Governments cater for the day to day operations and welfare of the Districts. The State of Erute has

five districts that include the North, East, West, South and Central districts and each district is under the leadership of a District Chief.

5. In April 2019, a new disease, Pan-virus broke out in the neighboring Kame State. Pan-virus is a viral hemorrhagic fever that is spread from one person to another through close contact with infected persons or their body fluids like sweat, droplets of saliva and urine. In Kame, 12,000 people were infected, 890 had recovered and an estimated 3,000 had succumbed to the disease within 3 months. The World Health Organisation (WHO) declared it a pandemic and advised governments all over the World to dedicate their efforts and resources to containing the pandemic.
6. The Government of Kame tried to contain the spread of the virus through restricting movement across its borders. However, the border between Erute and Kame remained open to enable continued movement of cargo between the two states. As such, the State of Erute set up inspection and quarantine points at the border to screen cargo transporters to and from Kame State. In order to assess the readiness of the health care facilities to handle the pandemic, an audit was done by the Central Government Health Inspection team in early June 2019 and it was discovered that hospitals in the North District and Kanga Island lacked protective gear and isolating facilities for those infected by the pan-virus.
7. It was also discovered that essential medicines and commodities such as condoms, emergency contraceptive medicines, misoprostol and oxytocin were lacking in several health care facilities yet these were essential to prevention of unwanted pregnancies, sexually transmitted diseases and to treat postpartum haemorrhage respectively. At the same time, Kanga Island was found not to have a health facility and anyone who wished to access health care had to travel to the mainland by ferry. The Inspection team made several recommendations to the North District leadership that included; ensuring that health facilities were well stocked with medical equipment and supplies and ensuring access to water, shelter, sanitation and hygiene in all health facilities by 30th August 2019.
8. Despite such measures, the North District reported its first case on 15th September 2019. The number quickly rose to 200 within two weeks. In a bid to contain the virus, the Government of Erute declared a total lockdown of the North district. President Ngata in her address to the nation reassured the citizens

of Erute that the government would dedicate its resources to preserve the lives of all the people of Erute. She appointed the Cabinet Minister for Health to be in charge of the North district's pan-virus task force. The task force put in place measures such as closing all public spaces like markets, schools, places of worship etc. They stopped public transport and only allowed those with private means of transport like bicycles, motorcycles and cars to move. The task force also declared a curfew from 6pm to 6am. These measures were effective from 18th September 2019. The Parliament of Erute also approved an emergency budget to aid the task force in curbing the spread of the virus.

9. During the period of the lockdown, anyone found disobeying the curfew was to be dealt with seriously. To enforce the lockdown, the Government of Erute deployed Special Forces of the military called "*We don't joke*" to patrol the streets and ensure compliance. The presence of the "*We don't joke*" unit in the North District scared all communities and they were forced to comply with the directives made. As a result of the measures that were put in place by the government, the spread of the virus has been contained. To date, Erute has not reported any death and there are only 20 active cases left. In spite of this, the measures and restrictions are still in place.
10. On 25th March 2020, Ngora, a 21 year old female living in North District, visited Wakidu Health Center IV to get condoms which are usually supplied free of charge but she was informed by the in-charge Dr. Steven, that they did not have condoms to supply because government funds had been diverted to buying protective gear for health workers. Ngora had to walk 10km back home from the Health Center and while she was still on her way at 7pm, she met a group of 5 soldiers from the "*We don't joke*" unit who dragged her to a nearby bush, ripped off her panties and gang raped her while claiming to enforce the curfew and all her efforts to fight them off and scream for help yielded no fruit. She even tried asking them to use protection but the soldiers just laughed at her asking where she expects them to get condoms at that time. After this horrific experience, Ngora managed to limp her way home.
11. One month later, Ngora missed her period and a pregnancy test revealed that she was pregnant. Due to shame and fear, Ngora never sought the services of a health worker to advise her on how to manage her pregnancy. She did not wish to return home and when she confided in her friend Duki, she was informed that the local government shelter for victims and survivors of sexual abuse had been converted into an isolation center for patients of the pan-virus pandemic. She had no choice but to go

home. On 8th July 2020, Mama Ngora found her daughter in a pool of blood and in great pain. She rushed her to Wakidu Health Center IV where she was informed by Dr. Steven that Ngora had suffered a miscarriage. He informed them that they needed to stop the bleeding and prescribed a dose of misoprostol tablets. Unfortunately, the misoprostol tablets were not in stock at the Health Center as the funds has been diverted to pan-virus response. He advised that they get the drugs from the pharmacy.

12. Mama Ngora went to purchase the said medicine from Lessidu's pharmacy using this prescription. However she could not afford it because a dose of misoprostol costs 30,000/= . She called several relatives and after 1 day, they managed to raise the money and purchased the drug. Ngora took the misoprostol but it was too late and she died from excessive loss of blood after three hours. Mama Ngora's neighbour, Mama Ttulu went to the Distirct Chief to report that Ngora died because of a miscarriage caused by medicine supplied by the Pharmacist. The District Chief reported the matter to the Police which arrested Lessidu and accused him of supplying drugs that cause miscarriage contrary to Section 143 of the Penal Code Act of Erute.
13. While Mama Ttulu was at the District Chief's office, Mr and Mrs Malizo also came to report their grievances. Mr. and Mrs. Malizo are an elderly couple which has lived on Kanga Island for the past 25 years. They have been living with HIV/AIDS for the past 10 years. Before the lock down, they always travelled to the North District Main Hospital once a month using the public ferry to stock up on Antiretroviral drugs (ARVs). Due to the pan-virus restrictions like the closure of public transport in September 2019, they could not take the ferry to the mainland. The only resident with a private boat Mr. Kuluse, charges exorbitant fees of 300,000/= per trip in order to hire his boat. Mr. and Mrs. Malizo managed to make 5 trips between the months of September 2019 to January 2020 for their monthly stock ups using Mr. Kuluse's boat. Unfortunately, they depleted their savings and could no longer afford the transport fees. The district chief informed them that the District did not have resources to distribute ARVs to those that were HIV positive as the government was dealing with a pandemic.
14. Mama Ngora, Lessidu and Mr. and Mrs. Malizo had heard an advert on Voice of Erute FM about free legal services offered by Public Interest Lawyers Initiative (PILI), a Non-Governmental Organization (NGO) operating in the North District. They went to their offices and saw Mr. Ngazi Jonathan, a public interest lawyer working with PILI. He was presented with the said facts by Mama Ngora, Lessidu and Mr. and Mrs. Malizo. He explained to them that their rights such as the right to access basic medical

services had been violated and PILI could help them get legal redress. PILI, instituted a suit against the Attorney General under the Human Rights Enforcement Act of Erute. PILI argued that;

- a) The failure of the government of Erute to provide essential Sexual and Reproductive Health commodities and supplies during the Pan virus pandemic is a violation of the Human Rights guaranteed in the Constitutional of Erute.
 - b) The pan-virus regulations are unreasonable as they limit access to essential health care services and commodities which is a violation of the Human Rights guaranteed in the Constitution of Erute.
 - c) The criminalization of the sale and supply of essential medicines such as misoprostol is a violation of the Human Rights guaranteed in the Constitution of Erute.
 - d) The failure of the government of Erute to establish public shelters and provide psychosocial support for survivors of sexual and gender based violence is a violation of the Human Rights guaranteed in the Constitution of Erute.
15. The Attorney General of Erute State denied any form of liability and noted that the pan-virus measures were justified, reasonable, lawfully passed and enforced in the circumstances considering that the Government was trying to handle a deadly pandemic. He also argued that the Government had used its resources to the maximum to ensure that there was timely access to essential medicines and emergency medical services and expressly denied the criminalization of the sale and supply of essential medicines.

FACTS BEFORE THE APPEALS COURT

The High Court dismissed the case brought by PILI with costs. In its Judgement, the Court observed;

“The world has changed, and we are all in a quandary as to how to go about our daily lives in view of this pandemic. We would implore the Applicant and affected persons seeking to challenge these extraordinary measures imposed in such extraordinary times to desist and to follow the communication issued by the Ministry of Health and the Head of State. This is an unprecedented time for all of us. We are stronger if we work together.”

PILI, dissatisfied with the Judgment of the High Court have appealed to the Appeals Court challenging the entire judgment and orders of the High Court.

FACTS BEFORE THE SUPREME COURT

The case was heard by the Appeals Court and the Court gave judgement in favour of PILI. The Court held inter alia;

“The Respondent can no longer rely on the pan-virus measures as a means of violating the Human Rights of the People of Eruete. The measures as they are, have no place in a democracy, are unjustified and we declare them null and void. As other members of the bench have held, we give Judgement in favor of the Appellant and order the respondent to pay costs to the Appellant.”

The Attorney General was aggrieved with the decision of the Appeals Court and appealed against the judgement of the Appeals Court to the Supreme Court.