

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT JINJA**

**HCT-03-CV-CS- 135- 2017**

- 1. THE CENTRE FOR HEALTH, HUMAN RIGHTS AND DEVELOPMENT  
(CEHURD)**
- 2. NAMWEBYA LOVISA**
- 3. ESTHER NAIGAGA**
- 4. PEREZ MWASE (SUING THROUGH HIS NEXT FRIEND  
ESTHER NAIGAGA :::PLAINTIFFS**
- VERSUS**
- 1. BUYENDE DISTRICT LOCAL GOVERNMENT**
- 2. ATTORNEY GENERAL :::DEFENDANTS**

**BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE**

**JUDGMENT**

The plaintiffs instituted **Civil Suit No. 135 of 2017** against the defendants on the 15<sup>th</sup> of November 2017 in this Honorable Court wherein they sought for the following orders;

1. A declaration that the failure of the 1<sup>st</sup> and 2<sup>nd</sup> defendant to provide access to early detection services for autism to the 4<sup>th</sup> plaintiff at the primary health care level is a violation of his right to health, right to equality and freedom from discrimination contrary to **Articles 21, 35 as read with Article 8A and National objectives and Directive Principles of State Policy XIV XVI XX, Section 8(c) 25(1) (b) and 28 of the Persons with Disabilities Act, and Articles 1,3,4,5,7,25,26 & 28 of the United Nations Convention on the Rights of Persons with Disabilities.**
2. A declaration that the failure of the 1<sup>st</sup> and 2<sup>nd</sup> defendant to ensure access to early detection and management services for autism to the 4<sup>th</sup> plaintiff at the primary health care level is a violation of his right to human dignity and to realize his full mental and physical potential contrary to **Article 21 and 35 of the Constitution, Section 28 of the Persons with disabilities Act 2006 and Articles 1,3,4,5,7,25,26 & 28 of the United Nations Convention on the Rights of Persons with Disabilities.**
3. A declaration that the failure of the 1<sup>st</sup> and 2<sup>nd</sup> defendant to provide rehabilitation and habilitation services to the 4<sup>th</sup> plaintiff is a violation of his right to equality and freedom from discrimination contrary to Article 21 of the

Constitution, **Section 25(1) (b) of the Persons with Disabilities Act 2006 and Articles 1,3,4,5,7,25,26 & 28 of the United Nations Convention on the Rights of Persons with Disabilities.**

4. An order that the 2<sup>nd</sup> defendant develops Clinical Practice Guidelines for the Management of Patients with autism Spectrum Disorders in Primary Health Care within two years.
5. An order that the 2<sup>nd</sup> defendant makes progress reports on development of the guideline in (e) to court and the first plaintiff every after six months from the date of Judgment.
6. An order that the defendants provide supportive social services to the 4<sup>th</sup> plaintiff within his primary health care level through medical specialty and assistance, personal services, speech and language therapy, social skills instructions, occupational therapy and sensory integration therapy.

**BRIEF FACTS**

The brief facts according to their plaint, the plaintiffs stated that in November 2016, the 1<sup>st</sup> plaintiff through an outreach program in Buyende District discovered the condition of the 4<sup>th</sup> plaintiff and referred him to a Child and Adolescent Psychiatrist who examined and diagnosed him to have a severe form of a neurodevelopmental disorder called Autism Spectrum Disorder. That none of the health facilities within the 1<sup>st</sup> and 2<sup>nd</sup> defendants' health and other services necessary for the detection, diagnosis, rehabilitation and habilitation of the 4<sup>th</sup> plaintiff's condition. That due to the 4<sup>th</sup> plaintiff's failure to access health services for early detection of his condition at an early stage of his life, the 4<sup>th</sup> plaintiff cannot independently wear clothes, he cannot freely interact with members of the community he lives in, he cannot talk, he is unable to attend school without intensive rehabilitation and on-going services for the management of his condition

Both defendants in this case did not file any reply to the pleadings of the Plaintiff. After failing to get summons to the two defendants, Court directed that both defendants be served with the summons to file a defence to the plaint via substituted service. Both defendants were duly served through by pinning the said Summons on the Court Notice Board and through the Daily Monitor Newspaper of Friday June 8 2018. After the expiration of the statutory period within which to file a defence, both defendants filed no Written Statement of Defence. Court was satisfied that both defendants had been duly served, but had failed and or refused to file any Written Statement of Defence and it was directed that the suit this suit proceeds exparte.

## ISSUES

During scheduling of this case, the following were the issues agreed upon for determination by this Honorable Court:-

1. Whether the failure of the 1<sup>st</sup> and 2<sup>nd</sup> defendant to provide access to early detection services for autism to the 4<sup>th</sup> plaintiff at the primary health care level is a violation of his right to health contrary to **Article 35 as read with Article 8A and National objectives and Directive Principles of State Policy XIV XVI XX, Section 8(c) 25(1) (b) and 28 of the Persons with Disabilities Act, and Articles 1,3,4,5,7,25,26 & 28 of the United Nations Convention on the Rights of Persons with Disabilities?**
2. Whether the failure of the 1<sup>st</sup> and 2<sup>nd</sup> defendant to provide access to early detection services for autism to the 4<sup>th</sup> plaintiff at the primary health care level is a violation of his right to health, right to equality and freedom from discrimination contrary to **Articles 21, 35 as read with Article 8A and National objectives and Directive Principles of State Policy XIV XVI XX, Section 8(c) 25(1) (b) and 28 of the Persons with Disabilities Act, and Articles 1,3,4,5,7,25,26 & 28 of the United Nations Convention on the Rights of Persons with Disabilities?**
3. Whether the failure of the 1<sup>st</sup> and 2<sup>nd</sup> defendant to ensure access to early detection and management services for autism to the 4<sup>th</sup> plaintiff at the primary health care level is a violation of his right to human dignity and to realize his full mental and physical potential contrary to **Article 21 and 35 of the Constitution, Section 28 of the Persons with disabilities Act 2006 and Articles 1,3,4,5,7,25,26 & 28 of the United Nations Convention on the Rights of Persons with Disabilities?**
4. Whether the failure of the 1<sup>st</sup> and 2<sup>nd</sup> defendant to provide rehabilitation and habilitation services to the 4<sup>th</sup> plaintiff is a violation of his right to equality and freedom from discrimination contrary to **Article 21 of the Constitution, Section 25(1) (b) of the Persons with Disabilities Act 2006 and Articles 1,3,4,5,7,25,26 & 28 of the United Nations Convention on the Rights of Persons with Disabilities?**
5. What are the remedies available to the parties?

When this matter came up for hearing, the plaintiffs were represented by learned counsel Mrs. RoseWakikoma from CEHURD Legal Aid Clinic. The matter proceeded exparte.

## THE LAW

**Article 35 of the 1995 Constitution of the Republic of Uganda** provides for the rights of persons with disabilities. It reads as follows;

1. *Persons with disabilities have a right to respect and human dignity, and the State and society shall take appropriate measures to ensure that they realize their full mental and physical potential.*
2. *Parliament shall enact laws appropriate for the protection of persons with disabilities.*

**Article 21 of the 1995 Constitution of the Republic of Uganda** provides for equality and freedom from discrimination. It reads that:-

1. *All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.*
2. *Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, color, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.*
3. *For the purposes of this article, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, color, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.*
4. *Nothing in this article shall prevent Parliament from enacting laws that are necessary for—*
  - (a) *implementing policies and programmes aimed at redressing social, economic, educational or other imbalance in society; or*
  - (b) *making such provision as is required or authorized to be made under this Constitution; or*
  - (c) *providing for any matter acceptable and demonstrably justified in a free and democratic society.*

*(5) Nothing shall be taken to be inconsistent with this article, which is allowed to be done under any provision of this Constitution.*

**Article 24 of the 1995 Constitution of the Republic of Uganda** provides for respect for human dignity and protection from inhuman treatment. It reads that:-

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

**Article 50 of the 1995 Constitution of the Republic of Uganda** provides for enforcement of rights and freedoms by courts. It reads that:-

- (1) *Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.*
- (2) *Any person or organization may bring an action against the violation of another person's or group's human rights.*

**National Objectives and Directives Principles of State Policy under XIV. General Social and Economic Objectives.** It reads that:-

*"The State shall endeavor to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that-*

- (i) *all developmental efforts are directed at ensuring the minimum social and cultural well-being of the people; and*
- (ii) *all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits".*

**XX. Medical Services.** It reads that:-

*The State shall take all practical measures to ensure the provision of basic medical services to the population.*

**Section 8 of the Persons with Disabilities Act 2020** provides for habilitation and rehabilitation for persons with disabilities. It reads that:-

- (1) *The Minister responsible for health and the Minister responsible for education shall, in consultation with the Council and the Minister, provide habilitation and rehabilitation services and programmes for the persons with disabilities.*
- (2) *The Government shall offer counselling services and inform persons with disabilities and their parents or guardians, caregivers and the members of communities where persons with disabilities are resident, on the habilitation and rehabilitation services that are available for persons with disabilities".*

Again, the **United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2008**. It reads that:-

**“Article 25**

*States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:*

- (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;*
- (b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;*
- (c) Provide these health services as close as possible to people’s own communities, including in rural areas;*
- (d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;*
- (e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;*
- (f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability”.*

**Article 26**

**“Habilitation and rehabilitation.** It reads that:-

*1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall*

*organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:*

*(a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;*

*(b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.*

*2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.*

*3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.*

Having taken due recognition of the applicable laws, I will now proceed to evaluate the evidence led in this case against the above stated laws.

#### **RESOLUTION OF THE ISSUES IN THIS CASE**

In resolution of the issues in this case, learned counsel for the plaintiffs presented five witnesses to support their claims.

The first witness was **Namulemwa Lovirea a female adult aged 52 years old and a resident of Nabwiguru village, Budumi Sub County Kamuli District peasant farmer (herein after referred to as PW1)**. She testified that she lives at home with her 8 children. That she is suing Buyende district and the government. That she has a sick child, who is mentally sick and that she has suffered with the child for a long time but the government has not helped her. That the child is Perezi Mwase. That she gave birth to him in 2004, 11<sup>th</sup> April. That it was found in 2007 that Perezi had mental challenges, as he would cry, disturb her and fail to sleep. That she discovered he had a problem and took him to Kidera hospital.

She further testified that at Kidera Hospital, she was told he had Malaria and she was given some tablets. That she took him to Buyende hospital and was still told he had malaria and she was given tablets. That the child's behavior was not changing and she was referred to Kamuli-Rubaga and at Kamuli-Rubaga she was told they do not see the sickness and was sent to Nalufenya. That at Nalufenya, she was given tablets and told he had a mental sickness. That the

tablets did not help him and when they reached home he got worse. That they went and got more tablets, he started getting better, but they did not have enough money to get more. That Perez was found to be with mental health when he was 5-6 years old.

Further, that when she failed to get more medication she would leave him at home with his friends. That if he is left alone he roams on the villages and spoil people's property. That time came that whenever she would not be at home, she would tie him on ropes. That the other children had started going to school who used to help him and she had to do work like digging and fetching water. That she would get ropes and tie him on a tree. That if she does not tie him, he runs away and spoils people's property, yet she has no money to pay. That if villagers see him, they call her to come and tie him in order for him not to spoil their property.

She added that she has never tried to take him to school because she did not know if there are other children and if there is a school, which admits children with such disability. That Perez cannot dress up himself. Even if he is given food, he pours it down. That there is an organization which came to see how he was suffering, they took him away. That the sister knows where he is. That he was taken in January last year they brought him in January this year and he was in good condition and had improved, for he can now go to the toilet by himself and also feed himself. That if Perez is returned to her now, she cannot afford what he uses. That he cannot take anything without sugar or bad food, he needs to eat things like *matooke*, meat eggs and she cannot afford them right now.

She further testified that she wants court to get her help to look after Perez to keep him in good condition, not being isolated and if he is brought back, a place where she can keep him and that she wants compensation for what she spent on him.

**In questions by court**, she answered that she does not remember the medication he was given at Kidera. That the documents were here, but when the father of Perez died, they disorganized the house and does not know where it is now. That at Buyende it was written in a book and does not know where it is now. That she does not have the one for Nalufenya. That the medication from Nalufenya could help but she failed to get money. That she did not look for other means of getting the medication.

The second witness was **Naigaga Esther a resident of Nabwiguru village, Kamuli District, a teacher Good Hope Primary School Nabwiguru, aged 24 years old (herein after referred to as PW2)**. She was is in court to sue Buyende



District and government for their failure to help her brother Perez who is mentally sick. That she is related to the 2<sup>nd</sup> Plaintiff and she is her daughter. That after mother got pregnant he was born at the hospital. That when Perez was 3-4 years, he would cry a lot at night but not so much in the day and they thought it was a headache. That they took him to Kidera Health Centre and they said that he had fever and he was given medicine for Malaria. That they gave it to him at home and the condition did not change, he would continue crying.

Further, that they took him to nearby clinics, but they could not find the illness and then took him to Buyende Hospital which referred them to Kamuli Hospital Kabanga. That they could not see the sickness and took him to Nalufenya and they could not find his illness and he was given tablets and said he could have a mental problem. That the medicine at Nalufenya could not help him because he would continue crying. That he was between 6-7 years he was disturbing them at the village they had a bicycle and would ride him around the village. That when they started going to school, their mother could not afford to stay with him, she is a farmer she had nothing to do but tie him on a rope on a tree and give him food there she would untie him a bit at home but he would escape. That she grew up at Buyende, but she studied at Kamuli. There is no school at Buyende for such children; he was never taken to school in Buyende or Kamuli.

In addition, that people on the village did not like Perez he would destroy things, even at home pour water, break cups and poor food on the ground. That when he would go to the village, he would eat everything eatable in the shop destroy others, kill their animals and people would chase him away wherever they see him. That when Perez was around 12 years, a relative of their father came and found him tied on a rope and he asked them about his condition and he told them that he can be helped by an organization called CEHURD which would help him not to be tied on ropes. That he went back to Kampala and communicated with his colleagues who came to see Perez and they promised to come back and take him.

That he was taken to Good hope in Kamuli, Home of hope which keeps people with such a disability. That they went with Perez and stayed for one week to learn his behavior. That the place is not owned by government but an individual. That after one week they returned them home and told them that they had studied his behavior. That they took them to a place in Mukono Kyampisi, it is not owned by Government at Kyampisi the people who were looking after children took them to Butabika. That they were told he had autism and that it is incurable and got treatment which would help him to calm down.

That at Batabika, they told them that he has autism and should not be tied to a rope, not be among the many people teach him to dress cloths and shoes and to go the toilet. That when they brought him back, she was with him at Butabika but she had to leave him with Mummy who did not cope with them. That after the Muzei's death CERHD knew he could not get assistance, so they took him to Entebbe where they are keeping him. That they last saw him in January last year, it was her mother and follower who went to see him. She prayed court to give them assistance towards Perez and to put such places in Buyende District. They also prayed for compensation on what they have spent taking care of Perez.

**In questions by court**, she answered that they would give him Valium at Nalufenya, which would calm him down for about 5 years and then he would get back to the same condition. That the doctors told them that the medicine would just calm him for a while but not treat him. That they did not expect a cure. That before they reached Butabika, they had got a proper diagnosis of the child problem at Butabika. That she had no idea about the problem.

The third witness in this case was **Dr. Catherine Aboo, a female adult 49 years old. Resident of Kira Wakiso district. Medical Doctor, Human Medicine, Masters of Medicine in Psychiatry, a Fellow of College of Medicine South Africa and a PHD in Psychiatry from Karohinkka Institution Stockholm, Sweden (herein after referred to as PW3)**. She testified that she started practicing psychiatry immediately she completed internship at Butabika hospital in 1999. In 2000-2003 Masters in psychiatry. That she knew Perez Mwase and the first time she got to know about him was when she was contacted by CEHURD to go and carry out a full psychiatry examination in 2016.

That they managed to go where he was in Buyende district it is not usual that she does assessment from home, but because of the challenges of getting Perez Mwase, she had to go to Buyende on 23rd and 24<sup>th</sup> November 2016. That the challenges at the time Perez Mwase could not be transported in a taxi, he was forever tied on a tree, naked throughout and could not communicate and was uncontrollable. That the picture is in mind the first time she met him, he was tied on a tree and all the family members were gone to the garden it was approximately 3:00pm.

That as soon as the family members arrived he made a lot of noise as if he wanted to be released. That the father came back on a motorcycle and he was untied, ran and took about 30 minutes to settle but he was able to have minimal settling. That she carried out an assessment, which included how he interacted with other people whatever he had language, he reflects himself estimating his level

of development and how he regulates his mood and behaviors. Her findings included the following: -

1. He was so deregulated in terms of movement, motions (most obvious thing).
2. He was not dressed yet he was 12 years old.
3. He was tied up on a tree
4. He was behaving like a 2-year-old threw a number trauma which 2 years old would do, bite with his tongue like a dog (traumatizes to watch) not chewing the food.
5. I made a diagnosis of a record developmental recorder -autism spectrum disorder in severe form.
6. Severe intellectual disability
7. Speech delay.

That when they have delays in two areas of development, called it Eledal development delay. That she made a report of the findings and signed it. (She was availed a document). She confirmed it is the report, which she made and was admitted as **P.E No 1**. That she diagnosed him at age 12 although this is a development which develops earlier that is why it is called neurological disorder. That the current intellectual understanding it was at the age of 2 years (2years) some deviation in development should have been picked and interventions start, however in Uganda children come to the clinic at the age of 5-6 years and they hardly get 1 ½ to 2 years for diagnosis. That such detection can be made by someone who has training in normal development emotional normal development. That a person should first have knowledge is what is normal even lower health centre cannot do it.

That even sitting in court is coming from far so sitting in a moral also it is not possible they need special needs school and interventions given as appropriate. That upon her report, she made a foundation and it picked her recommendation. That immediate intervention in terms of socialization and needed to be placed in an institution, he has improved since the placement. That she saw him on 9/11/2021 he was in an institution called Amanyi center, a center for transaction for children with disability back to the community. That he has improved from a 2-year-old to a 3-year-old.

That he is no longer tied on a tree and used to behave 'like an animal'; he is dressed up, can sit with other people and not step them. That he can appropriately engage the first time he went and stat on a person lap. That he had two words mama and baba now he has development other hands and can

eat with his hands and not like a dog. That she made another report admitted as **P. Exhibit No 2.**

That the ideal way of handling children with such health conditions would have been prevented by early detection and appropriate difficulty but still the baby after birth could still have delays in development. That the delay in development is key in early intervention. That such children are after abused legitimized and neglected quality life.

**In questions by court,** she answered that they moved to seek the health facilities and inquired and there were no interventions at the time. That it would have been possible to detect the gross nature and labeling, but whenever the child had a neurological order called autism, it could have been detected. That the community could have detected that the child is not normal and could put it to difficult interpretation e.g. witchcraft. That Buyende District had a health facility but a non-government facility. That as to whether it could detect that Perez had autism the detection if it was possible at the time it had Health Centre II or II

**Steven Kabenge a male adult 26 years old Entebbe social worker community based rehabilitation. Community based 2 social workers working with Grace Centre, an organization which seeks to address the plight in young adults with intellectual conditions like autism Down's Syndrome Hydrocephalus (herein after referred to as PW4).** He got to know Perez Mwase in 2016 through one of her friends called Benson who was by then volunteering with CEHURD. That she had just started working with Grace Culture. That Perez needed a safe place for him. Previously, he was tied upon a tree. That he needed to leave the activity of daily living. That to relate, self-care and work with his family to transform their mindset; and that all these services were not available in his home community because he has been there. That people believe that such a child with autism is bewitched or cursed, yet these are medical condition. That Perez is not the only child they deal with but they have a total of 20 children. That right now and in the community, they support over 500 children with autism; and the cost of looking after the child is very high, they are specific with what noted and because of destructive.

That each month you can spend approximately one million on one child. Intervention for such a child include behavior therapy, speech, educational support is a right, medication and psychosocial support. That they express difficulty in common things, while others need music therapy. That Perez can be in a normal school setting with a caretaker. That from the time he arrived, Perez would not be able to eat, he would eat with his tongue, but now he uses his

hands to eat. That he was destructive, aggressive, lacked concentration and non-compliant but right now, his clothes are on before he could tear them off before he is calm, has some speech and follows instructions. That his concentration has increased from zero to 45 minutes.

He pointed out that the sound which he makes toileting has increased, now he knows where to go if he needs the toilet.

**In questions by court**, he answered that by the time Perez came it was 19/1/2020 and he got the year of birth which is 2004 and he is 17 years old now. That had there been service in the community it would have been possible to diagnose him and make intervention. That it is possible that government can give the intervention e.g. special needs department at KYU. That it's possible they have done training with UHTs in Lira, Gulu, Kabale and that is working.

**The child Perez Mwase was presented for observation before Court: He was aged 17 years old, having been born in 2004 and was making noises. He was well dressed and calm even in the presence of strangers.**

#### **ISSUE ONE:**

In order to resolve the first issue in this matter, I have relied on the **Constitution of the Republic of Uganda as amended**. It does not expressly talk of a fundamental right to health, however, there are multiple references in the Constitution and other enabling laws to public health which emphasize this right and the role of the State in the provision of healthcare to its citizens. Specifically, **Article 8A (1) of the 1995 Constitution of the Republic of Uganda** provides that: *“Uganda shall be governed based on principles of national interest and common good enshrined in the national objectives and directive principles of state policy.”*

It also provides for the rights of persons with disabilities under **Article 35**.

**Article XX of the National Objectives and Directives Principles of State Policy** provides that the State shall take all practical measures to ensure the provision of basic medical services to the population.

Through the **Directive Principles of State Policy, the Constitution** has made it clear that the State to provide a decent standard of living. Several legal precedents have dictated that the state is responsible for its citizens' healthcare. Uganda's commitment to international legal treaties and conventions also binds it, as a state party, to enhance and provide adequate public services and a minimum standard of universal health care. Existing constitutional guarantees,

legal precedents and global commitments form a solid basis for a fundamental right to health and guarantees access to health legally binding on Uganda.

The above is an echo of **Article 12 of the International Covenant for Economic, Social and Cultural Rights** to which Uganda is a signatory. It provides for a right to the highest attainable standard of health.

**Section 20(1) of the Mental Health Act 2018** provides that a primary health center shall provide treatment for mental illness to all patients taken to the health facility for treatment or care.

The above emphasize the duty of government to ensure that its citizens have access to medical facilities, failure of which is a violation of the citizen's right to health.

Relating the above stated legal provisions to this case, it was the evidence of **PW1 Namulemwa Lovirea** the mother to the 4<sup>th</sup> plaintiff that at Kidera Hospital, she was told that the 4<sup>th</sup> plaintiff had malaria and was given some tablets. That she also took him to Buyende hospital and was still told he had malaria and was given tablets. That the child's behavior was not changing and she was referred to Kamuli-Rubaga where she was told that they do not see the sickness and was sent to Nalufenya hospital.

The ordeal that **PW1** faced was reechoed by **PW2 Naigaga Esther**.

The evidence of **Dr. Catherine Aboo** was to the effect that there was a delay in making a correct diagnosis of Perez's condition, at 12 years of age; although this neurological disorder develops earlier. That the current intellectual understanding is that at the age of 2 years old, some deviation in development should have been picked and interventions started, however in Uganda children come to the clinic at the age of 5-6 years and they hardly get 1 ½ to 2 years for diagnosis.

She was certain that such detection can be made by someone who has training in normal emotional normal development- a person should first have knowledge is what is normal even lower health centre cannot do it. The report she made of Perez was admitted as **P. Exhibit No 2**.

She was also certain that such health conditions would have been prevented by early detection and **in questions by court**, she answered that it would have been possible to detect the gross nature and labeling, but whenever the child had a neurological order called autism, it could have been detected if Buyende District had a Health Centre II or III at the time.

The interventions made on Perez were confirmed by **PW4 Steven Kabenge**.

Having analyzed all the above evidence and the submissions of learned counsel for the plaintiffs, it is clear that the government of Uganda failed to provide medical facilities in Buyende District, which could have made early detection and management services for children born with autism. This in my view made it impossible for parents with such children to get early diagnosis and early intervention programs, which have been shown to improve functional outcomes and quality of life.

I therefore agree with the submission of learned counsel for the plaintiffs that the failure of the 1<sup>st</sup> and 2<sup>nd</sup> defendant to provide access to early detection services for autism to the 4<sup>th</sup> plaintiff at the primary health care level is a violation of his right to health.

#### **ISSUES TWO & FOUR**

In resolution of the second issue, the aspect of a right to equality and freedom from discrimination stems right from **Article 21 of the 1995 Ugandan Constitution**; and it is a guaranteed therein. The obligations of the Ugandan government in relation to non-discrimination and equality for persons with disabilities as enshrined in the Constitution is to protect and offer guidance in this regard necessary as in carrying out its mandate.

Following up on that, **Section 53(1) & (2) of the Mental Health Act 2018** provides for non-discrimination against persons with disabilities and that they shall receive equitable treatment from the health units and mental health units.

It is noted that in Uganda, persons with disabilities continue to suffer discriminatory treatment that impairs or nullifies the enjoyment of their rights. In a case such as this one, the absence and or failure to provide early detection and management services for persons with autism at the lowest Health Unit closet to the people is a violation of their right to equality and freedom from discrimination.

The evidence presented before this court is to the effect that whenever the mother of **PW4** walked into a health facility in Buyende, she did not find the right medical care for her son. The 1<sup>st</sup> Defendant is a government Health Facility and as such, it is the duty of the government to ensure that it is equipped with trained medical personnel who could provide early detection, treatment and or referral to a higher Health Unit of a condition such as the one suffered by the 4<sup>th</sup> plaintiff in this case.

I therefore agree with learned counsels for the plaintiffs that by failing to provide the same to its citizens, this violates the right to equality and freedom from discrimination.

Turning to **Section 8 of the Persons with Disabilities Act of 2020**, it provides for habilitation and rehabilitation for persons with disabilities that;

1. *The Minister responsible for health and the Minister responsible for education shall, in consultation with the Council and the Minister, provide habilitation and rehabilitation services and programmes for the persons with disabilities.*
2. *The Government shall offer counselling services and inform persons with disabilities and their parents or guardians, caregivers and the members of communities where persons with disabilities are resident, on the habilitation and rehabilitation services that are available for persons with disabilities.*

According to the testimony of **PW3, Dr. Catherine Abbo, during questions by court**, she answered that they moved to the health facilities, inquired and were informed that there were no interventions at the time. That it would have been possible to detect the gross nature and labeling, but whenever the child had a neurological order called autism, it could have been detected. That although the community detected that the child is not normal, they put it to difficult interpretation e.g. witchcraft. She also noted that although Buyende District had a health facility, but it was a non-government facility. As to whether it could detect that Perez had autism, she was of the view that the detection was possible at the time if the District had Health Centre II or III.

Further, while it is clear that government has a duty to put in place health facilities for its citizens and this has progressively been achieved at various levels, but it is also true that some of the health facilities have not been well equipped to cater for complicated diagnosis and persons with neurological disabilities like the 4<sup>th</sup> plaintiff.

From the above, it is therefore right to conclude that while Government is alive to its duty and responsibility in the health sector, there is need to make legal declarations to remind it of its duties and responsibilities in such a manner that citizens in need of such services are not left out.

My conclusions are that the failure by the 1<sup>st</sup> and 2<sup>nd</sup> respondents to provide medical experts, habitation and rehabilitation centers which easily accessible by persons with disabilities is a violation of their right to equality and freedom from discrimination; and I so hold.



Turning to the 4<sup>th</sup> issue, having answered the 2<sup>nd</sup> issue in the affirmative, I see no need to deal with this issue, save to emphasize that the state had a duty towards the 4<sup>th</sup>; and failed to execute that duty thereby causing the 4<sup>th</sup> plaintiff untold and unnecessary pain and suffering.

### **ISSUE THREE**

I have taken into account the provisions of **Article 24 of the 1995 Uganda Constitution** which provides for the right to human dignity. In simple terms, Human Dignity is *'the right of a person to be valued and respected for their own sake, and to be treated ethically and morally right'*. It is an undisputed fact that Uganda is a signatory to all the enabling international Conventions and Treaties mentioned earlier in this Ruling and as such, committed herself to fulfill the obligations thereunder. The state must at all times recognize, respect and have a positive obligation to progressively realize human dignity through the mechanism of socio-economic rights. In the real sense of the matter, human dignity should be understood as the right to be protected from humiliation, a situation of incapacity or absence of self-determination.

Relating the above to the facts of this case, the 4<sup>th</sup> plaintiff who is proved to be an autism patient cannot talk nor do anything a normal human being can do, he is therefore incapacitated in that sense. The it is fact as per the evidence of **PW1 and PW2** that the 4<sup>th</sup> plaintiff was taken for medical care so that he can live a normal life decent human life from an early age, but unfortunately none of the available medical facilities had the expertise to give a correct diagnosis and interventions. The right to human dignity is a fundamental right that the state need not overlook. I cannot also ignore the fact whenever the state fails to provide for its citizens to enjoy the rights enshrined in the Constitution, it culminate into a violation of their rights. The evidence in this case reveals that the 4<sup>th</sup> plaintiff in this case was tied by ropes on trees to curb him, and this in my view, was not only degrading treatment towards him, but a violation of his rights to live a decent life.

My conclusions are that it is high time that the state of Uganda through the responsible duty bearers provides early detection and management services for persons with neurological disorders at the primary health care level; and this includes autism. Continued failure to do so is a violation of his right to human dignity and to realize the full mental and physical potential contrary to **Article 21 and 35 of the Constitution, Section 28 of the Persons with disabilities Act 2006 and Articles 1,3,4,5,7,25,26 & 28 of the United Nations Convention on the Rights of Persons with Disabilities.**

## ISSUE FIVE

Turning to the available remedies in a matter such as this one, the majority of prayers by the plaintiffs in this case are in the form of declarations. A declaration (sometimes called a declaratory order or declaration of right) is a formal statement from the court that a decision, act or procedure is unlawful.

It is trite law that a court can grant a declaration as to parties' rights, to the existence of facts, or as to a principle of law, where those rights, facts, or principles have been established to the court's satisfaction; and it is a discretionary remedy 'to be exercised in accordance with general principles'. The plaintiffs herein prayed for declarations as seen above.

As rightly submitted by learned counsels for the plaintiffs, **the Constitution of the Republic of Uganda under Article 50(1)**, which provides that any person who claims that a fundamental right or freedom guaranteed under the Constitution has been infringed or threatened is entitled to a competent court for redress; in view of the above findings, this court is satisfied that the declarations sought by the plaintiffs in this case are grounded within the laws which binds Uganda as a civilized state.

In the result, this suit succeeds and this Court there makes the following declarations:-

1. A declaration that the failure of the 1<sup>st</sup> and 2<sup>nd</sup> defendant to provide access to early detection services for autism to the 4<sup>th</sup> plaintiff at the Primary Health Care level is a violation of his right to health, right to equality and freedom from discrimination contrary to **Articles 21, 35 as read with Article 8A and National objectives and Directive Principles of State Policy XIV XVI XX, Section 8(c) 25(1) (b) and 28 of the Persons with Disabilities Act, and Articles 1,3,4,5,7,25,26 & 28 of the United Nations Convention on the Rights of Persons with Disabilities.**
2. A declaration that the failure of the 1<sup>st</sup> and 2<sup>nd</sup> defendant to ensure access to early detection and management services for autism to the 4<sup>th</sup> plaintiff at the Primary Health Care level is a violation of his right to human dignity and to realize his full mental and physical potential contrary to **Article 21 and 35 of the Constitution, Section 28 of the Persons with disabilities Act 2006 and Articles 1,3,4,5,7,25,26 & 28 of the United Nations Convention on the Rights of Persons with Disabilities.**
3. A declaration that the failure of the 1<sup>st</sup> and 2<sup>nd</sup> defendant to provide rehabilitation and habilitation services to the 4<sup>th</sup> plaintiff is a violation of

his right to equality and freedom from discrimination contrary to Article 21 of the Constitution, **Section 25(1) (b) of the Persons with Disabilities Act 2006 and Articles 1,3,4,5,7,25,26 & 28 of the United Nations Convention on the Rights of Persons with Disabilities.**

4. An order that the 2<sup>nd</sup> defendant in consultation with the relevant Ministries is directed to develop Clinical Practice Guidelines for the Management of Patients with Autism Spectrum Disorders in Primary Health Care progressively but in any case within Five years from this Judgment.
5. An order that the 2<sup>nd</sup> defendant in consultation with the relevant Ministries is directed makes progress reports on development of the guideline in (4) to court and the first plaintiff on an annual basis from the date of Judgment.
6. An order that the defendants take steps to provide supportive social services to the 4<sup>th</sup> plaintiff within his Primary Health Care level through medical specialty and assistance, personal services, speech and language therapy, social skills instructions, occupational therapy and sensory integration therapy. Steps to put this in place should be communicated within 12 months from this judgment.

Lastly, general damages are awarded at court's discretion and are intended to place the injured party in the same position in monetary terms as he would have been in had the act complained of not taken place. In this particular case, since there was no specific prayers for general damages and indeed none was pleaded or prayed for or proved to guide this court, I will desist from awarding any general damages.

Finally, it is now well established law that costs generally follow the event as per **S. 27 (2) of the Civil Procedure Act Cap 71** which provides that "*subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of an incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid*".

See **Francis Butagira vs. Deborah Mukasa Civil Appeal No. 6 of 1989 (SC)** and **Uganda Development Bank vs. Muganga Construction Company (1981) HCB 35**. Indeed, in the case of **Sutherland vs. Canada (Attorney General) 2008 BCCA 27** it was held that courts should not depart from this rule except in special circumstances, as a successful litigant has a 'reasonable expectation' of obtaining an order for costs.

In the instant case, the plaintiffs have succeeded in proving their case against the defendants; I have not found any justifiable reason to deny them the costs in this case. The Costs of this suit are awarded to the plaintiffs and shall be shared in the following manner equally between the two defendants in this case.

I SO ORDER

  
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**JUSTICE DR. WINIFRED N NABISINDE**  
**JUDGE**  
**10/03/2022**

This Judgment shall be delivered by the Hon. Deputy Registrar of the High Court Jinja who shall also explain the right of appeal to the Court of Appeal of Uganda.

  
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**JUSTICE DR. WINIFRED N NABISINDE**  
**JUDGE**  
**10/03/2022**