



PROBLEM FOR THE 11TH ANNUAL NATIONAL INTER-UNIVERSITY CONSTITUTIONAL LAW MOOT COURT COMPETITION

BALANCING COMPETING PRIORITIES IN CHAMPIONING REPRODUCTIVE AND GENDER EQUITY IN UGANDA

FACTS

Found in the fertile equatorial plains of Sub-Saharan Africa, the Republic of Bokomo stands as a testament to the power of a well-managed agrarian economy. With a population of about 50 million people, the majority of whom are youth, the country focusses on sustainable practices and innovation, and it has carved a niche for itself as an upper-income nation in the region. It boasts a Gross Domestic Product (GDP) of \$80 billion (USD), with agriculture contributing a significant portion of it and employing the most significant labour force in the country.

Recognizing the backbone of its success, the government dedicates a substantial portion of its budget to nurturing this sector: The agricultural industry was allocated a burgeoning \$28 billion (USD) in the recent national budget for 2024-2025. This allocation is to fuel research and development of drought-resistant crops, irrigation infrastructure projects in rural areas, and farmer subsidies for modern equipment and technology.

As the major cash cow of the economy, agriculture flourishes with a diverse range of crops like coffee, cocoa, and high-value fruits tailored to the region's climate. The burgeoning service sector is valued at \$16 billion (USD) and supports agriculture with logistics, banking, and communication infrastructure. A small light industry sector valued at \$8 billion (USD) processes agricultural raw materials or caters to the domestic market.

The country allocated the following budget to its essential sectors:

- **Agriculture:** 25% of the national budget, reflecting the government's commitment to long-term growth and food security.
- **Education:** 30% of the budget, with an emphasis on agricultural sciences, Science, Technology, Engineering, and Mathematics (STEM) fields, and vocational training to create a skilled workforce.
- **Health:** 10% of the budget goes towards improving healthcare infrastructure, disease prevention programs, and ensuring a healthy and productive population.
- **Defence:** 35% of the budget is allocated for maintaining stability and a well-equipped military for national security.

The Republic, despite its success, faces some hurdles:

- Volatile commodity prices: Global market fluctuations for agricultural products which impact income stability.
- Climate change: Erratic weather patterns and droughts pose a constant threat to crop yields.

The Republic has sought solutions in the following areas by making key interventions, such as;

- Value-added products: the country is transitioning towards creating higher-value products like processed foods or beverages to diversify income streams and reduce dependence on raw material exports.
- Regional trade: It aspires to become a regional agricultural hub, ensuring food security for neighbouring African nations through trade partnerships.

The President now thinks the economy is poised to solidify its position as a leading agrarian power in sub-Saharan Africa, paving the way for a prosperous and sustainable future. Socially, the Nation is caught in the middle of a rigid embrace between its deeply religious past and the progressive yearning of its modern populace by the UK, whose first contact point was through the Catholic and Protestant missionaries. The country is deep-rooted in religion, with a predominantly Christian but also Islamic spread as well as ethnic traditional minorities. However, as decades have passed, a growing segment of the population, particularly the youth, is questioning the disproportionate authority of religious doctrine and advocating for a more secular approach to governance.

The Country's Constitution incorporates significant aspects that can be argued to be founded on religious inclinations though, it is a secular country. This translates to policies impacting on several constitutionally guaranteed fundamental human rights and freedoms including education (where religious involvement is significant), healthcare (where certain medical practices are frowned upon), and access to Sexual and Reproductive Health and Rights and services. Access to safe and legal termination of pregnancy is unlawful as per the Penal Code of the Country and efforts to decriminalise termination of pregnancy have not yielded results.

The call to embrace no-fault divorce and decriminalise pseudo economic practices like sex work have fallen on deaf ears. The government has equally met challenges with religious doctrines that contrasts with advancements in medicine. Furthermore, vaccination programs in the Country are met with suspicion by cults, and Sexuality Education is stifled due to religious and ethnic restrictions. This places significant restraints on access and availability of quality public health services, making the citizens vulnerable to outbreaks of preventable diseases arising from limited access to reproductive healthcare services.

Consequently, the health system stagnated as the religious establishment, wielding significant political power and social influence, resisted these calls for a secular interpretation of the law as they view secularism as a threat to Bokomo's character and moral fabric which are attributed to a decline in Bokomo's religious values. The youth exposed to a more globalized world through media and technology questioned the dominance of religion and suggested measures such as boycotts so as to get their message across.

Sawubona Hospital is a church-founded private Not for Profit-Hospital in the Republic of Bokomo. It is a center for excellence in innovation and patient centred care with some of the most sophisticated medical equipment as well as a specialised wing for cancer treatment. As a result, Sawubona Hospital won an award in 2019 for being the best-leading Private Not for Profit Hospital in the entire region. At the award ceremony, the Medical Director (MD) lauded the various medical staff at the hospital for their service and promised to continue the work of treating all illnesses in the region under the hospital's motto of "Providing holistic and inclusive healthcare services to all."

In Mid 2021, the hospital has faced financial problems after the onset of the global COVID-19 pandemic. The economic problems stemmed from lack of potential revenue sources as patient numbers declined, and revenue streams such as grants and donations dwindled due to changes in donor funding and priorities. As a result, the hospital became indebted, and it was subsequently sued for failure to settle its indebtedness. Its plight was widely publicized in the media and as a result, the government, through the Ministry of Finance, Planning and Economic Development bailed-out the Hospital by a ninety percent (90%) majority share in the Hospital in December 2022.

Abeni, a 24-year-old female medical graduate, is a promising young doctor at Sawubona Hospital. She has been a young prodigy straight from her primary school and graduated top of her class both in her A-level exams and at the university. Being a fresh graduate, she was enrolled at the hospital as a surgical intern to assist in the surgical department. She was quickly promoted from surgical intern to assistant surgeon and later, to a full surgeon.

On Friday, 16th February 2023, Dr. Abeni quarrelled with her university sweetheart Misaachi after she found him flirting with Berna, her former university roommate. Infuriated by Misaachi's actions, she decided to go drinking with her best friends, Lina and Tina that evening at Aloet Country Club where she met Bongani. Lina and Tina encouraged Abeni, providing her with a package from ZamZam Pharmaceuticals advertised as 100% effective at preventing unwanted pregnancies. The package included their premium condoms and morning-after pills. With this encouragement [and feeling safe - relying on ZamZam products], Dr. Abeni decided to "cool off" from Misaachi's betrayal by sleeping with Bongani in a protected one-night stand.

As a first-class degree holder in medicine, she promptly swallowed her ZamZam morning-after pill after noticing issues with the Zamzam “premium condoms” to entirely forget about the ordeal. The following morning, she found 30 missed calls from Misaachi and a sweet WhatsApp voice note reminding her of what a power couple they were in their university days. He went on to assure her that she was the love of her life and asked for forgiveness. Dr. Abeni, pressured by her mother about the importance of securing a marriage early and her love for Misaachi, decided to understand Misaachi.

In March and April that year, Dr. Abeni missed her always regular period. As a star medic, Dr. Abeni contacted Kalindaluzi, a well-known supplier of abortifacients to university students at Kwivuga University, her alma mater. Kalindaluzi headed to ZamZam Pharmaceuticals and talked to his trusted friend Bakali who then handed him a couple of medicines in a paracetamol jar and said, “You know what to do, we have done this a million times.”

Kalindaluzi passed on the paracetamol jar through an online delivery boda-boda service, Haraka. The paracetamol jar contained a full dosage of mifepristone and misoprostol placed in an empty Zamzam paracetamol bottle and sent a Whatsapp voice note shortly afterwards saying, “those tablets will get the job done”. Upon reaching home and heavily reflecting on her strong cultural values, Dr. Abeni placed the medicine in her medicine cabinet and decided to tell Misaachi that she is carrying his child. Overwhelmed with joy, Misaachi decided to move into her apartment in Butoko Bungalows to take better care of her.

At 1:00pm on Saturday, 13th September, 2023, Dr. Abeni was down with a severe headache. Worried about his sweetheart’s unwellness, Misaachi checks the medicine cabinet and gets a bottle labelled Zamzam paracetamol and picks some “painkillers” and wakes up Dr. Abeni saying, “Here are some painkillers, darling”. Dr Abeni swallowed them and went back to bed. At around 2:00pm on the same day, a hysterical and heavily bleeding Dr Abeni was rushed to Sawubona Hospital. Upon arrival, the reception informed her that they do not work on Saturdays and that she should try another hospital or wait and see if the surgeon will return to pick up his phone charger.

At 5:00pm, Dr. Koka indeed passed by and quickly recognised Dr. Abeni shouting “I do not want this baby”. Misaachi too insisted that they terminate the baby and save his sweetheart from suffering. Dr. Koka then ordered that she be rushed into hospital where he discovered that she was having an induced termination of pregnancy because of the misoprostolic acid in her bloodstream. Upon discovering this, Dr Koka declared, “As a holy hospital and responsible law-abiding citizens of this country, we cannot help a sinner to abort her child. Abeni has a duty to preserve the miracle in her womb. She needs counselling and prayers. It is a hospital policy”. Dr. Abeni was then sent away.

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Dr. Abeni’s condition rapidly deteriorated and she was taken to Poko-Poko Private Hospital where she underwent caesarean birth. Due to the delay in managing her situation, she lost a lot of blood and the doctors suspected that the baby might have long term complications such as cerebral palsy. After a week, Dr. Abeni received a phone call from Sawubona Hospital that due to the month-long inspection from the Ministry of Health of Bokomo, they needed all the employees at the hospital on Monday that week. The hospital maintains a “no marriage-no baby” policy on its premises. Any employee who did not show up would be fired. Dr. Abeni, weak in disposition, duly reported for work on Monday and tried to engage with the hospital administration to secure her maternity leave. This fell on deaf ears as she was instructed to report back to work. Rumours of Dr. Abeni’s induced termination of pregnancy had been running loose at the hospital. Dr Siminyu and Dr. Simbamanyo shifted their work stations away from her desk. The hospital administration decided that Dr. Abeni should have her meals in her office so that she does not spread her bad morals to the other doctors. Dr Abeni was tasked with assisting in a long surgical procedure that involved long hours of standing. Prior to this operation, all surgeons were expected to sanitise materials, which she forgot to do leading to a severe infection of a one Mr Tito and resultant death of the patient.

In addition, Dr. Abeni developed a habit of coming late work because of her maternal roles with the child. She also got more non-responsive to her assignments that kept piling up. Heavily disappointed by Dr. Abeni’s blatant carelessness, the hospital administration demoted Dr Abeni from her current position to Assistant Surgeon and she was given a probationary period of a month. Meanwhile, at home, Misaachi locked Dr Abeni outside her home till late, after suspecting that the child is not his. One day, Misaachi pushed her off the bed to the ground and Dr. Abeni developed a slight limp in her left leg.

He threatened to leave Dr Abeni and that he would disclose his suspicions about her child to her family and co-workers if she did not hand over her monthly income to him. Dr Abeni conceded and did as Misaachi asked. All this happened while she was struggling to take care of her child. As a result, her mental health deteriorated. The hospital had previously referred her for a checkup for assistance targeted at addressing her mental health. However, the prescription given was intended for her to get adequate sleep and to take some painkillers.

Fast forward, she felt better and decided to return to work. She was quickly informed that as a result of her past conduct and pregnancy, the administration was skeptical of her commitment to work and ability to work in a Christian environment and to give her best while at work. **As a result, her contract was renegotiated to include but not limited to the following;**

- A clause extending her probationary period to 6 months from the date of signing of the new contract
- A clause stipulating her commitment to work efficiently and amicably with the supervisor and relevant authority without fail.
- A clause scaling back her pay by 200 USD, in exchange for 5 years under contract instead of 3 as was earlier contained.
- A clause stipulating that the hospital reserved the right to terminate the contract if for whatever reason, Dr Abeni reneged from the agreed code of conduct and deliverables, including repetition of her earlier indiscretions.

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Owing to the conclusion of her seeking medical assistance and feeling a bit better about herself, Dr. Abeni decided to return to work and was engrossed in her tasks and hospital rounds more than ever before. However, the young Dr Abeni relapsed barely 2 weeks into the new tenure and a verbal confrontation ensued with her supervisor while she was on her night shift. As a result, the hospital administrator conducted a quick hearing and he dismissed Dr Abeni premised on her violating the no marriage no pregnancy hospital policy and her for being in contempt of her contractual obligations.

Dr Abeni discouraged and disappointed, heard an advert on the Voice of Bokomo about free health legal aid services offered by the Amani Health Lawyers Initiative, a Non-Governmental Organization (NGO) operating in Central Bokomo. Dr Abeni went to their offices and sought legal assistance on how best to hold the state accountable. Dr Abeni presented her facts to Mama Ndara and Mama Ndara, a qualified Advocate, informed Dr Abeni that her rights to access quality health care services had been violated and Amani Health Lawyers Initiative, would assist her get legal redress. Amani Health Lawyers Initiative jointly with Dr Abeni instituted a suit against the Attorney General of Bokomo under the Human Rights Enforcement Act of Bokomo.

The Amani Health Lawyers Initiative argued that:

- The failure of Sawubona Hospital to provide Dr Abeni with quality Sexual and Reproductive Health services during her time in need, violated her right to access health services and commodities guaranteed in the Constitution of Bokomo.
- The dismissal of Dr Abeni premised on her pregnancy, violated her right to the highest attainable standard of physical and mental health and to be free from discrimination of all kinds and of all types.
- The failure of Bokomo State to put in place laws and policies that guarantee safe and legal termination of pregnancy has contributed to a high maternal mortality ratio of 362 deaths per 100,000 live births, resulting into the death of 2,600 women and girls, translating into seven deaths per day.
- The failure of the government to take steps aimed at ensuring equal access health care services to all irrespective of religious affiliations

The Attorney General of Bokomo denied any form of liability and noted that Sawubona Hospital was justified in its policies as it follows its Christian Doctrine which is supreme above provision of medical services to those in need. He also argued that there was no discrimination suffered by Dr Abeni premised on the fact that her dismissal rested on grounds of her pregnancy, which violated the “No marriage, no pregnancy rule”.

FACTS BEFORE THE APPEALS COURT

The High Court dismissed the case brought by the Amani Health Lawyers Initiative and Dr. Adeni with costs. **The Court observed that:**

“Much as we would have loved to entertain the case before us, the case before us and the issues raised, raise questions of constitutional interpretation which are a preserve of the Constitutional Court of Botswana. Ours, is to simply enforce rights of person who claims that their fundamental human rights and freedoms have been violated or infringed upon. It is upon that, that we then proceed to examine the case premised on the strength of the law, the facts and evidence submitted to this Honourable Court and thereafter make a decision to either allow the claim in part or totally or to reject the claim in part or in totality. Given that the case stands as is, we deny any prayers sought and the Applicants must be condemned in costs.”

Amani Health Lawyers Initiative and Dr Adeni dissatisfied with the judgement of the High Court, appealed to the Appeals Court to overturn the entire judgement and orders of the High Court.

FACTS BEFORE THE SUPREME COURT

The case was heard by the Appeals Court and the Appeals Court overturned the Judgment of the High Court. **The Appeals Court observed that:**

This being the first Appellate Court, we are required to evaluate the facts of this case, the law and the evidence before the High Court and we make our own independent assessment premised on our own evaluation. Our evaluation reveals that there was indeed a fundamental miscarriage of justice arrived at by the High Court in failing to determine the matter before it premised on its merits.

What Dr Adeni sought for from the High Court was to enforce her rights and these rights included her rights to access health care, to be accorded the highest attainable standard of physical and mental health, her right to be accorded equal treatment, her right to access quality health care services and commodities in addition to others. By being denied audience, the High Court closed its doors on her and left her to fight on her own in the corridors of Justice. The Corridors of Justice are meant to be the pathway to Justice and not exit route for those who have been denied Justice. The Court should have at least taken interest to hear her case premised on its strengths and not to dismiss it premised on raising questions for constitutional interpretation.

Questions for constitutional interpretation if so raised, should have been referred to the Appeals Court sitting as the Constitutional Court and matters that required enforcement of fundamental human rights and freedoms such as this one, should have been entertained there and then without question. For instance, given our firm belief in gender equity and equality, pregnancy whether with or without marriage, should never be a ground for dismissal in a secular country. For this reason, we hereby invalidate the decision of the High Court and declare that the State of Bokomo is a secular state and it violated her rights as claimed, and order that she be reinstated at Sawubona Hospital as a surgeon with full benefits. Compensation to a tune of USD 20,000 be paid to her accordingly with costs. The Attorney General was aggrieved with the decision of the Appeals Court and it appealed against the Judgment of the Appeals Court to the Supreme Court.

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