

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISC. CAUSE NO.140 OF 2002

GREENWATCH ::: APPLICANT

VERSUS

1. ATTORNEY GENERAL

2. NATIONAL ENVIRONMENT

MANAGEMENT AUTHORITY (NEMA) ::::::::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON JUSTICE ELDAD MWANGUSYA

RULING

This motion was filed in this court on the 9th December 2002 by Greenwatch, a Non Government Organisation registered and incorporated in Uganda with objectives that generally focus on issues to do with monitoring and exposing dangers posed to the environment and exploring avenues for its protection from all sorts of abuses. If I may say so the objectives of the organisation are noble indeed and their efforts to protect the environment should be applauded by everybody because Article 245 of the constitution of the Republic of Uganda which I set down hereunder enjoins Parliament to take measures for protection and preservation of the environment which this application seeks to do.

“245. Protection and preservation of the environment Parliament. shall by law, provide for measure intended-

- a. *to protect and preserve the environment from abuse, pollution and degradation;*
- b. *to manage the environment for sustainable development; and*
- c. *to promote environmental awareness.”*

The objectives of the applicant are in recognition of every person’s right to live in a safe environment as envisaged by the constitutional provisions.

The application is brought against the attorney General and the National Environment Management Authority seeking orders that;

- a. A declaration that the manufacture, distribution, use, disposal of plastic containers, plastic food wrappers, all other form of plastic commonly known and referred to as kaveera violates the rights of citizens of Uganda to a clean and healthy environment.
- b. An order banning the manufacture, use, distribution and sale of plastic bags and plastic containers of less than 100 microns
- c. An order directing the 2nd respondent to issue regulations for the proper use and disposal of all other plastics whose thickness is more that 100 microns including regulations and direction as to recycling re-use of all other plastics.
- d. An environment restoration order be issued against both respondent directing them to restore the environment to the state it was before the menace caused by plastics.
- e. An order directing the importers, manufacturers, distributors of plastics to pay for the costs of the environmental restoration.
- f. No orders be made to costs

The application was supported by the affidavits of Irene Sekyana, National Coordinator for the applicant and Sarah Naigaga a member of Environmental Law Alliance Worldwide and a Coordinator of the applicant.

In her affidavit Irene Sekyana stated that;

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3. Long after this application had been instituted, the Government through the budget speech in June 2007 did ban the importation, use and distribution of polythene bags of less than 30 microns.

4. That subsequent to the ban, the applicant has held national wide consultations, carried out research and found that the said ban has had no effect whatsoever on the reaction of the use, distribution, manufacture and disposal of polythene bags.

5. That on the contrary, the manufacturers have increased the thickness of the polythene bags to 30 or 31 microns and continue to manufacture, use and distribute them.

6. That the above can be confirmed by the public outcry evidenced by press reports, complaints, observations and studies.

7. That the menace of the polythene bags to the environment can only be curbed when this application is allowed and the orders sought.

Ms Sarah Naigaga on the other hand deponed that she obtained a scientific study from the Environment Law Alliance Worldwide an NGO that links environmental lawyers all over the world where she is a member, analysing plastic waste management in India by Priya Narayan. She further stated that the findings and recommendations in this study apply to Uganda and support the applicant’s case.

For the respondents, Mr. Patrick Kamanda, the Environmental Inspector to the second respondent and Malinga Godfrey, a State Attorney in the Attorney General’s Chambers swore affidavits in opposition to the application. Mr. Malinga stated as follows:-

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3. That contrary to the views expressed by Ms Naigaga Sarah, for the applicant, the 2nd respondent has in the implementation of its mandate to

manage the environment gone ahead to recommend to the government of Uganda through the Ministry of Finance and Economic Development for a number of disincentives and incentives geared at control, use and disposal of plastic/polythene bags in Uganda.

4. That in this direction one of the economic disincentives recommended by the 2nd second respondent to the government was the imposition of a higher tax on the plastic/polythene bags to discourage their importation.
5. That the recommendation was considered and taken up by the Government, that in the Budget Speech of 2002 – 2003 and in the financial Acts made there under a tax of 13% was levied on the gross import value of polythene raw material and that in this direction of controls parliament has further proposed that his tax be increased to 50% of the import value.
6. That in a further bid to control the use of the polythene bags one of the incentives recommended by the 2nd respondent to the government was tax exemptions to investors who are/were willing to manufacture or import biodegradable/disposable bags/domesticable bag utilities or investors ready to invest in the recycling of plastics.
7. That following this initiative and recommendation a number of investors are currently in dialogue with the government regarding this policy.
8. That from its inception to date the second respondent has looked at, verified various workable options for the control of polythene bags and that reasonable effort is being put forth to find workable and affordable means to control the use of polythene.”

On the other hand Mr. Patrick Kamanda stated:

“1. That the improper use and disposal of any materials in Uganda is a source of serious concern to the 2nd respondent due to the potential danger they pose to the environment.

2. That the 2nd respondent is implementing a number of legal, economic and economic strategies in order to control the improper use and disposal of plastic/polythene materials in Uganda.
3. That the second respondent is responsible for ensuring that the National Environment (Waste Management) Regulations are implemented so as to regulate the disposal of solid wastes in the country.

4. That the major requirement under these regulations is for all purposes generating solid waste to separate hazardous waste from non-hazardous waste and dispose of the waste in an environmentally sound manner.
5. That the second respondent has initiated the process of the preparation of solid waste disposal guidelines to guide regulated communities on practical aspects of environmentally sound disposal of solid wastes including plastic/polythene materials right from the beginning of the waste management cycle to final disposal.
6. That the 2nd respondent together with other partners in environmental management such as local governments, NGOs and community based organisations are implementing the national Environment Waste Management Regulations by carrying out awareness campaigns to educate the public about the dangers of improper use and disposal of plastic/polythene materials.
7. That the said awareness campaigns are targeted at stimulating a change of attitude in the public towards the use and disposal of plastic/polythene bags and also to mobilise the public to separate at source these materials for their safe disposal.
8. That the mere manufacture, distribution, uses and sale of plastics/polythene bags does not violate the rights of the citizens of Uganda to a clean and a healthy environment.
9. That the polluter pays principle is a cardinal principle in environmental management under the National Environment Statute that imposes the costs of environmental pollution on the actual polluter and therefore the second respondent cannot be held to be responsible for the restoration of the environment.”

In Miscellaneous Cause No. 140 of 2002 Mr. Oluka, who represented the Attorney General raised three preliminary points of objections i.e that the application did not disclose a cause of action against the Attorney General and that the application was improperly before court in that it was brought by the applicant on behalf of other Ugandans who had not authorised the applicant to do so and without leave of court as legally required under Order 1 rule 1 of the CPR before filing a representative suit and that the application was supported by defective affidavits. Mr Wabunoha a

Senior Legal Officer with the second respondent associated himself with Mr. Oluka's first objection. All these were however overruled by Lameck N. Mukasa and the application was set down for hearing.

Two issues were raised for determination:-

1. Whether the use, manufacture and distribution of polythene bags of more than 30 microns constitute a danger to the environment and in turn violate the rights of citizens of Uganda to a clean and health environment.
2. Whether the respondent is entitled to the orders and remedies sought.

In his written submissions, Mr Kakuru Kenneth contended that issue No. One had been subsequently settled by admission of both the respondents. The danger posed by polythene bags results from their chemical composition and not from thickness/microns. He thus stated that the ban on polythene bags which is now in place does not take into account the methods of use, distribution and disposal. While on the issue of remedies, he stated that before hearing this application, the parties had engaged in a process of ensuring amicable resolution of this issue through the parliamentary select committee. A bill had been drafted with the help of Environmental Advocacy NGOs. He thus invited court to make an order directing the respondents to expedite the passing of the bill/subsidiary legislation to ensure that the provisions of the Constitution are not violated continually. He cited the case of **FESTO BALEGELE & 794 OTHERS -Vs- DSM CITY COUNCIL, HIGH COURT OF TANZANIA MISC. CIVIL CAUSE NO. 90 OF 1991.**

I have studied this application and the written submissions of Mr. Kakuru, counsel for the applicants. From the affidavit in support and those in opposition to the application there is consensus as to the danger posed to the environment by the rampant and uncontrolled use of polythene bags. From the affidavit of Mr. Malinga it is also very clear that in recognition of the danger to the environment some steps have been taken to curb the importation and use of polythene bags. The measures included the drafting of a bill that would go a long way in protecting the environment against degradation but what could not be ascertained is how far this process has gone given the length of time this application has been pending in court. All this court can say is that whoever is involved in the process of enacting a

law towards protection of the environment should do so as a matter of urgency because the damage is likely to be extremely costly. In view of this observation the best this court can do is make a declaration that the manufacture, distribution, use, sale, sell disposal of plastic bags, plastic containers, plastic food wrappers, and all other forms of plastic commonly referred to as 'kaveera' violates the rights of citizens of Uganda to a clean and healthy environment as acknowledged by both parties.

The rest of the orders prayed for including the ban on manufacturing, use, distribution and sell, regulations for proper use and disposal of all plastics, an environment restoration order and an order directing the importers, manufacturers, distributors to pay costs of environment restoration will hopefully be addressed in the proposed law which as I have already observed needs expeditious consideration in order to protect the environment for the benefit of every citizen both in the short and long time.

I order accordingly.

Eldad Mwangusya

J U D G E

05.10.2012