



Environment Action Network Ltd. v. Attorney General and National Environment Management Agency

High Court Miscellaneous Application No. 39 of 2001

Country: Uganda

Region: Africa

Year: 2001

Court: High Court at Kampala

Health Topics: Child and adolescent health, Environmental health, Public safety, Tobacco

Human Rights: Right to a clean environment, Right to health, Right to life

Facts

The applicant, a public interest organisation, brought an application in the public interest seeking a declaration that unregulated smoking in public areas is a violation of the constitutional rights of non-smokers to life and to a clean and healthy environment. Article 50(2) of Uganda's Constitution provides that "any person or organization may bring an action against the violation of another person's or group's human rights". The applicant relied upon multiple international reports on the negative health consequences of involuntary tobacco smoke inhalation for children and adults as evidence.

The respondent raised four preliminary objections, two based on the evidence and two based on procedure. The objections based on the evidence were that the application is based on hearsay and that the applicant is not an expert on the effects of second-hand smoke. The two objections based on procedure were that the applicant cannot claim to represent the Ugandan public and that the applicant did not provide 45 days notice of intention to sue as required in section 1 of Act 20 of 1969.

Decision and Reasoning

The Court rejected the two objections based on the evidence as premature as the credibility of the evidence must be determined after a hearing on the substance of the evidence.

The Court held that the applicant was capable of bringing the claim representing the non-smoking Ugandan public as Article 50(2) of the Constitution provides that right. The Court also noted that given the number of affected persons, children and indigent adults, that do not have the resources or capacity to bring this application on their own behalf, the public interest is served by allowing the applicant to bring the application in their interest.

The Court held that as these proceedings were brought under Article 50(2) of the Constitution and concern the violation of fundamental rights, section 1 of Act 20 of 1969 does not apply. Instead, the Fundamental Rights and Freedoms (Enforcement Procedure) Rules apply. These only require that the Attorney-General and relevant parties receives notice, which the respondent received. The Court emphasized that as Article 50(2) is meant to protect fundamental rights, procedural requirements cannot be an impediment. Having a 45-day notice period as required in section 1 of Act 20 of 1969 could allow the government to violate rights for that period of time with no recourse.

Decision Excerpts

"I agree with this requirement that the respondent, usually Government or a Scheduled Corporation which is supposed to be busy as Government, needs sufficient period of time to investigate a case intended to be brought against it so as to be able to avoid unnecessary expense on protracted litigation. This rationale cannot apply to a matter where the rights and freedoms of the people are being or about to be infringed. The people cannot afford to wait 45 days before pre-emptive action is applied by Court. They would need immediate and urgent redress. They need a short period which is one provided under the ordinary rules of procedure provided by the Civil Procedure Act and its Rules. To demand from the aggrieved party a 45 days notice is to condemn them to infringement of their rights and freedoms for that period which this Court would not be prepared to do. Any alleged infringement must be investigated expeditiously before damage is done." (p. 7)

“The interest of public rights and freedoms transcend technicalities, especially as to the rules of procedure leading to the protection of such rights and freedoms.” (p. 9)

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