

5. That the information requested for is liable to mandatory disclosure in public interest and to enable the applicant institute or pursue criminal proceedings.

6. It is in the interest of promoting administrative fairness, efficiency, transparency and accountability among political leaders and statutory bodies that the application is granted.

The respondent in response through the affidavit in reply of Clerk to Parliament Ms. Jane L. Kibirige, responded that the information sought by the applicant is not only obscure and vague but also unknown to the respondent.

That the applicant wrote to the Clerk to Parliament on 20th August 2020 seeking to access a Bio-data form purportedly signed by Hon. Kyagulanyi Sentamu Robert published on the information website.

That the respondent had no corresponding legal duty or obligation requested for and that the request was an assumption that the clerk to parliament.

That the personal data of Members of Parliament on the parliament's website is obtained orally without any verification since it is not the duty of parliament to verify and it was justified for the respondent not granting the requests by the applicant as they didn't have the information.

REPRESENTATION

The Applicant was self-represented while the Respondent was represented by the Office of the General Council, Department of Litigation and Compliance, Parliament of Uganda.



Both parties filed written submissions which have been read and considered by this Court in this Ruling.

ISSUES

- 1. Whether the respondent was justified in denying the applicant access to the impugned information?**
- 2. What remedies are available to the parties?**

RESOLUTION

- 1. Whether the respondent was justified in denying the applicant access to the impugned information?**

The applicant in his written submissions and cited S.16 of the Access to Information Act 2005 and also relied on paragraph 4 in the affidavit in support of the application where he stated that the request was made on 20th August 2020 and as of 19th Sept 2020 no response was made which was enough to dispose of the application but went ahead to address court on other aspects

He cited ***CHARLES ONYANGO OBBO & ANOR V AG SCCA NO.2/2002 where court held that protection of the guaranteed rights is a primary objective of the constitution. Limiting their enjoyment is an exception to their protection and therefore a secondary objective.....***

The applicant relying on S.34 of the Access to Information Act provides for mandatory disclosure in public interest notwithstanding any other provision in this part, an information officer shall grant a request for access to a record of the public body otherwise prohibited under this part if;



a. The disclosure of the record would reveal evidence of a substantial contravention Of, or failure to comply with the law going by Section 115(a) and Section 351 of The Penal Code Act, Cap 120.

The respondent in reply stated that it is not a collector or custodian/ controller of personal information/bio data of Members of parliament including the Hon. Kyagulanyi Ssentamu Robert and that in line of A 81 of the constitution and the Parliament Elections Act once a member of parliament is declared as a winner and gazzetted all that is required is for such a member to take oath of allegiance and oath of member of parliament. There is no requirement for bio data information to be collected by the respondent.

The respondent also submitted that there is no law empowering the respondent to collect or even process the personal data of Hon Kyagulanyi Ssentamu as required under the data Privacy and Protection Act.

In regards to the delayed response to the request for the said information was attributable to the obscurity of the request and the need to verify the information the information on the parliamentary website where he alleged to have gotten the information from.

Having looked at the evidence on record and the submission of both counsels for the applicant and response court finds that the defendant abused their duty and obligation to review the terms and conditions of service, standing orders, training and qualifications of persons holding office in parliament as **Section 6(b) of the Administration of Parliament Act.**



The respondent cannot therefore raise a defense of that it had no corresponding legal duty/ obligation to keep the information requested for by the applicant.

The respondent is not justified in law in not granting the request of the applicant for a record/ document and in case the respondent claims that he did not have the documents requested would mean that they faulted in their responsibility of acquiring information regarding qualifications of persons holding office in parliament.

Kyagulanyi Robert Ssentamu was a Member of Parliament hence a holder of an office in parliament. And the commissioner of parliament therefore was supposed to hold that information since he was a person and a holder of an office in parliament.

Section 34 of the Access to information Act provides for mandatory disclosure in public interest notwithstanding any other provision in this part an information officer shall grant a request for access to a record of the public body otherwise prohibited under this part if the disclosure of the record would reveal evidence of a substantial contravention of or failure to comply with the law. In agreement with the submission of the applicant would mean that the disclosure of the record would reveal evidence of a substantial contravention of or failure to comply with the law **hence creating an offence under Section 115 and section 351 of the Penal code Act cap 120 and its true that if the** information was availed to applicant by the respondent would reveal evidence and therefore the applicant would have a chance to institute criminal charges against the said Kyagulanyi Robert Ssentamu who is a public servant and that **Article 80 (2) (f) of the Constitution which states that a person is not qualified for election as a member of Parliament if that person has within the 7 years immediately preceding the election**



been convicted by a competent Court of a crime involving dishonesty or moral turpitude.

Therefore, this information would help the applicant in determining the competence of a public servant in that case Kyagulanyi Robert Ssentamu and also confirm if he committed an offence as per **Section 115 and 351 of the Penal Code cap 120.**

The respondent was required to avail the applicant with a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be including all communications with every person who conducted the search on behalf of the information officer.

Having perused all the evidence and laws I find the respondent unjustified in denying the applicant the information he asked for from the respondent who was by law as discussed above.

Issue. 2

What remedies are available to the parties?

The applicant in their written submission submitted that he the respondent was required to avail the documents but refused to do so which was in violation of the law and prayed that the application be granted in terms proposed in the Notice of Motion with costs

As regards general damages the applicant prayed for a round figure of **Ugx.10,000,000=** relying on the case of **SA AIRLINK (PTY) LTD V MPUMULANGA AND PARKS AGENCY South Gauteng High court No.1011 of 2012 and further prayed that he is granted costs for the application.**



In response the respondent submitted that they had not committed any wrong act to the detriment of the applicant to warrant compensation for general damages since the respondent did not have the Bio-data of Kyagulanyi Robert Ssentamu and also informed court that damages are offered at the discretion of court.

In regards to costs the respondent submitted that the applicant was not entitled to costs as applicant was not an advocate and also relied on the case of **Kasaija v iga & anor HCT04CV 004-2014** and was affirmed by **Hon justice Opio Aweri JSC** in consolidated constitutional appeals **No.002/2018 Male Mabirizi V AG where it was held that the advocates (remuneration and taxation of costs)** Regulations are made under the Advocates act which specifically is for enrolled advocates and the applicant not being an enrolled advocate can't be remunerated as one.

The applicant submitted in rejoinder that whether he is entitled to professional fees or not the tax master is to determine that and also pointed out that **Section 16** of Access to Information Act cites in any case and therefore leaves no exceptions and **Section 3** Access to Information Act tells them how parliament was determined to enforce **Article 41** of the Constitution and therefore the strict timeliness in the Act are intentional and must indeed be adhered to.

Damages are a sum of money awarded by a Court as compensation for a tort or breach of Contract.

They aim at placing the injured party in as good a position so far as money can do it, as if the matter complained of had not occurred.

This Principle was re-echoed in **Luciano De Sanctis Vs Jack Wavamuno & North & South Co (U) Ltd [2009] 1 HCB 59.**



General Damages are the direct natural or probable consequence of the act complained of as per **Lord Macnaghten** in the case of **Stroms Vs. Hutchinson [1905] AC 515**.

Having read the submissions of both parties and evaluated the evidence and laws applicable, this Court is inclined to agree that the grant of damages of **Ugx.10,000,000/= (Ten Million Uganda Shillings only)** is fair enough for the applicant having put into consideration his time, efforts and all the hustle that comes with filing of matters in Courts of Law, that the respondent failed in its duties to ensure that they avail information regarding one of its persons holding office that is to say **Robert Kyagulanyi Ssentamu**. The respondent failed in its duty and this cannot go on as citizens have a right to have information that regards public servants as this will promote accountability and transparency and on top of that choosing better leaders.

With regards to costs, the Court is in agreement with the submission of the respondent and the supreme court decision that the applicant not being an enrolled advocate is not entitled to professional fees as per the case of **Male Mabiriz V AG** and that the Advocates (remuneration and taxation of costs) Regulations are made under the advocates act who are lawyers called to the Bar and in this case the applicant is not an advocate.

Following this the applicant is denied costs but granted General Damages to a tune of **Ugx.10, 000,000/=** only, its thus ruled.

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Nasambu Esther Rebecca.A
Chief Magistrate

24/11/2021