

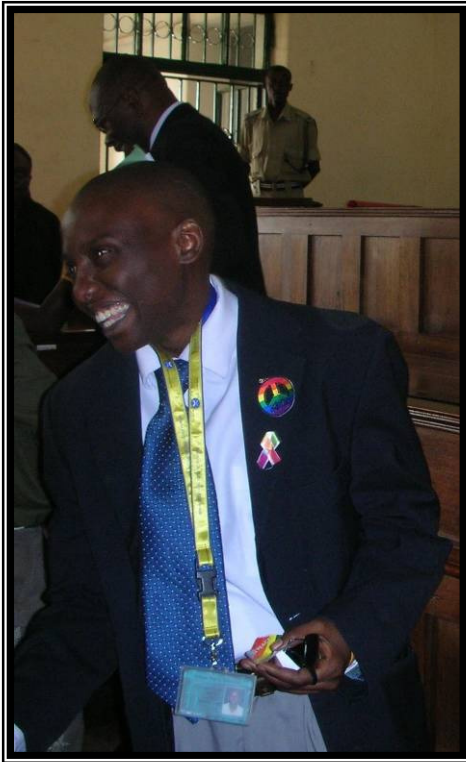
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## **HUMAN RIGHTS VICTORY: UGANDAN TRANSGENDER, LESBIAN, AND GAY HUMAN RIGHTS UPHELD IN THE HIGH COURT OF UGANDA**

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“Justice has come in Uganda!” The shouts of excitement and tears of joy from African transgender, lesbian, and gay Human Rights Defenders can still be felt from the court room and all around the continent.

**Yesterday, the High Court of Uganda ruled on Victor Mukasa and Oyoo’s case, declaring that Ugandan constitutional rights apply to lesbian, gay, bisexual, and transgender (LGBT/Kuchu) people regardless of whether they are homosexual or transgender.**



Victor Mukasa elated after the hearing on 21 September 2007; Photo Credit: M.B.

Victor Juliet Mukasa brought this case against the Attorney General of Uganda when government officials illegally raided Victor’s home without a search warrant, seizing documents related to Victor’s work as a Human Rights Defender for people who are transgender, lesbian, gay, bisexual, and intersex. The officials illegally arrested a guest at Victor’s home, Oyoo, and treated Victor and the guest in an inhuman and degrading manner amounting to sexual harassment and indecent assault.

Yesterday the High Court of Uganda ruled that the government violated the rights of Victor Mukasa and Oyoo. The government will be required to pay damages to both Victor and Oyoo for violating their rights, torturing them, and seizing Victor’s documents.

## THE JUDGEMENT

The final judgement on the case was issued yesterday to a court full of Ugandan lesbian, gay, bisexual, transgender, and intersex people. Counsel Rwakafuzi recounted the historic moment that occurred yesterday when **Justice Arach declared: “Human rights must be respected. It has been found that the actions of the officials that molested Victor Mukasa and Oyoo were unconstitutional, inhuman, and should be condemned.”** Justice Arach called upon the international conventions and emphasised that the Universal Declaration of Human Rights enjoins us to respect human rights and protect them in a spirit of brotherhood, which includes sisterhood.”

**“Justice Arach condemned the actions of the officials, declaring them to be inhuman and in direct violation of the Victor Mukasa and Oyoo’s constitutional rights to freedom from torture and freedom from invasion of privacy.”**

The case, *Yvonne Oyoo and Juliet Mukasa v. the Attorney General*, was a civil case filed as an application under Article 50 of the Constitution of Uganda for the enforcement of fundamental rights and freedoms guaranteed in Articles 20 – 45 of the Constitution. The purpose of the case was to establish precedent in the enforcement of Ugandan constitutional rights as applying to lesbian, gay, bisexual, and transgender (LGBT/Kuchu) people regardless of whether they are thought to be homosexual or transgender.

**The judgement upheld the following articles of the Constitution of Uganda as applying to all people, regardless of their sexual orientation or gender identity and/or expression:** Article 23, states that, **“No person shall be deprived of personal liberty”**. Article 24 on respect for human dignity and protection from inhuman treatment, states that, **“No person shall be subjected to any form of torture, cruel, inhuman or degrading treatment or punishment.”** Article 27 concerning right to privacy of person, home and other property states that, **“No person shall be subjected to: (a) unlawful search of the person, home or other property of that person; or (b) unlawful entry by others of the premises of that person or property. No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property.”**



Victor Mukasa recounts the events of the hearing at the High Court on 21 September 2007, where the judge heard oral testimony in the Ugandan LGBT Human Rights Court Case.

The government official who raided Victor's house was called to the stand and cross-examined by the lawyers. The court room was packed with no seats remaining.

Ugandan LGBT people (kuchus) proudly wore shirts and stickers with rainbow flags,

the Sexual Minorities Uganda (SMUG) logo, and

"Let Us Live in Peace" printed boldly across them.

Photo Credit: J.P.



The High Court of Uganda; Photo Credit: M.B.



After the 3<sup>rd</sup> scheduled hearing on 11 June 2007, Kuchus took turns proudly holding the rainbow flags to shouts of “Viva kuchus of Uganda”. From the end of the long line of tables, two of the first known homemade Ugandan rainbow flags were unfurled. Photo Credit: J.P.



**“THE WORLD HAS CHANGED”  
Human Rights Defenders Speak Out**

**Victor Mukasa, Ugandan LGBTI Human Rights Defender**

I am overjoyed and overwhelmed. We are celebrating this victory. My spirit was in that courtroom. My spirit is in union with all Ugandan lesbian, gay, bisexual, transgender, and intersex people. I am happy that justice has come.

**The fact that the Ugandan High Court is relying on international human rights conventions is a good sign that justice will come to everyone in Uganda some day.**



Victor Mukasa after the hearing on 12 September 2008. Photo Credit: M.B.

**It was my dream that justice would come and it has come.**

**And it is my bigger dream that justice will come to every human being in Uganda who is oppressed.**

**This does not mark the end. The struggle continues until every human being is free.**

**Let us work together to understand the meaning of human rights.**

**For in every country, the most important role that police can play is to protect people. This judgement is a serious reminder to the Ugandan police that all Ugandans, including LGBTI people, should be handled with respect and dignity.**

**Victor Mukasa, Ugandan LGBTI Human Rights Defender (Continued)**

It has been a long journey, most of the times sad, but it is a journey from which I have grown personally and as a Human Rights Defender. This moment, to me, means that we have started stepping into victory. One leg is inside victory. It will take more determination and collaboration to get to freedom. We will need to increase on our focus.

**We must have more belief that freedom is coming—that we are not struggling for nothing.**

**Oyoo, Kenyan Human Rights Defender**

Efforts are still being made to reach Oyoo.

**David, Ugandan Human Rights Defender**

**At least truth and justice has been unveiled.**

I was in court today to witness this. The police and government officials dehumanized Victor by raiding Victor's home and treating Victor and Oyoo in a horrible way. But truth and justice has been shown today in the court. I am so happy that at least the public and policy makers are beginning to respect all people, no matter what is their sexual orientation.

**Pouline Kimani, Kenyan Human Rights Defender**

**I am glad that there is now more accountability—the government is responsible to uphold the Ugandan Constitution, protecting all people's rights, including LGBTI people.**

I am thankful that the judicial system has been fair in delivering justice. Now there still needs to be more sensitisation and education on how violations against LGBTI people occur and how government officials can work to protect LGBTI people from human rights violations and abuses. This is an opportunity to push to ensure that all human beings are protected under the Ugandan Constitution.

**Pouline Kimani, Kenyan Human Rights Defender (Continued)**

**As our basic rights are upheld,  
LGBT people will be safer  
when going to school,  
going to work, and  
leading lives like  
everybody else.  
We will not have to live in  
fear that someone might  
harm us at any moment  
for no reason.**

**And as we become more  
free to live in peace, the  
general public in Uganda  
and Kenya will be at ease  
to relate with us because  
they will understand the  
struggle that we have been  
through. The public with  
see it from a personal  
view, that everyone  
deserves the right to  
Live in Peace.**

**Activists from Kenya**

**After a long struggle, this  
is a historic moment that  
we hope transcend  
borders to different  
regions and countries in  
respecting human rights  
for all.**

Pouline Kimani at the hearing on 12 September 2008.  
Photo Credit: M.B.

**Kasha, Ugandan LGBTI Human Rights Defender**

It has been a long three years of dreaming and finally I have woken from that dream. Indeed there is justice in the world.

**Frank Mugisha, Co-Chairperson of Sexual Minorities Uganda (SMUG)**

I was able to witness history today. Justice Arach read through all the submissions and affidavits again. These documents included how the Local Council of Kireka unlawfully entered and searched the house of Victor Mukasa, the police arrested and detained Oyoo and subjected Oyoo to inhuman and degrading acts while in police custody. This included, sexual harassment, torture, being denied to use toilet facilities and confiscated personal property.

**Justice Arach declared that it was invasion of the parties' privacy and violation of their basic rights, liberty, and equal protection, which all contravenes the Constitution of the Republic of Uganda and the Universal Declaration of Human Rights.**

The judge emphasised the importance of Article 1 of the Universal Declaration of Human Rights. She ruled that the Attorney General would be responsible to pay damages to both Victor Mukasa and Oyoo for committing against them acts of torture and inhuman treatment, and for violated Victor Mukasa's right to privacy and communication. The court further ruled that the Attorney General would pay the cost of this application.

The court was filled with Ugandan, Kenyan and Rwandan LGBTI activists. The press crowded around us, taking interview with our excitements.

**It is still jubilation in Uganda as East African LGBTI activists are overwhelmed with excitement.**



## **BACKGROUND: FACTS OF THE CASE**

Case: Yvonne Oyoo and Juliet Mukasa v. the Attorney General  
Misc. Application No. 247 of 2006

Civil case: Application under Article 50 of the Constitution of Uganda for the enforcement of fundamental rights and freedoms guaranteed in Articles 20 – 45 of the Constitution

Purpose of the Case: To establish precedent in the enforcement of Ugandan constitutional rights as applying to lesbian, gay, bisexual, and transgender (LGBT/Kuchu) people regardless of whether they are thought to be homosexual or transgender

Violations of Rights Committed by Agents of the Government:

- Illegal search of the home of Juliet Mukasa without a search warrant and unauthorized seizure of items from the house amounting to trespass and theft
- Illegal arrest of Yvonne Oyoo, guest found in the home at the time of the raid
- Inhuman and degrading treatment of the applicants amounting to sexual harassment and indecent assault

Articles of the Constitution of Uganda Concerned:

Article 23 Protection of personal liberty

(1) No person shall be deprived of personal liberty . . .

Article 24 Respect for human dignity and protection from inhuman treatment

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

Article 27 Right to privacy of person, home and other property

(1) No person shall be subjected to-

- (a) unlawful search of the person, home or other property of that person;
- (b) unlawful entry by others of the premises of that person. property.

(2) No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property.

Applicants: Oyoo and Juliet Mukasa

Legal Counsel for the Applicants: Counsel Rwakafuzi and Counsel Atuki

Defendant: The Attorney General of Uganda

State Attorneys for the Defendants: Senior State Attorney Margaret Nabakooza, Senior State Attorney Mwaka Phillip, and State Attorney Susan Ojong

Judge: Justice Stella Arach

Court: The High Court of Uganda, Kampala, Uganda

Judgement: Justice Arach declared: “‘Human rights must be respected. It has been found that the actions of the officials that molested Victor Mukasa and Oyoo Yvonne were unconstitutional, inhuman, and should be condemned.’ Justice Arach called upon the international conventions and emphasised that the Universal Declaration of Human Rights enjoins us to respect human rights and protect them in a spirit of brotherhood, which includes sisterhood. Justice Arach condemned the actions of the officials, declaring them to be inhuman and in direct violation of the Victor Mukasa and Oyoo Yvonne’s constitutional rights to freedom from torture and freedom from invasion of privacy.” —Recounted by Counsel Rwakafuzi



Victor Mukasa after the hearing on 12 September 2008.  
Photo Credit: M.B.



Banner at the launch of the first Ugandan LGBT Human Rights Media Campaign, "LET US LIVE IN PEACE" on 16 August 2007. Photo Credit: M.B.

**“However long we waited, it has come to pass and justice has prevailed.”**

**—Ugandan Kuchu**