

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION**

**MISCELLANEOUS APPLICATION NO. 0650 OF 2022(ARISING
FROM MISCELLANEOUS CAUSE NO. 86 OF 2022)**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO INTERVENE AS
AMICI CURIAE BY THE APPLICANTS HEREIN ARISING FROM
MISCELLANEOUS CAUSE NO. 86 OF 2022**

BETWEEN

**1. COLLABORATION ON INTERNATIONAL ICT POLICY FOR EAST AND
SOUTHERN AFRICA(CIPESA)**

2. ACCESS NOW

3. ARTICLE 19: GLOBAL CAMPAIGN

FOR FREE EXPRESSION (ARTICLE 19) =====APPLICANTS

AND

1. INITIATIVE FOR SOCIAL AND ECONOMIC RIGHTS (ISER)

2. THE UNWANTED WITNESS (U) LIMITED

3. HEALTHY EQUITY AND POLICY

INITIATIVE LTD =====APPLICANTS IN THE MAIN CAUSE

AND

1. THE ATTORNEY GENERAL

2. NATIONAL IDENTIFICATION REGISTRATION

AUTHORITY (NIRA) =====RESPONDENTS IN THE MAIN CAUSE

1ST APPLICANT'S AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

I WANYAMA EDRINE of C/o M/S Thomas and Michael Advocates, Plot 127 Muteesa II Road, Ntinda, P. O Box 75377, Kampala and M/s MOM Advocates 2nd floor Ntinda Shopping Centre, Suite C08 and C09, Ntinda-Kampala do hereby by solemnly make oath and state:

1. That I am an adult male Ugandan of sound mind and the Legal Officer of the 1st Applicant (**COLLABORATION ON INTERNATIONAL ICT POLICY FOR EAST AND SOUTHERN AFRICA**, Website: www.cipesa.org) hereinafter referred to as **CIPESA**.
2. That I am a duly authorised representative of the 1st Applicant swear this affidavit in that capacity in support of the application by the Applicants to be admitted as Amici Curiae in Miscellaneous Cause No 86 of 2022.
3. That I know that CIPESA is a non-for-profit organization duly registered in Uganda having been founded in 2004. CIPESA is one of two centres established under the Catalysing Access to Information and Communications Technologies in Africa (CATIA) initiative, which was funded by the UK's Department for International Development (DfID). CIPESA focuses on decision-making that facilitates the use of ICT in support of development and poverty reduction. (*A copy of the certificate of registration is hereto attached as annexure 'WE1'*).
4. That I know that the Organisation promotes internet freedom and governance, civic participation, data governance, the digital economy, digital inclusion and digital resilience and works across the continent, informing policy-making, and stirring debate and convening productive gatherings. The Organisation works with networks, individuals and organisations (private sector, governmental, academic, civil society) across the region, and we are key members of several African and international initiatives that aim to improve the inclusiveness of the Information Society.
5. That I know that CIPESA, through research and documentation contributes to the availability of information on the policy, legislative and practice environment affecting ICT in Africa; advocacy and stakeholder engagement on threats to free speech, access to information, equal access, privacy and security online and opportunities for technology to advance democratic participation, transparency and accountability in governance and protecting and promoting internet rights; and knowledge and skills development in digital rights policy

engagement, digital literacy, digital security, social accountability and human rights monitoring; strategic litigation and movement building. *(A list/summary of the research publications is hereto attached as annexure 'WE2')*

6. That I know that CIPESA is a recognized member of various African and international initiatives that aim to improve the inclusiveness of the Information Society, including the Association for Progressive Communications (APC), Global Network Initiative (GNI), Global Knowledge Partnership (GKP), IFEX, Global Encryption Coalition, World Benchmarking Alliance, and the Alliance for Affordable Internet (A4AI).
7. That I know that CIPESA has Observer status with the African Commission on Human and Peoples Rights and, has made several contributions to the digital rights, digital inclusion, internet freedom, data protection and privacy through the various regional and international human rights mechanisms including the African Commission on Human and Peoples Rights and the Universal Periodic Review. *(A list/summary of the submissions made by CIPESA is hereto attached as annexure 'WE3')*.
8. That I know that CIPESA requests leave to appear in the present case as amicus curiae contributing its expertise and knowledge of international practice on relevant international and comparative law and jurisprudence on the use of ICT to improve governance and livelihoods.
9. That I know that CIPESA has made legal analyses and submitted to government institutions such as the Parliament of Uganda on related subjects of data protection and privacy and internet freedom. *(A list of the various legal analyses is hereto attached as annexure 'WE4')*
10. That I know that CIPESA has experience in providing expertise to courts of law on issues regarding digital identity, digital inclusion, right to privacy, use of ICT systems and their impact on human rights. CIPESA filed an affidavit in support of the petition of *Cyber Law Initiative and 5 others V The Attorney*


General Constitutional Petition No.26 of 2018 where the gist of the case was challenging the Social Media tax and its impact on the socio and economic life of the people of Uganda. *(A copy of this Affidavit is hereto attached as annexure 'WE5')*

11. That I know that the Organisation has been involved in extensive stakeholder consultations and engagement on matters pertaining digital security, online security, protection of personal data, data governance, surveillance among others.
12. That I am aware that in respect to the duty to respect, protect and fulfil human rights, the obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights; obligation to protect requires States to protect individuals and groups against human rights abuses; and the obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.
13. That I know that CIPESA is aware of the current system in Uganda that makes it mandatory for one to present a national identification number, or being part of the national identification register acquired through enrolment in the national digital identification system by Ugandans to access SAGE benefits as a form of social security, as well as public health services.
14. That CIPESA has examined the above practice and the existing legal and policy regulatory framework and is ready and willing to provide this honourable court with submissions on the impact of use of biometrics on Digital ID rights, data governance, online security, surveillance, internet freedom, right to access to information, right to privacy and freedom of information.
15. That I know that CIPESA has had the opportunity to study the pleadings of the main Application and Affidavits in reply and notes that there is need to resolve the questions around the data protection, digital inclusion, surveillance especially those that have been left out in the national identification system in

Uganda and the sufficiency of protection measures and their impact on protection of the right to privacy even at the instance of a roll out of a good government program like SAGE. This issue has not been dealt with by the pleadings before court and yet are important in Court's determination of the Main Cause.

16. That I know that CIPESA is neutral and impartial concerning the legal matters that are before this honourable Court in the main cause.
17. That I know that the interest of CIPESA in this matter before court constitutes fidelity to the law as experts and proponents of Digital ID Systems and online security and safety and attendant rights.
18. That I know that the points of law CIPESA has submitted on are novel and will aid the development of jurisprudence of Uganda.
19. That I know that CIPESA's submissions draw attention to relevant matters of law that are useful, focused and principled.
20. That I know that CIPESA has jointly drafted, together with the 2nd and 3rd Applicants the amicus brief touching the matters deponed in this affidavit submitted to this honourable court which will give assistance to the court that it would otherwise not have.
21. That I know that it is in public interest, interests of justice, the promotion and protection of human rights that the application seeking leave to intervene as Amicus Curiae is granted.
22. That whatever is stated herein above is true and correct to the best of my knowledge belief and information save where otherwise stated.

SWORN by the said **WANYAMA EDRINE** at **KAMPALA** on this **3rd** day of **November 2022**



DEPONENT

BEFORE ME



A COMMISSIONER FOR OATHS



MASABA RAPHAEL GIDEON
Advocate,
Commissioner
For Oaths
&
Notary Public
0782-786285

Jointly Drawn and filed by:
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2. ACCESS NOW
3. ARTICLE 19: GLOBAL CAMPAIGN FOR FREE EXPRESSION
(ARTICLE 19) =====APPLICANTS

AND

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2. THE UNWANTED WITNESS (U) LIMITED
3. HEALTHY EQUITY AND POLICY INITIATIVE LTD
4. THE ATTORNEY GENERAL
5. NATIONAL IDENTIFICATION REGISTRATION
AUTHORITY (NIRA) ::::::::::::::::::::RESPONDENTS

APPLICANTS' AFFIDAVIT IN REJOINDER TO THE 4TH AND 5TH
RESPONDENT'S AFFIDAVIT IN REPLY

I WANYAMA EDRINE of C/o M/S Thomas and Michael Advocates, Plot 127 Muteesa II Road, Ntinda, P. O Box 75377, Kampala and M/s MOM Advocates 2nd floor Ntinda Shopping Centre, Suite C08 and C09, Ntinda-Kampala do hereby by solemnly make oath and state:

1. That I am an adult male Ugandan of sound mind and the Legal Officer of the 1st Applicant (COLLABORATION ON INTERNATIONAL ICT POLICY FOR EAST AND SOUTHERN AFRICA, Website: www.cipesa.org) hereinafter referred to as CIPESA.
2. That I am a duly authorised representative of the 1st Applicant and swear this affidavit in rejoinder to the 4th and 5th Respondents' affidavit in reply in Misc. Application No. 0650 of 2022 in which the Applicants seek to be admitted as Amici Curiae in Miscellaneous Cause No 86 of 2022.
3. That I have read and understood the contents of the affidavit in reply by the 4th and 5th Respondents sworn by Rosemary Kitembo and the same has been explained to me by my lawyers and in rejoinder thereto state as follows;
4. That the entire affidavit in reply of Rosemary Kitembo is riddled with falsehoods, unsubstantiated hearsay statements, and bare denials belatedly contrived to mislead this Honourable Court.
5. That the contents of paragraphs 1, 2, 3, 4, 5, 18 and 19 are noted.
6. That in specific rejoinder to paragraph 6, the Respondents have not clearly substantiated their claim of bias as they merely state it. In fact, the Applicants have demonstrated their neutrality to the matter first as non-natural persons who would ordinarily seek no service before the 5th Respondent and that grounds vii, ix, and x only re-affirm the expertise and credibility on the subject before the Court. The grounds averred do not and in any way point to any bias to discredit the Respondents but seeks to emphasise the points of law that will assist the Court in amicable adjudication of the issues raised in the Main Application.

7. That in specific rejoinder to paragraphs 7 and 8, the Applicants have ably demonstrated their expertise and credibility through the statements of expertise on page 36, 37 of the Application (Annexure "JS4"), organisation publications, submissions, legal memoranda and contributions to various international, continental, regional, and national courts, tribunals, commissions, and government agencies on the subject of digital ID systems and attendant rights on pages 12, 13 of the Application (Annexures "WE2" and "WE3"); pages 27, 28, 29 (Annexures "JS2" and "JS3"); pages 60, 61, 62, 63, 64 (Annexures "MK2" "MK3" "MK4"). These form the necessary evidence to show the expertise and credibility of the Applicants regarding the issues of digital ID, privacy, and freedom of expression and their relationship to social and economic rights.
8. That in specific rejoinder to paragraph 9 of the affidavit in reply, the Application does not bring in new evidence, rather the Applicants point out relevant points of law and fact that are useful to aid the Court in determination of the matter before it. Further, the points of law and fact highlighted by the specific paragraphs of the Applicants are related to the issue of national IDs which need not be overlooked. They will assist the Court in not only reaching the decision, but in further development of legal jurisprudence in the subject area.
9. That in specific rejoinder to paragraph 10 of the affidavit of reply, the Applicants are not biased in any way and that the Respondent merely alleges bias and innuendo and that the allegations are not substantiated and the same should be ignored. To the contrary, ground xi only re-emphasises the aspect of a point of law and fact which the Court may need to draw its attention to. SAGE is an economic right whose access requires use of a National ID which brings in the aspect of protection of individuals' personal data. These issues are interrelated and the expertise of the Applicants will

aid the Honourable Court in coming to the conclusion of the matter before it.

10. That in specific rejoinder to paragraph 11, the Respondent's claims of bias and hostility are unsubstantiated and baseless and the same should be ignored. To the contrary, the Application and the brief are limited to the substance of the matters relating to digital ID, privacy, and protection of personal data and do not in any way interfere with the working or integrity of the Respondents; they are simply to assist this Honourable Court in adjudicating the matter before it in Msc. Cause 86 of 2022.
11. That in further rejoinder to paragraph 11 of the affidavit in reply, the claim of bias towards 4th and 5th Respondents is false, baseless and unsubstantiated and the same should be ignored. Paragraph 12 of the 1st Applicant Affidavit in support of the Application is intended to further demonstrate its expertise, vigilance, and participation in matters concerning digital ID and privacy. The 1st Applicant was not a party in the Constitutional Petition; *Cyber Law Initiative and 5 others V The Attorney General Constitutional Petition No.26 of 2018* but only filed an affidavit in support as an expert in digital rights, data protection, and privacy. Mere participation in a case before the Court does not create an automatic inference of bias.
12. That in specific rejoinder to paragraph 13 of the affidavit in reply, the Respondents' claims are false, baseless, and unsubstantiated. The joint Amicus brief establishes questions of expertise of the Applicants to wit, right to privacy, freedom of expression, and the relationship between the right to privacy and impact on social, economic, and cultural rights. These are well substantiated in pages 8 to 21 of the Amicus brief.

13. That in specific rejoinder to paragraph 14 of the affidavit in reply, the Respondents' claims are riddled with falsehoods. The Respondents have been given an opportunity to respond to the Application and all the pleadings in the Application will be served upon the Respondents. The Respondents are ably represented before the Court and have agreed to proceed with the hearing of the Application by way of written submissions as directed by this Honourable Court on 13th October 2022. At the said hearing, the Respondents did not indicate to the Court that they wish to cross examine the Applicants. Further, even if they wished to do so, it is within their right and the Court's discretion to grant the same to them and the cross examination can be done in many ways including the use of the Visual-Audio facilities as provided for under **THE JUDICATURE (VISUAL-AUDIO LINK) RULES, SI N0.26 of 2016**.

14. That in specific rejoinder to paragraph 15 of the Affidavit in reply, the Amicus brief is deeply grounded in and exhibits the expertise of the issues with which the Applicants seek to assist the Court. As stated earlier, the brief points to the novelty of matters which would otherwise not be paid attention to; right to privacy, freedom of expression, and the relationship between the freedoms and the social, economic, and cultural rights within the spectrum of international, regional, and continental mechanisms and regimes which the pleadings in the Main Application have left out. The points raised by the Applicants will assist the Court in dealing with ease with the matter before it and will further contribute to the development of jurisprudence on the workings of digital ID systems and the right to privacy.


15. That in specific rejoinder to paragraphs 16 and 17 of the affidavit in reply, the Applicants do not raise new causes of action but rather point the Honourable Court to novel areas of the law which will assist the Court in its adjudication and disposal of the matter before it. The points of law as clearly

indicated by the statement of questions in the Amicus brief have not been dealt with in the pleadings of the main application and yet are pertinent to the subject before this Honourable Court. Further, the Respondents have not demonstrated the danger and disadvantage that they would suffer if this Application is allowed. The Applicants have indicated the merits of the Application and the brief clearly indicates the benefit this Honourable Court will enjoy in admitting the Applicants as Amicus Curiae.

16. That I know that the benefits of admitting the Applicants as Amicus Curiae to the Main Application MSC. NO. 86 of 2022 outweigh the objections raised. In furtherance of the benefits associated with the Amicus Curiae Application, the application should be resolved in the Applicants' favour. Admitting the Applicants will be more advantageous to the case before the Court and will immensely contribute to the legal jurisprudence of digital ID systems and its relationship to the social, economic, and cultural rights in Uganda.
17. That I know that the Applicants seek to join as Amicus Curiae in public interest and allowing them as Amicus Curiae will be for the benefit of the public and the development of jurisprudence.
18. That I know that it is in the interest of justice that the Application Msc. Application no 0650 of 2022 be granted for the admission of Applicants as Amicus Curiae to assist the Court in the administration of justice.
19. That I know that it is in public interest, interest of justice, and the promotion and protection of human rights that the Application seeking leave to intervene as Amicus Curiae should be granted.

20. That whatever is stated herein above is true and correct to the best of my knowledge, belief, and information save where otherwise stated.

SWORN by the said WANYAMA EDRINE at KAMPALA on this 19th day of December 2022



DEPONENT

BEFORE ME



Jointly Drawn and filed by:
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