



Africa Regional Congress

Strategic litigation in Uganda



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FIDA U case disposal strategies prior to 2003

- Use of ADR- limited success due to non enforceability –dependence on goodwill
- Utilisation of court-limited success due to bottlenecks in the judiciary e.g. case backlog, delays in hearing, disabling legal frameworks.
- **1995:** Constitution introduced progressive Bill of rights and Constitutional Court
- Realisation of the impact of strategic litigation by public interest bodies, FIDA U.

Uganda's experience in gender based Strategic litigation

2003 FIDA Constitutional petition on the Divorce Act

- A husband may apply by petition to the court for the dissolution of his marriage on the ground that his wife has been guilty of adultery.
- A wife may apply by petition to the court for the dissolution of her marriage on the ground that since the solemnisation of the marriage her husband has been guilty of -
 - (i) incestuous adultery;
 - (ii) bigamy with adultery;
 - (iii) marriage with another woman with adultery;

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- rape, sodomy or bestiality;
 - (v) adultery coupled with cruelty-; or
 - (vi) adultery coupled with desertion, without reasonable excuse, for two years or upwards."

HELD: It is glaringly impossible to reconcile the impugned provisions of the Divorce Act with our modern concepts of equality and non-discrimination between the sexes enshrined in our 1995 Constitution.

LAW U – 2 Constitutional petitions on the Succession Act and the Penal Code Act, 2007

- **Any man** who has sexual intercourse with any woman not being his wife commits adultery and, **in addition, the court shall order any such man on first conviction to pay the aggrieved party compensation of six hundred shillings and on subsequent conviction not exceeding twelve hundred thousand shillings as may be so ordered.**
- (2) **Any married woman** who has sexual intercourse with any man not being her husband commits adultery and is liable on first conviction to a caution by the court and on subsequent conviction to imprisonment for a term not exceeding six months.

HELD: This law treats women derogatorily and perpetuates the inferior status of women.

Second LAW U case challenged Succession Act

- The words 'legal heir' are defined omitting females
- When a man dies intestate his property is distributed in a prescribed manner, but no mention is made regarding females who die intestate.
- While the Act provides for a only a father who by will can appoint a guardian or guardians for his child during minority, there is no provision for a mother to appoint a guardian for her child who is still a minor.

HELD: all sections are null and void to the extent of their inconsistency with the Constitution

'MIFUMI Constitutional Petition on Bride price, 2007

The petition challenged the constitutionality of customary practice of demand for and payment of the Bride price as condition precedent to a marriage and the refund to its dissolution

- **Held: Bride price is intended to show appreciation to the parents of a bride. In numerous instances, a bride price agreement may be entered into with joy by two parties seeking the felicities of the marriage relationship.**

Centre for Health Human Rights and Development Petition Constitutional Petition, 2012

The public health crisis of preventable maternal mortality and non-provision of essential maternal health commodities and services in government health facilities leading to deaths of pregnant women is an infringement of their rights to life and to health.

court dismissed petition on account that maternal mortality issues are a responsibility of the Executive arm of government to address and not the court since it is a “political question”. Appeal in Supreme Court

-Same NGO currently mobilising CSOs towards strategic litigation on abortion.

Defining Strategic Litigation


- This is legal action that seeks to bring about social change through the use of courts beyond the individual case
- Raises issues of public concern to the public
- It is a strategy under Public interest law.
- Lawyers get to use their powers to protect the people

Important assessments to make


- Whom are you fighting for? E.g. minorities, victims, potential victims
- What are you fighting for? E.g. education, employment, housing, health political participation, SGBV, SRHR.

Important factors for strategic litigation

- Define litigation goal e.g.
 - policy/legal reform,
 - end of degrading practise or violation,
 - empowering vulnerable groups
 - strengthening rule of law
- Choose the right forum i.e. appropriate institution, e.g. domestic court, ACHPR?
- Use persuasive law from similar legal systems i.e. precedents
- Try and educate the court- this can be done pro-actively
- Mobilise required resources



An unsuccessful case may not mean failure- important pronouncements may be made!

- MIFUMI case- The court acknowledged that in some instance bride price plays a factor in domestic abuse and women being treated as inferiors
 - A refund demand for bride price fails to honor the wife's unique and valuable contribution to a marriage. A woman's contribution in a marriage cannot be equated to any sum of money or property, and any refund violates a woman's constitutional right to be an equal co-partner to the man.
 - The aggrieved party would be at liberty to institute criminal proceedings or a civil action in a court of competent jurisdiction under the relevant law.
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Challenges

- Slow, lengthy and complex
 - Costly
 - May lack public support
 - Not a substitute for political processes, -must be supported by other processes.
 - If Judiciary is not progressive, little success may be registered
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