



THE REPUBLIC OF UGANDA

IN THE MATTER OF THE COPYRIGHTS AND NEIGHBOURING RIGHTS ACT 2006

AND

THE COPYRIGHTS AND NEIGHBOURING RIGHTS REGULATIONS, 2010

AND

IN THE MATTER OF COPYRIGHT APPLICATION NO. UG/C/2023/89 BY FRANK  
GASHUMBA

AND

IN THE MATTER OF AN OBJECTION AGAINST THE REGISTRATION OF  
COPYRIGHT APPLICATION NO. UG/C/2023/89 BY HAJAT HADIJAH UZEIYE  
NAMYALO AND KITATTA IBRAHIM ALMALIK

HAJAT HADIJAH UZEIYE .....1<sup>ST</sup> OBJECTOR

KITATTA IBRAHIM ALMALIK.....2<sup>ND</sup> OBJECTOR

VERSUS

FRANK GASHUMBA.....APPLICANT

BEFORE: BIRUNGI DENIS: ASST. REGISTRAR

*Representation*

*Mr. Kenneth Muhangi and Blair Ntambi of KTA advocates, appearing for the applicant*

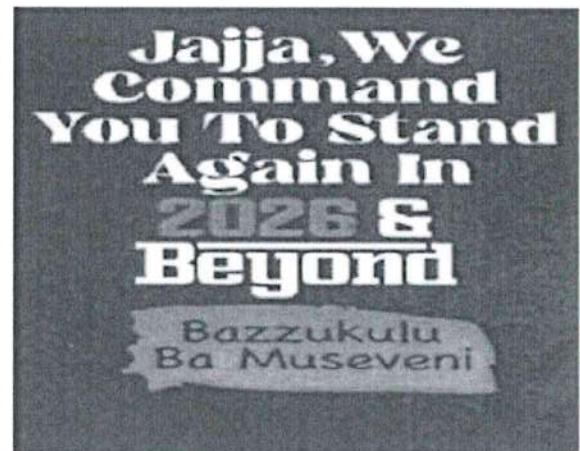
*Mr. Kangye Stanley of K&K advocates appearing for the 1<sup>st</sup> Objector*

*Ms. Nakonyi Doreen of Kabega Bogeza and Co Advocates appearing for the 2<sup>nd</sup> Objector*

**A. Background**

1. On 18 May 2023, the applicant, Mr. Frank Gashumba filed an application for registration of a copyright in the works titled "OMALAKO JAJJA TOVA KU MAIN

**SIGALA KU BALLOT: JAJJA WE COMMAND YOU TO STAND AGAIN IN 2026 AND BEYOND: BAZZUKULU BA MUSEVENI**. The works include a silhouette of President Yoweri Kaguta Museveni and the words "*omalako jajja tova ku main Sigala Ku Ballot*" and "*Jajja, We command you to stand again in 2026 & beyond*". The works, which are the subject of these proceedings, are indicated below;



2. According to his signed application dated 16 May 2023 and filed with the Registrar on 18 May 2023, the applicant authored the above works on 5 November 2022.
3. On 5 June 2023, Hajjat Hadijah Uzeiye Namyalo, the 1<sup>st</sup> objector filed an objection against the registration of the works, claiming to be the originator and creator of the works, having used them prior as early as 19 October 2022, predating the applicant's claimed date of authorship.
4. On the 17 July 2023, Mr. Kitatta Ibrahim Almalik (hereafter referred to as the 2<sup>nd</sup> Objector) filed another objection, contesting registration of the applicant's application. The 2<sup>nd</sup> objector too claims to be the author of the disputed works by virtue of an article he wrote. The said article is titled; "**Omalako; Jajja Tova Ku Main: The ideology of Museveni's bazzukulu**" and was registered vide copyright number UG/C/2023/6. It was also published in the opinions section of the Daily Monitor on January 13, 2023, under the heading "**The ideology of Museveni's bazzukulu**".

## **B. ISSUES**

5. This matter first came up for hearing on 17 July 2023. Due to the insufficient procedural guidance in the Copyright and Neighboring Rights Regulations 2010, which only provide for objection by way of letter, without specifying the mode of admitting evidence to prove the claims, I directed parties to file their evidence by statutory declarations in accordance with section 3 of the Statutory Declarations Act, Cap 22. The section provides for statutory declarations as the mode of proving facts in matters that are not before Courts of Judicature.

6. The parties filed their respective statutory declarations as directed. The matter came up for mention and scheduling on 12 September 2023. The following issues were framed for determination;

(i) ***Whether the applicant is the rightful author/owner of the works in copyright application number UG/C/2023/89***

(ii) ***Remedies***

7. During the hearing of 12 September 2023, I directed parties to address me by way of written submissions. The Objectors were directed to file and serve the applicant by 18 September 2023, the applicant to file and serve by 25 September 2023. Any rejoinders to be filed by 28 September 2023. The ruling was set for 18 October 2023. At this point, pleadings and evidence closed.

### **C. APPLICATION FOR ADMISSION OF ADDITIONAL EVIDENCE**

8. Despite closure of proceedings on 12<sup>th</sup> September 2023, on 15<sup>th</sup> September 2023, Counsel for the applicant filed a notice of motion under section 98 of the Civil Procedure Act, and Order 52 of the Civil Procedure Rules SI-071—1, seeking leave to file a supplementary affidavit in support of the copyright application, and requesting that submissions be stayed until the filing of the supplementary affidavit by the applicant. In the grounds and accompanying affidavit, the applicant seeks to adduce digital evidence to prove that he started developing the disputed works prior to 5 November 2022, the date stated in his copyright application. I have perused the application and I hereby reject it and accordingly dismiss it because of the following reasons;



9. The applicant seeks to amend pleadings by way of evidence. In proceedings of this nature, the applicant's pleading is the copyright application form (form 1) stipulated under regulation 3 of the Copyright and Neighboring Rights Regulations, 2010. The form is filled and filed by the applicant and contains the title of the applicant's work, the description of the works, the name and address of the author, the date of birth of the works, i.e. when the works were reduced in material form, the date of publication of the works among others. The applicant signs and dates the application. Details of the works claimed such as drawings or articles are attached and submitted to the Registrar for registration.
10. Under regulation 3 (1) of the Copyright and Neighboring Rights Regulations, 2010, the purpose of the application for registration is to; (a) Keep evidence of ownership of the right; (b) Identification of the works and authors and (c) Maintenance of the record of the right. These are important objectives as they seek to keep the authenticity of the record.
11. The particulars of the application are stipulated under regulation 4 and include among others, the year in which the creation of the works was completed and the date of publication, if any. Based on those particulars, the Registrar publishes a notice of the application in the gazette as required under regulation 5. The application therefore constitutes the whole claim of the applicant, including the date of authorship of the works and is a complete authentic record for future reference.
12. The details contained in the application bind the applicant and cannot be altered by admission of contrary evidence during objection proceedings under regulation 6 of the Copyright and Neighboring Regulations. By filing this application, the applicant seeks to change the date of authorship to show that he authored the works prior to 5 November 2022. This cannot be possible because the application filed, and forming the official record, shows 5 November 2022 as the date when the works were birthed.
13. Secondly, even if the rules permitted admission of additional evidence, evidence cannot be admitted when proceedings have closed. The Registrar directed evidence to be filed by 31 August 2023. Evidence closed on that date and the matter came up for mention on 12 September 2023, where issues were formulated and



parties directed to file written legal arguments. I am unable to see the basis upon which the applicant now seeks to admit additional evidence.

14. In exercise of quasi-judicial functions under the Copyright and Neighboring Rights Regulations, the Registrar occasionally adopts the procedures and practices of court whenever gaps exist in the enabling law. In this case, the Copyright and Neighboring Regulations 2010 do not provide for circumstances under which additional evidence may be adduced. I am therefore compelled to look at the Procedures and practices of Court. The Civil Procedure rules provide under Order 6 rule 19, for amendment of pleadings at any stage. This has been interpreted by Courts to ensure that amendments are sought before trial. In **Eastern Bakery v Casteline [1958] 1 EA 461**, Sir Kenneth Okinor, held that; "*It will be sufficient, for purposes of the present case, to say that amendments to pleadings sought before the hearing, should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice if the other side can be compensated by costs*". I agree entirely with that principle. In this case, hearing had closed and the matter is set for submissions and ruling. Amendment of pleadings at this stage is untenable. One of the cardinal rules in administration of justice is that there must be an end to litigation. Newbold P in **Lakhashmi Brothers Ltd v R. Raja & Sons [1966] E.A 313**, 314 reaffirmed the principle on the strength of following words:

*"There is a principle which is of very greatest importance in the administration of justice and that principle is this: It is in the interest of all interested persons that there should be an end to litigation" (emphasis mine)*

15. While the above case was dealing with an application for review, seeking to substitute a judgment of the last appellant Court, I am persuaded that the principle applies to the circumstances of this case. Permitting the applicant to adduce evidence at this point will lead to endless litigation. The objectors too will seek to respond and this would mean reopening the matter afresh. I accordingly dismiss the application and proceed to determine the matter.

#### D. ANALYSIS



**(1) Whether the applicant is the rightful author/owner of the works in copyright application number UG/C/2023/89**

16. An author is defined under section 2 of the Copyright and Neighboring Right Act, 2006 (CNRA) as follows; “*author* means the physical person who created or creates work protected under section 5 and includes a person or authority commissioning work or employing a person making work in the course of employment”. Section 5(1) of the CNRA makes a list of literary, scientific and artistic works, which are eligible for copyright protection. It is not disputed that the works subject of these proceedings qualify as protected works, particularly as works of drawing under section 5 (1) (f) of the CNRA. What is in dispute is the ownership of the works.
17. It should be noted however, that for works listed under section 5 to be eligible for protection, they must be original and reduced in material form. Hence, section 4 of the CNRA provides that: ***The author of any work specified in section 5 shall have a right of protection of the work, where work is original and is reduced to material form in whatever method irrespective of quality of the work or the purpose for which it is created.*** The word “original” has been held not to mean novelty but that the works in question must originate from the author. Peterson J in **University of London Press Ltd v University Tutorial Press Ltd [1916] 2 Ch 601**, noted that ***The word ‘original’ does not in this connection mean that the work must be the expression of original or inventive thought. Copyright Acts are not concerned with the originality of ideas, but with the expression of thought, and, in the case of ‘literary work’***
18. The concept of originality and reduction in material form are critical for determination of authorship. It was considered by the High Court in the case of **Al Hajji Nasser Ntege Sebagala V Mtn Ltd And Another Civil Suit No 283 OF 2012** where Justice Christopher Madrama Izama (as he then was) was stated that: ***After review of the statutory law provisions, the case law and the evidence, it is my conclusion that the word "author" has a specific meaning. In the relation to sound recording the word "author" has a restricted meaning by virtue of the definition of the expression "sound recording". It is the fixation***



*of sound in a material carrier such as a tape, disc or similar material. Secondly, by definition of the word "fixation", the meaning becomes more apparent as embodiment of sound in a material form sufficiently stable or permanent, to permit them to be perceived, reproduced or otherwise, communicated through a device. Last but not least the person who commissions or creates the work is the person who does the recording or commissions the recording of the works. In the restricted meaning therefore, it is the third-party who is the author of the recording of the Plaintiff's voice in the sense that it carried out the fixation of the Plaintiff's voice in a material form and was able to reproduce it and sell it to the Defendant. Before doing that, it compiled the Plaintiff's answers to different people and to different questions and merged the answers together with the audible background sounds of reactions from members of the public who were present. On the other hand the Plaintiff never arranged the recording and never consented to the use of his voice in the manner in which it was utilised by the third-party and the Defendant as ringtones for sale to the subscribers of the Defendant. In the premises he could not have been the author of the works to which he never consented or willingly participated."*

19. While the above case was dealing with sound recordings, and the current one deals with works of drawing, the principle is still applicable. The rightful author is the original person who actually drew the works or the one who commissioned them. The act of drawing the works on paper itself is reduction of the works in material form within the meaning of section 4, the same way fixation of the works in a material carrier such as a tape is the mode of reduction in sound recordings.
20. Three persons claim authorship of the disputed works. The applicant on one hand and the two objectors on the other hand. For the applicant, he claims to have authored the works on 5 November 2022 as per his application filed on 18 May 2023. In his statutory declaration filed on 7 August 2023 however, he stated that he conceived the idea in September 2022 and started to make versions of artistic works incorporating the words "**OMALAKO JAJJA TOVA KU MAIN SIGALA KU BALLOT: JJAJJA: WE COMMAND YOU TO STAND IN 2026 & BEYOND:**



**BAZUKULLU BA MUSEVENI", "JAJJA TOVA KU MAIN" AND "TOWETA JAJJA".** The works incorporate a silhouette of President Yoweri Kaguta, facing the left walking on the road and a ballot box in front of him.

21. Under paragraph 8 of his statutory declaration, the applicant states; "*although in my application documents, the day the works were birthed is stated to be 5 November 2022, this was intended to communicate the date on which the final version of the artistic works was completed*". The applicant continues to state that the period between October to 4 November 2022 was development stage and that in October 2022; he approached the Office of the National Chairman (ONC) of the National Resistance Movement (NRM) and offered to print for them T-shirts and campaign materials through his company. That he presented his artistic works and proposed several catch phrases that the ONC could choose for purposes of printing T-shirts, banners and other campaign materials. These were subject to the approval of the ONC before they could be printed.
22. The applicant further states in para 15 of his statutory declaration, that his company was given the tender to print T-shirts and other campaign materials by the ONC. In para 16, he states that he was only paid to print T-shirts and not to develop the artistic works to include on the T-shirts, which he claims, to be his own creation. He denies entering any commission agreement with the ONC or being hired or contracted by the ONC to develop the disputed artistic works.
23. The 1<sup>st</sup> Objector in her statutory declaration filed on 24<sup>th</sup> July 2023, states that she is the head of the Office of the National Chairman of the National Resistance Movement (NRM). Her roles include championing and coordinating efforts to promote activities and initiatives of the Office of the National Chairman as well as overseeing campaigns and drives to achieve programs of the ONC.
24. That the applicant approached her office through his company Sarafina Events Ltd seeking to participate in the awareness campaigns by helping with branding. That consequently, the first objector hired the applicant to assist with branding and requested him to share proposals. She and her team considered the proposals, after which she coined the words: "**OMALAKO JJAJA TOVA KU MAIN**". The 1<sup>st</sup> Objector maintains that the words were authored as a result of collective effort by



her team. That for his contribution, through his company Sarafina Events Ltd, the applicant was duly compensated. Several receipts of payment stamped by the Applicant's company are attached as evidence. For example, receipt no.308 dated 18 October 2022 is admitted in evidence. Others are dated 25 October 2022, 31 October 2022, 17 November 2022, and 29 November 2022. There are also "salary acknowledgement sheets" signed by the applicant as monthly salary payments for the months of December 2022, January and February 2023. The applicant's position is indicated as "Blind operation".

25. The 1<sup>st</sup> Objector contends that on 19 October 2022, she launched the campaign at her office with the event dubbed "**OMALAKO JAJJA TO VA KU MAIN**" which was widely broadcast. She has attached newspaper excerpts, video recordings and tweets to prove this. The first excerpt is the New Vision article of October 20, 2022 titled; "**Youth ask Museveni to contest in 2026**". In the second paragraph, the article states, "...the group signed a resolution with the theme. "**Omalako Jjajja tova ku main**". The daily monitor publication of 20 October 2022 also contained the same reporting although without using the disputed words. A tweet of 20 October 2022 posted by the first objector shows a banner containing the disputed words. Then video footages of the launch of 19 October 2022, submitted in evidence also show a banner containing the words and the image of President Museveni.
26. The 1<sup>st</sup> objector also contests the applicant's use of the silhouette of President Yoweri Kaguta and contends that it infringes on the president's likeness. In her affidavit in rejoinder at paragraph 8, the 1<sup>st</sup> objector contends that silhouette is derived from the image of the President taken in 2019 to promote Anti-corruption walk campaign, a copy of which has been annexed to the affidavit.
27. For the 2<sup>nd</sup> objector, the main contention is that he is the registered copyright holder of the works contained in copyright number **UG/C/2023/6**. Per his application filed on 3 February 2023, the said works are titled; "**OMALAKO JAJJA TOVA KU MAIN: THE IDEOLOGY OF MUSEVENI BAZZUKULU**". It is described as a political commentary/article. The article too is attached to the application. The same was



published in the opinions section of the Daily Monitor newspaper of January 13, 2023 at page 15.

#### **E. DETERMINATION**

28. The main issue for determination is whether the applicant is the author/owner of the disputed works. Both objectors have laid claim on the works. I will begin with objector no.2.

##### **(i) Objection number 2 filed by Mr. Kitatta Almalik Ibrahim**

29. Having reviewed the evidence and the law, I dismiss the second objection for the following reasons. As noted above, the basis for this objection is copyright ownership of an article titled "**OMALAKO JAJJA TOVA KU MAIN: THE IDEOLOGY OF MUSEVENI BAZZUKULU**" already registered under copyright number UG/C/2023/6. It is an article and hence qualifies as literary work under section 5 (1) (a) of the CNRA. The applicant's works on the other hand are artistic works of drawing as indicated in the images above. The words "**OMALAKO JAJJA TOVA KU MAIN**" which are just part of the heading/title of the 2<sup>nd</sup> objector's copyrighted works and also appear in the applicant's artistic works are not the 2<sup>nd</sup> Objector's works. The applicant presented his words in stylized manner in red and white color as well as a silhouette of President Museveni with a dark background. The 2<sup>nd</sup> objector's copyrighted work is the whole article and not a segment of his heading. Similarly, the applicant claims works in the artistic drawings and not segments of the same. The 2<sup>nd</sup> objector does not allege that the registration of the applicant's work infringes his registered copyright No. UG/C/2023/6. He just claims that the applicant's works are his. I am unable to see how that is so. Moreover, what he expresses in that article is an idea of "bazukkulu". For instance in the second last paragraph of the article, he writes; "**Resultantly, Namyalo and her team began by relaunching the Office of the National Chairperson with the theme "Omalakko Jajja Tova Ku Main".**" Clearly, by this statement, the 2<sup>nd</sup> Objector confirms that those words are not his but originated from the launch of the ONC. It is trite law that copyright does not protect ideas, but expression of those ideas. By writing on the ideology of Museveni's Bazukkulu, the 2<sup>nd</sup> objector is not expressing



the idea of "**Omalakko Jajja Tova Ku Main**" but merely expressing his thoughts about it, which are the whole article and not the quoted words alone. It should be noted that as stated in the quoted paragraph of the article, the words "**Omalakko Jajja Tova Ku Main**" were already public knowledge way before the 2<sup>nd</sup> Objector registered his copyright in January 2023. The 2<sup>nd</sup> Objection therefore fails and is hereby dismissed.

**(ii) The 1<sup>st</sup> objection filed by Hajat Hadijah Uzei Namualo.**

30. The 1<sup>st</sup> objector disputes the applicant's ownership of the disputed works and claims that the same were collectively generated by her office, the Office of the National Chairman of the National Resistance Movement (NRM). The 2<sup>nd</sup> objector further contends that her office employed and commissioned the applicant through his company and hence the said works qualify as commissioned works. While there is evidence of receipts paying the applicant for printing T-shirts, and as an employee in the position of "Blind Operation", there is no formal employment contract or a specific commissioning contract for the creation of the works.
31. Commissioned works are provided under the CNRA. Section 8 thereof provides;
- "(1) Where a person creates a work—*
- (a) in the course of employment by another person;*
- (b) on commission by another person or body; then in the absence of a contract to the contrary, the copyright in respect of that work shall vest in the employer or the person or body that commissioned the work..."*
- Was the applicant therefore commissioned by the 1<sup>st</sup> Objector to create the disputed works?***
32. The CNRA does not define the word "commissioning". The High Court in **Angella Katatumba V Anti-Corruption Coalition Civil Suit No.307 of 2011** at page 8 of the Judgement attempted to define the word as follows;
- "The Copyright and Neighboring Right Act does not define commissioning. From the wording of section 8 (1) (b), the word "commission" is not used as a term of art or legal term but in its ordinary English meaning. According to the Cambridge International Dictionary of English, to commission means to*



***formally choose someone to do a special piece of work. The free dictionary, which is an online dictionary, defines commissioning as the act of granting certain powers or authority to carry out a particular task or duty..."***

33. From the provisions of section 8, Copyrights acquired by virtue of commissioned rights arise in two ways; (1) creation of the works during the course of employment, and this must be proved by adducing evidence to prove the existence of a contract of service or employment contract; (2) specific commissioning of another to create the works where there is no employer-employee relationship or where there is one, but the employee is commissioned to specifically create the works outside his or her course of employment. With regard to commissioned works arising from employment relationship, the 1<sup>st</sup> objector has not adduced sufficient evidence to prove the existence of employer-employee relationship between the applicant and the Office of the National Chairman. The case of ***Market Investigations Ltd v Minister of Social Security [1969] 2 QB 173 at 185*** per Cooke J, gives a more elaborate test for ascertaining existence of an employment contract in absence of a written contract. Factors such as who controls the work, whether the person is entitled to statutory rights such as sick pay, who provides retirements benefits, the method of payment (for example, weekly or monthly or on the basis of a lump sum for an agreed item of work), whether tax is deducted at source and financial responsibility, among others are helpful in determining an employer-employee relationship. In this case, there is no evidence of an employment contract or payment of Pay as You Earn and National Social Security deductions. The three salary acknowledgement receipts admitted in evidence by the 1<sup>st</sup> objector are not sufficient to proof existence of a contract of service.
34. There is also no commissioning contract or other sufficient evidence adduced before me to prove that the applicant was commissioned or contracted to specifically create the disputed works. The receipts adduced indicate that the applicant was paid to print T-shirts. Printing T-shirts is not the same as developing artistic works for incorporation on those T-shirts. In absence of written contracts or other sufficient evidence, I am unable to find that the 1<sup>st</sup> objector commissioned the



applicant to author the disputed works—whether by employment contract or otherwise.

***Date of authorship of the disputes works***

35. Of particular importance to the determination of whether the applicant is the author of the disputed works is the issue of when the works were birthed or expressed in material form. In his application, the applicant indicates 5 November 2022 as the date when he authored the works. The 1<sup>st</sup> objector has shown that the said works were in use as early as October 2022 by her office. She has submitted evidence of two newspaper articles reporting the launch where the words were used. She has also submitted a tweet containing the words on the disputed works and two video footages of the launch where the disputed works were unveiled. I have reviewed the footages. They contain the words used in the disputed work with half image of President Yoweri Museveni. The launch took place on 19 October 2022 and was reported in both print media and television.
36. The 2<sup>nd</sup> Objector's article published in the Daily Monitor of 13<sup>th</sup> January 2023, corroborates the First objector's narrative, when it states that the launch was under the them "**Omalako Jajja Tova Ku Main**". The 2<sup>nd</sup> Objector signs off as the Public Relations Officer of the ONC in that article. This clearly shows that a significant portion of the disputed works were in circulation on banners and T-shirts around October 2022 during the launch of the ONC and hence were authored way before 5 November 2023. While there is no evidence to prove who the actual author of the words is, from the available evidence, it is highly probable that the words are a campaign slogan arising from political messaging and political activities of the National Resistance Movement.
37. The applicant's application to submit additional contrary evidence has already been rejected for reasons I have indicated above and I agree with the principle in the authority of **Katatumba v Anti-Corruption Coalition Uganda Civil Suit No.307 of 2011** cited by Counsel for the 1<sup>st</sup> Objector where Court noted that: "...**it is however case law which is consistent with Order 6 generally that provides that a party cannot introduce evidence inconsistent with the previous pleading or defence...**"

38. Even if the Registrar had considered the applicant's additional evidence, and claims made in his statutory declaration that 5 November 2022 was the date when the works were finalized, and that between September and October 2022, the idea was conceived and the works were in development stage. This in and of itself does not grant the applicant copyright in the works. This is because under section 4 of the CNRA, a person is entitled to copyright protection only when the claimed works are reduced in material form and not for mere ideas. (See **AL HAJJI NASSER NTEGE SEBAGALA V MTN Ltd and Another CIVIL SUIT NO 283 OF 2012**). Therefore preparatory stages, including practising the works or conceiving the idea are all not protected until the works are reduced in material form.
39. For purposes of section 4, reduction in material form is important for proving originality. In the case of **British Northrop Ltd v Texteam Blackburn Ltd [1974] RPC 57** at 68 the principle was conveniently summarized by Megarry J as follows: "*Copyright is concerned not with any originality of ideas but with their form of expression, and it is in that expression that originality is requisite. That expression need not be original or novel in form, but it must originate with the author and not be copied from another work ... A drawing which is simply traced from another drawing is not an original artistic work: a drawing which is made without any copying from anything originates with the artist.*" As found above, the words "**Omalako Jajja Tova Ku Main Sigala Ku Ballot**", "**Jajja, we command you to stand Again in 2016 & Beyond: Bazzukulu Ba Museveni**" included in the applicant's claimed works were already in circulation as early as 19<sup>th</sup> October 2022 in the launch organized by the First Objector's office. As such, they are not the applicant's original words.
40. For a person to own copyright in the works, he or she must have expended labour, skills and judgement. The second part of the applicant's claimed works is rather interesting as it contains not only the words but also the silhouette of President Yoweri Kaguta as part of the works. Current authorities have held that it is possible to acquire copyright in distorted artistic images of existing images including those available in public domain such as the one the first objector alleged was copied from the photograph of the president taken in 2019 to promote the Anti-corruption



walk. In *Temple Island Collections Ltd V New English Teas Ltd [2012] EWPCC 1*, Court noted that; “ *ultimately however the composition of the image can be the product of the skill and labour (or intellectual creation) of a photographer and it seems to me that skill and labour/intellectual creation directed to that end can give rise to copyright.*”

41. The applicant does not only claim the drawn silhouette of President Museveni but also the words artistically presented in red and white, and the entire drawing as a whole. It should be noted that a substantial part of the works contain the words and indeed a combination of the image and the words constitute the entire character and quality of the works. Indeed both the applicant and the First objector agree that the purpose of the works were for political mobilization activities. The words forming part of the second works constitute a substantial part of the character and the purpose of the whole works. According to his application, the applicant indicated that the claimed works are not derivative works. The CNRA defines “derivative work” as “*work resulting from adaptation, translation or other transformation of an original work but which constitutes an independent creation in itself*”. Under section 5 (1) (i), “derivative work which by selection and arrangement of its content, constitute original work” are eligible for copyright protection. Section 5 (2) further provides that “*Derivative works such as— (a) translations, adaptations and other transformations of pre-existing works under subsection (1); and (b) collections of pre-existing works like encyclopaedia and anthologies; which by selection and arrangement of their contents constitute original works, shall be protected under this Act as original works*”.
42. To claim derivative works in an application for registration, the author must indicate the original works from where the said works are derived. Regulation 4 (i) of the Copyright and Neighbouring Rights Regulations provides that: “*if the registration being applied for is for derivative work, state the pre-existing work*”. Therefore, where the applicant has not indicated that the application is for derivative works, he cannot claim the same thereafter. In this case, it is very clear that the works, including a related image of the president were already in circulation, and probably someone else, for instance the person who originally captured the picture of the



President could have copyright in them. If any transformation was made, the applicant ought to have claimed protection for the transformation, which are derivative works but not claiming to be the original author of the works. The CNRA recognizes that derivative works are transformations of original works, and hence the regulations require that such a fact is disclosed.

43. Plainly speaking, a derivative work is a work that is based on or derived from another work. For example a painting based on a photograph, a collage, a musical work based on an existing piece or samples, a screenplay based on a book. Legally, only the copyright owner has the right to authorise adaptations and reproductions of their work –this includes the making of a derivative work.
44. Under section 46 of the CNRA, adaptations of existing copyrighted work without authorization constitute copyright infringement. Section 46 provides; "***Infringement of copyright or neighbouring right occurs where, without a valid transfer, licence, assignment or other authorisation under this Act a person deals with any work or performance contrary to the permitted free use and in particular where that person does or causes or permits another person to— (a) reproduce, fix, duplicate, extract, imitate or import into Uganda otherwise than for his or her own private use; (b) distribute in Uganda by way of sale, hire, rental or like manner; or (c) exhibit to the public for commercial purposes by way of broadcast, public performance or otherwise.***" In *Atal v Kiruta ta 97 Africa Arts and Crafts Civil No.927 of 2004* at page 10 of the ruling, Court defined copyright infringement as follows; "***Copyright infringement by definition is the unauthorized use of material that is covered by copyright law, in a manner that violates one of the copyright owner's exclusive rights, such as the right to reproduce or perform the copyrighted work, or to make derivative works.***" This means that the right to make derivative works belongs to the copyright holder of the original works. That right can be extended to others by authorization for example by granting of a license. In his Book, *Intellectual Property 8<sup>th</sup> Ed* at page 102, Bainbridge explains the complexity of copyrights in derivative works. He states; "***for derivative works, usually, there will usually be several rights associated with the work and the exploitations of works in which***



*numerous rights exist can be fairly complex".* As a way of example, he adds *"the exploitation of a sound recording must take into account all these rights by way of licenses, assignments or waivers".*

45. From the extract above, and the provisions of section 46 of the CNRA and the case of **Atal v Kiruta** (supra), it is clearly to me that derivative works derived by a person other than the author of the original works, require the authorization of the author of the original works. Without such authorization, modification, adaptation or any transformation of copyrighted work would constitute copyright infringement within the meaning of section 46 of the CNRA. This is further emphasized in section 5 (3) of the CNRA, which states that: *"The protection of a derivative work under subsection (2) shall not affect the protection of the pre-existing work used by a person for derivation purposes".* Consequently, a person cannot claim copyright in derivative works, when the derived works infringe the pre-existing works. This protection is a reaffirmation of an author's economic and moral rights granted under section 9 and 10 of the CNRA respectively.
46. The applicant's drawing of the Silhouette of the President is indeed a transformation of the picture of the president, admitted by the First Objector, taken in 2019 during the anti-corruption walk. A side-by-side comparison of the two shows close resemblance. The applicant has not adduced any evidence to prove that the copyright holder of that image authorized him before he made the adaptations, transformations or modifications. Consequently, he cannot claim copyright in the silhouette as doing so would constitute infringement. I do not agree with Counsel for the first objector's submissions that the drawing infringes image rights of the president based on the ruling in the case of **Winnie Asenge v Opportunity Bank Civil Suit No. 756 of 2013**. Rights over images or ones likeness arise in a cause of action for false endorsement of a product or a service. In the case of **Asenge v Opportunity Bank** (supra), false endorsement was held to occur, when a person's identity (typically a celebrity's identity) is connected with a product or service in such a way that consumers are likely to be misled about that person's sponsorship or approval of the product or service in question.



47. The false endorsement is a misrepresentation to the public that the person whose image is used endorses the product or service. In applying this principle, the Hon. Justice Peter Adonyo at page 10 of the Judgement in **Asenge V Opportunity Bank** noted that. *"The actionable cause, therefore, under misrepresentation would then bring the suggestion that a plaintiff did in fact endorse or license a defendant's product or somehow has control over those products. Arising from this seemingly clear common law jurisprudence, it is my humble view that for one to succeed in an action for infringement of image rights such a person has to prove the following basic elements:*

- The plaintiff must be identifiable.*
- The defendant's action was intentional.*
- The defendant must have acted for the purpose of commercial gain."*

48. As per the above principles, it appears to me that the ground for refusal of copyright registration based on the image rights of the president would only succeed if the objector was President Museveni himself claiming infringement of his image rights. There is no doubt that the silhouette in question clearly identifies President Museveni and that the applicant intentionally used it for commercial gain—hence falling within the principles laid out in **Asenge V Opportunity Bank** (supra). However, only the person whose likeness or image is used to endorse a product or service without his or her authority has locus to bring a claim or in this case, an objection based on image rights. Similarly, a person who captured the image and therefore has copyright in the same could bring an objection on grounds of unauthorized modification of his or her works. In absence of these, I do not agree that image rights in this case, can be a basis for objection by the 1<sup>st</sup> objector.

49. I have already held that the applicant has no ownership in the words forming part of the works as they pre-date his claimed date of authorship. Neither the color nor the italicized presentation of those words alone amount to originality. I have also determined that without authorization of the copyright holder of the image of President Museveni, the applicant cannot claim derivative works in the silhouette. I therefore find that the applicant is not the author of the works submitted in Copyright application No.UG/C/2023/89.



50. Lastly, I take note of the fact that the disputed works are works of a political character. They are intended for political mobilization for the President and the National Resistance Movement (NRM) and have become synonymous with campaign messaging of the NRM and its youth supporters. While there is no evidence to conclusively determine the author of the works, there is sufficient evidence on a balance of probability, to prove that applicant could not have been the author.

51. Based on the analysis above, I therefore find as follows;

- (a) The applicant is not the author and cannot apply for registration of the disputed works.
- (b) There is no evidence to prove that the 1<sup>st</sup> objector commissioned the applicant to developed the disputed works.
- (c) The 2<sup>nd</sup> objector has no copyright in the disputed works.
- (d) The 1<sup>st</sup> Objector has not proved ownership/authorship of the works.
- (e) The available evidence is insufficient to determine the author of the disputed works.

## **F. REMEDIES**

52. Having found as above, I make the following orders;

- (i) The 1<sup>st</sup> objection is upheld.
- (ii) The 2<sup>nd</sup> objection is hereby dismissed.
- (iii) The application for registration of copyright No.UG/C/2023/89 is hereby denied.
- (iv) Each party shall bear its own costs.

I so order.

Given under my hand this 18<sup>th</sup> day of **October** 2023

  
Birungi Denis  
Ass. Registrar of Copyright.

  
Digitally signed by  
Birungi Denis  
Location: Uganda  
Registration  
Services Bureau  
Date: 2023.10.18  
09:45:56 +03'00'