

Pegasus Scholarship Trust – Uganda Placement 2021

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On 27 November 2021, the front page of the Uganda Saturday Vision newspaper read:

“WOMEN TO DECIDE WHERE TO BURY THEIR HUSBANDS”

I was walking down the street in Kampala, sidestepping potholes and loose goats, when I noticed the headline. I stopped immediately, shocked to see this story on the front page.

In the previous two weeks I had spent time shadowing Lady Justice Alice Komuhangi in the High Court. During that time, Justice Komuhangi had heard a case concerning a dispute over the location of a burial.

The deceased was a Ugandan man born into the “Ndiga” clan who had been living in Switzerland with his wife (also a Ugandan national) at the time of his death. He had died intestate. The deceased’s widow had repatriated his body to Uganda for the purpose of affecting his burial at the home that they had purchased in the country. The deceased’s siblings wished for him to be buried at the family’s ancestral burial ground and applied to the court for an order to that effect. Their case, in essence, was that the customs of the “Ndiga” clan required that the deceased be buried at the ancestral grounds and that the Ugandan Constitution not only protected but promoted cultural traditions, norms and customs.

By way of context, Uganda is home to 56 different tribes and with each of those tribes being subdivided into clans. Clan membership is patrilineal and every member of a given clan traces their ancestry to common male ancestor. Upon marriage a woman joins her husband’s clan and ceases to be a member of her father’s clan. Polygamy remains common with men marrying multiple wives. Overall, gender inequality in Uganda remains pronounced despite the fact that the Ugandan Constitution protects the equal rights of women.

The widow argued that her husband had ceased to practice the customs of the ‘Ndiga’ tribe and that his wish was to be buried at the home which they had purchased in Uganda where she too would be buried upon her death.

The argument was fascinating and involved hearing evidence from an elder of the ‘Ndiga’ clan who described the importance of burial at family ancestral grounds and set out the consequences which would follow if the body was buried elsewhere. It was said that the living members of the deceased’s family would be haunted by dreams of the deceased which would persist unless the body was exhumed and relocated to its proper place at the ancestral burial grounds.

Following the first day of the hearing, Justice Komuhangi and her clerk were kind enough to discuss the case at length with me - patiently answering my numerous questions about procedure, the law and Ugandan culture. I subsequently became more involved in the case, first assisting with legal research and later providing input to the drafting of the judgment.

Ultimately, the case was decided in favour of the widow. Although Justice Komuhangi and I had discussed the fact that the case had the potential to positively impact women’s rights in

Uganda, I had absolutely no idea that the judgment would provoke sufficient reaction to make the front page of the newspaper!

Although that experience was rather surreal, much of my work reminded of the justice system back at home. The Ugandan Judiciary faces a huge backlog of cases, worsened by the COVID-19 pandemic. The problem is particularly acute in the criminal courts where it is not uncommon for an accused to spend over five years in custody awaiting trial. The Judiciary, operating in the context of limited resources, were introducing numerous initiatives to try to reduce the backlog by increasing efficiency within the system. To that end, I assisted with several projects including:

- i. the development of a pilot programme for the daily hearing of criminal cases which aims to eventually replace the current system of hearing cases during quarterly sessions;
- ii. the expansion of the ‘State Brief’ scheme which provides government funding for defence advocates;
- iii. the drafting of sentencing guidelines; and
- iv. the implementation of practice directions on bail and case management.

As a criminal barrister, the vital importance of reducing delay within the criminal justice system was immediately apparent to me and it was reassuring to observe the determination with which the Ugandan Judiciary was seeking to tackle the issue.

Outside of work, I seized the opportunity to explore Uganda. I white-water rafted at the source of the River Nile (the guides assured me that the crocodiles were vegetarian); tracked mountain gorillas in Bwindi Impenetrable Forest; hiked in the Rwenzori mountains and saw more than my fair share of big cats whilst on safari!

I am extremely grateful to the Pegasus Scholarship Trust and to the Ugandan Judiciary for providing me with such an amazing opportunity. I am particularly grateful to Andrew Khaukha, the Technical Advisor to the Judiciary, for co-ordinating my placement on a day-to-day basis. My time in the Pearl of Africa was unforgettable!

