

**CENTRE FOR INTELLECTUAL PROPERTY AND TECHNOLOGY LAW (CIPIT)
MOOT COURT COMPETITION, STRATHMORE UNIVERSITY**

11-12 OCTOBER 2018

**Before THE EAST AFRICA COURT OF JUSTICE
APPELLATE DIVISION
(ON APPEAL FROM THE EAST AFRICA COURT OF JUSTICE,
FIRST INSTANCE DIVISION).**

MANGALA MINYALA

1st APPELLANT

WIKA VIRUS ACTION PLATFORM

2nd APPELLANT

-AND-

**GUACAMOLE REPUBLIC OF AVOCADO
RESPONDENT (GRA)**

Hypothetical Case

1. Guacamole Republic of Avocado (GRA) is a **democratic state situated in East Africa. It is a member of the United Nations (UN) since its independence in 1963. It is also a member of the East Africa Community (EAC) having signed and ratified the East Africa Community Treaty in 2002. It has population of approximately 40 million people.** It borders Uganda to the East, South Sudan to the South, Kenya to the West and Tanzania to the North. **GRA has a quasi-federal system of governance termed “devolution” which is made up of 12 provinces which are headed by Mayors. The main ethnic groups in the country, based on the 2012 national census, are the Lubos (34.5% of the total population), the Abugisi (30%), and the Dangans (20%). Other groups make up the remaining 15.5%.**
2. **GRA has a new constitution that was promulgated in 2015. GRA’s human rights system in Chapter 16 of the 2015 GRA Constitution is based on the 1948 Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and the African Charter on Human and Peoples’ Rights (Banjul Charter). GRA acceded to the International Covenant on Civil and Political Rights on 14th June 1975; signed and ratified the African Charter on Human and Peoples’ Rights on 20th October 1986.** The country has also **signed and ratified the African Union Convention on Cyber Security and Personal Data Protection (1st July 2015) and a treaty similar in substance to Council of Europe’s Budapest Convention on Cybercrime.** GRA is also the first African country to publicly state that the European Union (EU) General Data Protection Regulations

(GDPR) will be part of its domestic laws.

3. **The 2015 GRA Constitution provides for presidential and National Assembly (NA) elections to be held every four (4) years, through direct voter participation. The 300-member NA has its seat in Borito, the capital of GRA. Members of National Assembly (MNAs) are elected per constituency, based on a first-past-the-post electoral system. Under Article 2(4) of the 2015 GRA Constitution, the President has the power to enter into treaties or agreements on behalf of the State, but any such undertaking is subject to ratification by an Act of the National Assembly, supported by the majority of all MNAs. The judicial structure in GRA is as follows: each province has a trial court and appellate court. From a province's appellate court, one can appeal to the Supreme Court of GRA (the highest court). GRA also has a Federal High Court. The Federal High Court of GRA can also be a court of first instance in cases where it has exclusive jurisdiction. From the Federal High Court, one can apply for leave to appeal to the Supreme Court of GRA. There is also the GRA Constitutional Court, which has original and exclusive jurisdiction on human rights issues based on the Bill of Rights in GRA's 2015 Constitution and international treaties. The Supreme Court must sit with a minimum of five Judges to fully constituted. The Supreme Court, presided over by the Chief Justice, is in Borito.**
4. **Being a member of the East African Community (EAC), citizens of GRA, both natural and juridical persons, are allowed to bring legal cases (*locus standi*) before the East African Court of Justice which in this case jurisdiction and admissibility requirements similar to those of the African Court of Human and Peoples' Rights. GRA has signed and ratified the Protocol to Banjul Charter on the Establishment of the African Court of Human and Peoples' and deposited a declaration under Article 34(6) of the Protocol to the Banjul Charter on the Establishment of the African Court of Human and Peoples' Rights.**
5. GRA is the most tech-savvy state in East Africa, with a thriving innovation city **famed** for its firsts in technology: Innovation and business incubation hubs, supported by relevant state agencies, are found in all major town centres. According to 2015 estimates GRA had a GDP of \$80.977 billion, making it the 75th largest economy in the world. The per capita GDP was estimated at \$1,789. Notwithstanding the positive features of GRA, there are governance issues including corruption, **nepotism, and fundamental human rights violations** which have affected public service delivery particularly in healthcare **sector**.
6. **The government's limited budgetary allocations on the socio-economic sector such as healthcare and education are been identified as the main cause of the spread of the Wika virus, a highly communicable disease that causes liver inflammation among other health issues, and when transmitted *in utero*, severe brain malformations and other birth defects. The virus is transmitted to people from wild animals and spreads in the human population through human-to-human transmission. According to the World Health Organization (WHO), The average Wika virus case fatality rate is around 50%. Case fatality rates have varied from 25% to 90% in past outbreaks. The first Wika Virus outbreaks occurred 2014–**

2016 in remote villages in Central GRA, near tropical rainforests. In 2017 the GRA Ministry of Health declared that the Wika virus had been leading ailment with the highest number of fatalities in GRA.

7. Through the Ministry of Health and the **GRA** National Health Insurance Fund, the Government of GRA created a Health Information System to help with the management of health services and to enhance service delivery to the people. The Ministry contracted a technology solutions firm, Matibabu Tech Inc., to create a mobile application to enable the people of GRA to access health services. The firm created the *e-Afya* application. This granted citizens access to some portals in the Health Information System, such as schemes for people living with certain conditions, including Wika Virus. This was intended to enable them to locate and access the closest specialised health center for their condition, keep track of the distribution of their medication, and connect with support groups. The application, in its terms and conditions, stated that personal data collected from its users would not be shared with or sold to third parties without the users' consent.
8. Mangala Minyala is a 25-year-old GRA citizen living in the province of Zumunda. She is living with Wika virus. Mangala downloaded the application to her phone and entered her details into it, which linked her up to her National Health Insurance Fund account. Among the information required to create a profile in the *e-Afya* application were personal details such as identification card number, age, existing medical conditions, passport photo, and blood type. As soon as Mangala started using the mobile app, she noticed that her web browser began to show advertisements for drugs to treat her condition.
9. Mangala **Minyala** has been a member of Wika Virus Action Platform (WVAP) ever since she was diagnosed with Wika Virus **December 2016**. Wika Virus Action Platform is a registered society **under the laws of GRA** whose functions involve looking into the welfare of people living with Wika Virus. Mangala **Minyala** raised an inquiry in the group to find out if she was the only one seeing the advertisements for drugs to treat Wika Virus. She discovered that every group member who had signed up for *e-Afya* was seeing similar advertisements in their searches.
10. Acting on Mangala's discovery of a possible privacy breach, the Platform conveners asked her to collaborate with them to request more information about *e-Afya* and its privacy policy from the Ministry. They decided to ask the Ministry about the online advertisements in writing and demanded to know which information was shared with third parties. They also asked for details of the terms of engagement between the Ministry and the GRA National Health Insurance Fund, and the system service provider. In a separate letter, Mangala wrote to the Ministry of Health to ask about her personal information, and the terms of engagement Matibabu Tech Inc. The Ministry officials first refused to reply to her letter, and then, when she persisted, told her that due to her condition some of her rights were suspended for the sake of public interest.
11. On 6th January 2016 Mangala first brought proceedings against GRA under the **2015 GRA Constitution (~~which is identical to the Constitution of Kenya, 2010~~)** and the Access to Information Act (which is also identical to the Kenyan Access to

Information Act, 2016) for violations of their rights to privacy and protection of personal data in the **GRA Constitution Court**. **The case was dismissed with the court finding that Mangala Minyala had not proved his claims. Mangala then appealed this decision to the GRA Supreme Court which declined to grant hear this case it wasn't able to convene the requisite quorum of five (5) justices since two (2) justices had recused themselves for personal reasons.**

12. **On 10th June 2017, Mangala Minyala and Wika Virus Action Plan which now joined him, filed a suit in first instance division of the East Africa Court of Justice. Mangala and Wika Virus Action Plan argued that Mangala and other members of the Wika Virus Action Plan had the rights violated under the East African Community Treaty, the International Covenant on Civil and Political Rights, and the Banjul Charter. The First Instance Division held that the court had jurisdiction and that the case was admissible and further that GRA had not violated Mingala's rights under international law. Minyala and Wika Virus Action Plan being dissatisfied by this decision have now appealed to the East Africa Court of Justice Appellate Division.**

13. In the **appeal**, the appellants seek **the following reliefs:**

- (i). The action by the Ministry of Health in sharing their health information with Matibabu Tech Inc without appropriate safeguards in the agreement amount to a breach of their right to personal privacy including privacy relating to the safeguarding of health information both under the constitution and relevant laws.
- (ii). The action of Matibabu Tech Inc. in disclosing her health information without her informed consent amounted to a breach of her right to privacy including the right to have the data relating to her health protected under the relevant laws and only to be shared, disclosed and processed in accordance with the relevant laws.
- (iii). That the disclosure of her personal data did not serve any public interest as alleged by the first respondent or on any other ground, and that if the data served public interest, its disclosure should have been done with her informed consent in accordance with the relevant laws.

INSTRUCTION

Prepare memorials for both the Applicant (Mangala) and the Respondent (the Guacamole Republic of Avocado) addressing, in respect of each of the three claims, legal standing, admissibility, the merits, and reparation.

Task for the Applicant's Counsel

14. As an advocate of the East Africa Court of Justice, Mangala's lawyers have sent you a brief instructing you to file an appeal on their client's behalf. The brief sets out the above facts. As appellants' counsel, you are requested to:
- (i). Undertake research which includes consulting legal texts, statutes, constitution and international comparative law.
 - (ii). Draft a document (aide memoir) which, in one section: outlines the material facts, set out the law and in the other section, and in simple terms, outlines the procedural steps you will take in accordance with the relevant court rules and other relevant rules and protocols from the time you receive the instructions until you argue the matter in court.
 - (iii). Draft heads of argument (~~Skeleton argument~~) which contains all the material facts, the law including relevant case law and other legal authorities. The aide memoir will assist you in the process.
 - (iv). You will have **45 minutes (including a max 5 minutes of rebuttals)** to present your argument before a panel of **3** East Africa Court of Justice judges.
 - (v). The Respondent's lawyers will in turn have **45 minutes (including max 5 minutes for surrebuttals)** to present their argument which also gives them a chance to rebut your submissions.

Task for the Respondent's Counsel

- (i). Undertake research which includes consulting legal texts, statutes, constitution and international comparative law.
 - (ii). Draft a document (aide memoir) which, in one section) outlines the material facts, set out the law and in the other section, and in simple terms, outlines the procedural steps you will take in accordance with the relevant court rules and other relevant rules and protocols from the time you receive the instructions until you argue the matter in court.
 - (iii). Draft heads of argument (~~Skeleton argument~~) which contains all the material facts, the law including relevant case law and other legal authorities. The aide memoir will assist you in the process.
 - (iv). The Appellant's lawyers will have 30 minutes to present their argument before a panel of 5 East Africa Court of Justice judges.
 - (v). You will in turn have 45 minutes (**including a max 5 minutes of surrebuttals**).
15. The oral hearing of the matter has been set for the month of **11-12 October 2018**.