



ENFORCEMENT OF PATIENTS AND HEALTH WORKERS' RIGHTS (EPHWOR)

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Attention

Development/ Strategic Partners

RE: CASE BRIEF

Enforcement of patients and health workers Rights (EPHWOR) & 2 other

Vs.

- 1. Marie Stopes Uganda,**
- 2. National Drug Authority**
- 3. Attorney General**

Background of the case

EPHWOR is a Non – Governmental organizations bringing this public interest case on behalf of many Ugandans that use condoms for prevention of sexually transmitted infections like HIV / AIDS and un wanted pregnancies

Condoms are subject to mandatory analysis before release to the market by National Drug Authority; this analysis is carried out at the National Drug Authority quality control laboratory.

This laboratory is World health Organization (WHO) prequalified and also accredited by ANAB (a certified Agency for USA) to ISO/ IEC 17025 standards.

The importer of condoms is given a conditional release to quarantine the products until analysis results are provided by the laboratory.

NDA during routine surveillance on the market found out that two un authorized batches of life guard condoms batch; 19050105 and 19040205 had been released to the market without the approval of National Drug Authority.

It was estimated by Ministry of Health by the end of 2019 only 70.8% of the defective condoms had been recovered by NDA and 29.2% of the defective condoms were still in public use.

EPHWOR as a patient rights centered organization has been approached by various victims of the defective life guard condoms that were rolled on market by Marie Stopes before final approval by National Drug Authority. Some of the victims contracted HIV /AIDS, gonorrhoea and others un wanted pregnancies.

EPHWOR is concerned that there is a likelihood that there are many other Ugandans who could have contracted other Sexually transmitted Diseases but have not come up due to lack of information , sensitivity and molarity context of the matter.

EPHWOR believes there are still other defective condoms still in public use and the respondents have not done much to address this problem and this may affect the strides and success the country has been making in HIV/AIDS prevention and control .

SUMMARY OF THE FACTS

On the 29th /07/2019 the 1st respondent Marie Stopes Uganda imported two batches of life guard condoms batches nos 19040205 and 19050105 from MHL health care ltd India.

Condoms are subject to mandatory analysis before release to the market by National Drug Authority and this analysis is carried out by the NDA quality control laboratory and during the course of analysis the importer is given conditional release to quarantine the product until analysis results are provided by the laboratory.

However before NDA finished testing the said condoms, on the 17th /09/2019, mariestopes Uganda rolled the condoms for public use

One month into public use, on the 30th of October NDA found that the condoms were defective and ordered Marie Stopes to recall the Condoms from the public use

The reason for recall was that the condoms failed the test of failure of freedom from holes and burst properties this means these condoms subjected to tensile and strenuous forces like Sex could easily burst and had holes that can allow exchange of fluids.

For the one month, these condoms were in public use, three Ugandans who have deponed affidavits with us were victims of the said condoms

1. Kintu Joseph resident of Nakaseke contracted HIV/ AIDS after using the defective condoms.
2. Balinya Sulaiman resident of Ibanda contracted gonorrhoea after using the defected condoms.
3. Birungi Joyce resident of Mukono became pregnant yet she had used the condoms to prevent un wanted pregnancy.

It is against this backdrop that EPHWOR and one Ugandan have gone to court with a public interest case to seek redress on behalf of Ugandans who could have used the defective life guard condoms that were rolled on market illegally.

EPHWOR and the other two applicants pray to Court for the Following Orders and Declations.

DECLARATIONS THAT;

1. The Respondents acted illegally and negligently in the rolling of defective Life Guard Condoms Batch Nos. 19040205 and 19050105 to the public in violation of the right to life, health, and human dignity guaranteed under Objectives V, XIV, XX, Articles 22, 8A and 24 of the Constitution of the Republic of Uganda, 1995.

2. A declaration that the 2nd Respondent abdicated its supervisory role over regulation of the 1st Respondent's activities leading to the rolling of defective Life Guard condoms to the general public in violation of the aforementioned provisions of the Constitution and Section 2(1),35 and 36 of the National Drug Policy and Authority Act, 1993.
3. A declaration that the 3rd Respondent failed in its Constitutional and Statutory duty to take effective measures to prevent and control HIV transmission in violation of the right to life, health, and human dignity guaranteed under Objectives V, XIV, XX, Articles 22, 8A, Article 24, Article 45 of the Constitution of the Republic of Uganda, 1995 and Section 24(1) (d) of the HIV and AIDS Prevention and Control Act, 2014.
4. A declaration that the 3rd Respondent failed in its Statutory Obligation to Prevent third Parties from Interfering with the enjoyment of rights by Ugandans

ORDERS THAT;

5. The Respondents be compelled to conduct an audit of Life Guard condoms Batch Nos. 19040205 and 19050105 that were illegally rolled to the public and those that were recalled in order to ascertain the extent of damage caused to users of the defective condoms.
6. The 2nd Respondent be directed to revoke the 1st Respondent's license in relation to importation and distribution of condoms due to Contravention of the Mandatory post-shipment testing procedure.

7. The 2nd and 3rd Respondents be directed to revise their regulatory and supervisory mechanisms on the control and prevention of HIV transmission in Uganda.
8. The Respondents be compelled to immediately conduct mass sensitization through the media and other communication channels about the effect of Life Guard condoms Batch Nos. 19040205 and 19050105 that were found to be defective.
9. The Respondents be directed to conduct mass testing of all users of the defective Life Guard condoms Batch Nos. 19040205 and 19050105 and to provide treatment to all persons found to be infected as a result of using the said defective Condoms.
10. The Respondents be directed to further recall the Defective Condoms that May still be sold in Pharmacies, Drug Shops and Supermarkets all over the Country.
11. Any other relief deemed fit by this Honorable Court.

Case Status

The Case was filed on the 6th day of August at the High Court of Uganda (Civil Division) at Kampala.

We await a hearing date from court.

Media coverage

This case has already attracted the attention of various media houses who have responded by publishing articles and videos highlighting the same case. Visit the links below to see what various media houses have written, published and broadcasted.

1. <https://observer.ug/news/headlines/66002-man-who-contracted-hiv-after-using-life-guard-condoms-sues-gov-t#:~:text=A%20man%20who%20allegedly%20contracted,that%20adversely%20affected%20public%20health.>
2. <https://www.kfm.co.ug/news/government-dragged-to-court-over-defective-lifeguard-condoms.html#:~:text=Government%20has%20been%20dragged%20to,in%20circulation%20on%20the%20market.>
3. <https://nilepost.co.ug/2020/08/06/government-dragged-to-court-over-faulty-life-guard-condoms-on-market/>
4. <https://www.facebook.com/CapitalFMUganda/photos/a.783522751676528/3744293415599432/?type=3>
5. <https://kmaupdates.com/health-uganda-govt-sued-over-fake-life-guard-condoms-in-store/>
6. <https://mtnstopshiv.org/news-aggregator>

7. <https://www.spyuganda.com/nda-attorney-general-byaruhanga-sued-over-defective-life-guard-condoms/>

Support

We are grateful to NETPIL for supporting our Media and Publicity Coverage during filing.

Best Regards,

Lanyero Sharon

Executive Director

Enforcement of Patients and Health Workers' Rights

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