

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

SEXUAL MINORITIES UGANDA	. CIVIL NO. 12-30051-MAP
Plaintiff	.
	.
V.	. SPRINGFIELD, MASSACHUSETTS
	. JUNE 24, 2015
SCOTT LIVELY	.
Defendant	.

. . . . .

TRANSCRIPT OF TELEPHONE STATUS CONFERENCE  
BEFORE THE HONORABLE KATHERINE A. ROBERTSON  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 (Court called into session)

2 (2:30:20 PM)

3 THE CLERK: In the matter of Sexual Minorities  
4 of Uganda v. Scott Lively, Civil Action No. 12-30051.

5 THE COURT: Sorry about that. Counsel, could  
6 you identify yourselves for the record and let me know if  
7 you expect anybody else to be calling in this afternoon?

8 MR. MIHET: Good afternoon, Your Honor, we have  
9 Horatio Mihet and Roger Gannam on behalf of Mr. Lively the  
10 defendant.

11 THE COURT: Thank you very much, and do you  
12 expect anybody else to be present? I think not, probably,  
13 right?

14 MR. MIHET: Not from our side, no, Your Honor.

15 THE COURT: Okay, thank you.

16 MS. SHAH: Good afternoon, Your Honor, my name  
17 is Jeena Shah present for the plaintiff, Sexual Minorities  
18 of Uganda and I don't expect anyone else to join us.

19 THE COURT: So it'll just be the three of us.

20 All right, I set this down for this sort of case  
21 management or status conference, if you will, primarily  
22 because I have really three motions, well I have six  
23 motions pending but I have three motions pending that  
24 really have to do with the schedule of for discovery, and  
25 I want to deal with that separately from the motions to

1 compel and the motions for an amendment to the protective  
2 order.

3           So what there is pending in front of me is the  
4 motion by Sexual Minorities of Uganda for an extension of  
5 time to October 15<sup>th</sup> to provide its expert disclosures and  
6 to then extend the other litigation deadlines sort of  
7 starting with October 15<sup>th</sup> as a starting point and that's  
8 for the, for good cause meaning it's because the expert  
9 you've unexpectedly, the plaintiff has unexpectedly lost  
10 its expert. So I'm going to allow that motion and set the  
11 further schedule as proposed I think in that motion. But  
12 what I'm also going to do then is I am going to extend the  
13 period for fact discovery based on the other two motions,  
14 one of which is a motion for an extension of time for the  
15 deposition of the plaintiff and the person I believe is  
16 its principle witness and so, of Sexual Minorities of  
17 Uganda under Rule 30(b)(6) and also of Mr., I'm not sure  
18 how to pronounce his name. I know it begins with an O.

19           MR. MIHET: Oniema (ph), I believe, Your Honor.

20           THE COURT: All right, and then there is also  
21 this motion for protective order with respect to Mr.  
22 Ganafa. So my view of this is that since you're extending  
23 the schedule in any event, the volume of discovery that  
24 the plaintiffs have produced, the timing of that  
25 production, I've seen the form of some of those documents.

1 I believe the point that it's difficult to navigate  
2 through those documents is a fair point. I also see that,  
3 you know, where there is a motion to compel by Sexual  
4 Minorities of Uganda, there is the motion to require  
5 Sexual Minorities of Uganda to produce unredacted  
6 documents depending on the rulings that are made on those  
7 motions which will not be made this week. There could  
8 then be a motion by either party to go back and take a  
9 further deposition based on information that they did not  
10 have in the initial production. It doesn't make sense to  
11 me to treat discovery that way, especially given that it  
12 appears that at least the plaintiffs most important  
13 witness hasn't been deposed yet and it's possible that the  
14 defendants most important witness has not been deposed.  
15 Has Mr. Lively been deposed?

16 MS. SHAH: Yes, Your Honor, he has.

17 THE COURT: Was that deposition completed?

18 MR. MIHET: It was just today, Your Honor. I  
19 would just note for the Court that we did offer to--

20 THE COURT: Right, you offered to extend the  
21 time for that. I saw that in the filing and the plaintiff  
22 selected to go forward and I haven't, I have not read the  
23 motion to compel by Sexual Minorities of Uganda. Is there  
24 any chance that based, that if that motion was allowed  
25 there would be a need for further deposition testimony

1 from Mr. Lively?

2 MS. SHAH: Yes, Your Honor, that's possible.

3 THE COURT: That's possible so you know--

4 MR. MIHET: We'll bring that up later.

5 THE COURT: Right. I'm sorry, go ahead, Ms.  
6 Shah.

7 MS. SHAH: Oh, yes, Your Honor. If we move  
8 forward with Mr. Lively's deposition because we really  
9 needed to stick to the schedule give the effort that our  
10 clients have made in order to arrange their schedule for  
11 the deposition--

12 THE COURT: I've read that. I really don't find  
13 it persuasive that if I extend the fact discovery that  
14 parties cannot be made available over the period between  
15 now and September, between now and August 30<sup>th</sup>. I just  
16 don't find that persuasive and I do find persuasive that  
17 the volume of material that the plaintiffs have produced  
18 to the defendants, the form in which it's been produced,  
19 the possibility that there is going to be a need for  
20 further, you know, that there would then be a need for  
21 further deposition testimony from both sides depending on  
22 the rulings on the motions to compel, it does not, I am  
23 going to allow the defendants motion for an extension of  
24 time to take the deposition of Sexual Minorities of Uganda  
25 and it's Mr. Onieta, however that's--

1 MR. MIHET: Oniema.

2 THE COURT: Oniema, because I think that there's  
3 good cause as well for that extension. So that's, and  
4 I'm, I believe that in that time period, now, I'm not  
5 extending the period of fact discovery, you know, for all  
6 purposes so that there can be additional depositions  
7 noticed. It's just so that these this deposition, the  
8 Sexual Minorities of Uganda and its principal witness and  
9 Mr. Ganafa, who's deposition hasn't yet been taken, so  
10 that those depositions can be taken and so if there's a  
11 need for additional deposition testimony for Mr. Lively,  
12 that that can happen as well between now and August 30 of  
13 2015.

14 MR. MIHET: Your Honor, may I bring up a related  
15 issue?

16 THE COURT: Yes.

17 MR. MIHET: We had scheduled for June 30<sup>th</sup> the  
18 deposition of the third party witness, one Kabya Kaoma.  
19 He and his lawyers have requested as a courtesy to  
20 postpone that for a later date in July. We've discussed  
21 it with SMUG and they are not opposed so, because fact  
22 discovery otherwise closes we would just ask the Court to  
23 allow for that to happen so that we can accommodate a non-  
24 party witness.

25 THE COURT: That's fine. That's fine. And if

1 there is any other party, if there's any other witness  
2 whose deposition has been noticed and not yet taken, and  
3 it's more convenient for the parties, you know, to  
4 postpone and take that deposition you know within the next  
5 month or so, that's also fine, but I don't see, given the  
6 extension that there's going to be, given the fact that  
7 this case is going to take longer than anticipated anyway,  
8 and given the status of discovery and the outstanding  
9 motions it, and the arguments raised by the parties, I  
10 think that this is the most logical and the most  
11 appropriate way to proceed.

12 Let me make sure that I understand so that I can  
13 reflect in any order whose deposition will be taken beyond  
14 the current June 30 deadline?

15 MR. MIHET: Well, we have obviously SMUG, Oniema  
16 depositions.

17 THE COURT: Yeah.

18 MR. MIHET: We have the Kabya Kaoma, K-A-B-Y-A.

19 THE COURT: Yeah.

20 MR. MIHET: Kaoma, K-A-O-M-A.

21 THE COURT: K-A-O-M-A?

22 MR. MIHET: Correct.

23 THE COURT: Right.

24 MR. MIHET: Then we have the Victor Mufasa (ph)  
25 who's scheduled for the 30<sup>th</sup>. He is also a non-party

1 witness and SMUG had indicated being willing to push that  
2 further on to July. We'll push it forward that, now that  
3 the - (inaudible - 2:39:31) - has given us that  
4 possibility. Also we have tomorrow, Juan Richard Lucimbo  
5 (ph) noticed and scheduled and we're, SMUG's opinion or  
6 position because if the Court gives us some time, we  
7 certainly could use it to review some of the documents  
8 that, given some of the documents that came from Mr.  
9 Lucimbo's custody, we have not had an opportunity to  
10 finish the, we'd very much interested in pushing that out  
11 a little bit as well.

12 MS. SHAH: Yeah, Mr. Lucimbo flew to the United  
13 States from Kampala just two days ago, specifically for  
14 his deposition tomorrow and is flying back early next  
15 week, and so it is not possible for us to change his  
16 deposition at this time. If they needed to extend fact  
17 discovery, you know, our production in mid April, they had  
18 time to determine whether or not they needed to move all  
19 of our depositions. At the end of April they had simply  
20 said they wanted to move the depositions from May to June  
21 and in good faith reliance on our negotiation our clients  
22 bought tickets and flew here for their depositions and it  
23 would cause great pressure to Mr. Lucimbo having to fly  
24 back for his deposition.

25 THE COURT: All right, so he's here already?

1 MS. SHAH: Yes.

2 THE COURT: Yeah. I think that deposition has  
3 to go forward, Mr. Mihet.

4 MR. MIHET: Well that's fine, Your Honor. We'll  
5 do that. We'll forego another night's sleep and catch up  
6 this weekend on that, so we can do that.

7 THE COURT: Okay. All right. So then for, so  
8 fact discovery will be extended for the purposes of the  
9 deposition of Sexual Minorities of Uganda, the 30(b)(6)  
10 deposition of Sexual Minorities of Uganda and Mr. Oniema  
11 and Mr. Kaoma and Mr. Mufasa, and to the extent that, to  
12 the extent or if, if the motion to compel by Sexual  
13 Minorities of Uganda is allowed, and additional documents  
14 or additional information is forthcoming from Mr. Lively  
15 to Sexual Minorities of Uganda causes the plaintiff to  
16 believe that it needs to take additional deposition  
17 testimony from Mr. Lively, that as well can be  
18 accomplished by August 30. I will hope to have these  
19 motions which are not fully briefed yet, I will hope to  
20 have them ruled on within the next you know two to three  
21 weeks at least so that you can understand what your  
22 obligations are with respect to producing the documents,  
23 whether unredacted documents have to be produced, whether  
24 any documents are going to be produced subject to an  
25 attorney's eyes only designation or not.

1 MS. SHAH: Your Honor, there is one more  
2 matter. We had outstanding issues subpoena for one Mr.  
3 Martin Sempa who is in Uganda--

4 THE COURT: Yup.

5 MS. SHAH: --and that subpoena, we have not been  
6 able to depose him as we have not yet been able to serve  
7 him.

8 THE COURT: Oh, all right, so that's another  
9 deposition that can be accomplished. So Mr. Sempa's  
10 deposition?

11 MS. SHAH: Yes, that's at the end.

12 THE COURT: Right, right, right. Mr. Sem, it's  
13 B-A, right? Or is it--

14 MS. SHAH: P as in Paul.

15 THE COURT: P, okay. So Mr. Sempa's deposition  
16 as well can be taken before August 30<sup>th</sup> of 2015, okay?

17 MR. MIHET: Your Honor,--

18 THE COURT: Yes.

19 MR. MIHET: --if the Court will indulge one  
20 other thing, because Mr. Gannam and I have been in non-  
21 stop traveling depositions in this case, we would ask the  
22 Court for just a short seven day extension on the briefing  
23 on the pending motions that, discovery motions, and the  
24 testimony of, extend the same courtesy to SMUG on the  
25 responses that still due from it. We just have been on

1 the road every single day since the motions were filed,  
2 Your Honor.

3 THE COURT: Ms. Shah?

4 MS. SHAH: We would not oppose that, Your Honor.

5 THE COURT: Okay so what I have that's not fully  
6 briefed at this point is the motion to compel by Sexual  
7 Minorities of Uganda and a motion to compel plaintiff to  
8 produce unredacted documents by the defendants, and so  
9 each of you will be given an additional seven days to file  
10 your oppositions to those motions.

11 MR. MIHET: Thank you, and Ganafa protective  
12 order motion.

13 THE COURT: I'm sorry. The AEO motion I thought  
14 was fully briefed?

15 MR. MIHET: Not that one, the one for,  
16 protective order for Mr. Ganafa.

17 THE COURT: Oh, for Mr. Ganafa. Right, I'm  
18 assuming that his deposition will be taken. All right,  
19 all right. I'm assuming that his deposition will be  
20 taken. I would like - given that there's additional time,  
21 I would request that the parties discuss whether there is  
22 a way to resolve the disagreement about Mr. Ganafa. You  
23 know, I will say that my view of that is that if he is  
24 employed and it's difficult for him to come here, and  
25 there's adequate time, I'm not ruling on it. I will look

1 at the opposition. I will give you additional time, an  
2 additional seven days from whenever the opposition was  
3 filed. So really I'm saying 21 days for the oppositions  
4 on each of these motions and I'll calculate what that is  
5 and we'll put that in an order. But I would encourage the  
6 parties to discuss and see whether they can resolve their  
7 disagreement about the conditions for taking his  
8 deposition. If you can't I'll rule on the motion. If  
9 it's pending I will rule on the motion.

10 MR. MIHET: We would definitely both go back to  
11 the drawing board and give it our best shot, Your Honor.

12 THE COURT: Okay. All right, so anything else  
13 from, so I now, I have really one, two, three, four, five,  
14 six depositions that will be taken between now and August  
15 30, correct?

16 MR. MIHET: I've kind of lost count. One, two,  
17 three, four, five, that's if you count the SMUG and Oniema  
18 depositions as two separate ones.

19 THE COURT: As two separate, right. Yup, and  
20 which is what I was doing. All right, five. Sexual  
21 Minorities of Uganda, Mr. Oniema, Mr. Kaoma, Mr. Mufasa  
22 and Mr. Sempa.

23 MR. MIHET: And Mr. Ganafa.

24 THE COURT: And Mr. Ganafa. All right. All  
25 right. All right, and I will receive the oppositions. I

1 will set a schedule for the, or I will, you know, the  
2 clerk, we will issue an order about the deadlines for  
3 filing the oppositions on the motions that haven't been  
4 fully briefed yet. Once they are fully briefed, I will  
5 get rulings to you, you know, as soon as I can. The  
6 filings are pretty extensive so, and I think it's, I think  
7 they raised significant and complicated issues which is  
8 one of the reasons, which is another of the reasons that I  
9 felt that fact discovery really needed to be extended  
10 with, to give the Court adequate time to really look at  
11 and consider the issues that you had raised in your  
12 motions, in your discovery motions rather than - anyway,  
13 so all right. Is there anything else from the plaintiff's  
14 side this afternoon, Ms. Shah?

15 MS. SHAH: No, Your Honor.

16 THE COURT: All right, is there anything else  
17 this afternoon from Mr. Lively's side?

18 MR. MIHET: No, Your Honor. Thank you for  
19 accommodating us on short notice.

20 THE COURT: Okay. All right. Thank you all.  
21 Orders will issue consistent with what we have discussed.  
22 Thank you.

23 MR. MIHET: Thank you.

24 MS. SHAH: Thank you.

25 (Court adjourned at 2:47:49 PM)

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CERTIFICATION

I, Maryann V. Young, court approved transcriber,  
certify that the foregoing is a correct transcript from  
the official digital sound recording of the proceedings in  
the above-entitled matter.

/s/ Maryann V. Young

June 29, 2015

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