

**IN THE HIGH COURT OF UGANDA**

**HOLDEN AT MBARARA**

**HIGH COURT-05-CV- EPA .0003 OF 2001**

MUSINGUZI GARUGA JAMES

PETITIONER

VERSUS

AMAMA MBABAZI  
ELECTORAL COMMISSION

RESPONDENT NO. 1  
RESPONDENT NO. 2

**BEFORE THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE**

**RULING**

1. When this case was called for hearing, Dr. Joseph Byamugisha, learned Counsel for Respondent No. 1, raised an objection, to my presiding over the hearing of this petition. The ground for the objection was as shocking as it was unusual. Dr. Byamugisha submitted that he had reason to object to my sitting as a judge in H.C.C.S.No 650 of 1991 C. Kayoboke v Amos Agaba and others sometime in 1993. In that case he was one of the defendants. In light of that objection, he stated that he had intimated to his client, Respondent No. 1, that it may be difficult for him to represent him in this case. The Respondent No. 1 then instructed Dr. Byamugisha to object to my sitting as a judge in this case as my impartiality is questioned. He referred to Rule 7 of the Judges Code of Conduct, I suppose, to provide authority for his application.
2. Dr. Byamugisha further submitted that he would have no objection if I provided assurances to his client that he would not have problems in this matter.
3. Mr. Deus Byamugisha, learned Counsel for Respondent No. 2 submitted that he left the matter to my conscience and judgment.
4. Mr. Mbabazi, learned Counsel for the Petitioner, submitted that the objection was unfounded with no supporting grounds. He prayed that the same be rejected.
5. I recall that sometime in 1993 I was hearing the case of Kayoboke v Amos Agaba and others, referred to by Dr. Byamugisha. It is true that he was one of the defendants in that matter. He was also, I recall, Counsel for the defendants too. I recall making a ruling on some matter where I questioned the propriety of a party in a matter acting as Counsel in

the same matter. Thereafter, some objection was raised with the Principal Judge over my handling of that case. The objection was not raised directly before me. I decided to bow out of the matter.

6. If I understand Dr. Byamugisha correctly, it is because of that ‘objection’ that he raised in that case, that prompted him to inform his client that it may be difficult for him to represent Respondent No. 1 in this matter. Hence the instructions to object to my presiding over this matter. He referred to this matter as delicate, and stated that he was being as polite as possible.
7. I asked Dr. Byamugisha if he has ever appeared before me in any matter since that case to-date. He replied that he had appeared before me in two matters in which there was no problem but there were not of such magnitude as the current matter.
8. I have had some difficulty to understand the true thrust of the objection. It is suggested that it is my impartiality, in relation to Counsel, that is suspect, but not against any of the parties, though one of the parties has decided to found an objection on this allusion. I am unable to draw a connection, with an objection that was never raised before me in one case, 9 years ago, and the case now before me. Dr. Byamugisha did not show me any connection between the two. As a result, I am unable to accept the objection raised by Dr. Byamugisha. It is overruled with costs.
9. I think the following words of Wambuzi CJ, (as he then was), are apt. “To conclude I must state that there is a growing tendency in these courts to lay false accusations of bias either to avoid certain judicial officers handling their cases or to cause delay in the disposal of cases. There is a growing tendency to allege corruption or bias when parties lose their cases. No one in this country has a right to choose which judicial officer shall determine his or her case. All judicial officers take the judicial oath to administer justice to all manner of people without fear or favour, affection or ill-will. Judicial officers have a duty to prevent delays on flimsy or unsubstantiated grounds.”  
See Statement by Chief Justice S W W Wambuzi on the application by G.M. Combined in Civil Application No.9 of 2000.
10. These remarks have been repeated in *Uganda Polybags Ltd v Development Finance Co. Ltd and 3 others*, Supreme Court Misc. App. No. 2 of 2000. The Supreme Court had this to say, “Before we take leave of this matter we would like to reiterate our concern which was expressed in Constitutional Application No. 1 of 1997 *Tinyefuza v. Attorney General* and Civil Application No. 9 of 2000 *G.M. Combined (U) Ltd v. A.K. Detergent (U) Ltd.*, over the growing tendency to level charges of bias or likelihood of bias against judicial

officers. We would like to make it clear that litigants in this country have no right to choose which judicial officers should hear and determine their cases. All judicial officers take the oath to administer justice to all manner of people impartially, and without fear, favour, affection or ill will. That oath must be respected.”

11. I understand that the Respondent No. 1 wanted assurances that he would not have any problems. I am unable to give such assurances beyond the judicial oath that I subscribed to before the President on or about the 21<sup>st</sup> November 1991. It is not for me to anticipate what is to happen in cases I am hearing.
12. Finally, I may state for the record, that this case was originally before my brother, Kagaba, J. Because of the load of the work Kagaba J., had, the Principal Judge decided to appoint another judge to hear the petition. The Principal Judge requested that I take over the hearing of this case. I complied with the request.
13. I wish to make it very clear that I am not overanxious to be here in Mbarara, sitting to hear this case, with the result that I am away from my family in Kampala, for personal reasons. I returned to this country four months ago after an absence of almost two years. Two months ago my father passed away. I prefer to be in Kampala with family while at the same time I spend sometime sorting out issues related to my father’s estate. I am here in Mbarara under a sense of obligation that the law and my conscience impose upon the judges of this nation to do justice to all manner of people without fear or favour, affection or ill-will. Personally I would wish to be elsewhere and I must say that I was tempted to do so by the opportunity presented by this objection. I am, however, constrained to respect my oath of office.

Delivered at Mbarara this 5<sup>th</sup> day of February 2002.

FMS Egonda-Ntende  
Judge