

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 (3)

1. Dr. Byamugisha, learned Counsel for the Respondent No. 1, applied to this court, to the schedule the appearance of witnesses coming for cross-examination, so as to minimize the expense of maintaining those witnesses in Mbarara while at the same time saving time they have to be kept away from their ordinary activities. This would allow the witnesses to go away and return when they are needed, thereby staving off frustration not to come back. Dr. Byamugisha stated that it was not possible to reach agreement with the Petitioner's Counsel in light of the way things are going.
2. Dr. Byamugisha further submitted that Counsel for Petitioner may indicate how much time they will require for each witness, and whether it is two or more days, the Respondent would bring that witness for those days, while the other witnesses stay away. Mr. Deus Byamugisha, learned Counsel for the Respondent No. 2, supported this application.
3. Mr. Walubiri, learned Counsel for the Petitioner, submitted that this was a simple matter that could have been ironed out by counsel sitting together. He left the matter in the hands of the court.
4. I called out in open court for the witnesses who were present in court to stand up and thirteen persons stood up, and provided their names to court. I inquired of Petitioner's Counsel how much time was required for cross-examination of each of those witnesses. Mr. Walubiri responded that they would need six hours for the Respondent No. 1, five hours each for Kamara Bayaye, Captain Ndahura, Nakunda Edward and James

Kamwesiga. He further stated that they would need an additional three hours to complete the cross-examination of Mrs Mbabazi and for the other eleven the witnesses, they would need about three hours each. The said time estimates did not include allowances for interruptions and objections.

5. Dr. Byamugisha then stated that because of the manner in which they conduct their cross-examination they would be interrupted. An hour should be added for each witness for interruptions. An extra hour should be added for re-examination of the Respondent No. 1 and the other four witnesses. For the rest of the witnesses he stated that an extra-forty five minutes be added for re-examination. Mr. Deus Byamugisha stated that in respect of his witness I should add on extra hour for interruptions and an additional two hours for re-examination.
6. I indicated to the parties that on average five hours were available each day. Dr. Byamugisha then suggested that would work out to two days for each of the five witnesses and one day for the rest of the eleven witnesses. We broke off at that point for a lunch break. On resumption of the proceedings in the afternoon I started off by stating, "I propose then that I shall be available on the following dates. Tomorrow the 8th February 2002. I suppose we shall have five hours. We shall then resume on the 11th February 2002."
7. Dr. Byamugisha at that stage applied that I determine whether the time proposed by counsel is reasonable under circumstances of this petition. And even if it is reasonable whether it is sufficient reason for this court to extend time within which to determine the petition. He referred to Rule 13 of the Parliamentary Elections (Elections Petitions) Rules, (hereinafter referred to as the Rules), and submitted that court must comply with this rule. He stated that he accepted instructions on the basis of this rule. If court was disposed to extend time for reasons of this cross-examination and re-examination, Dr. Byamugisha stated that they have discussed this matter with his learned friend for Respondent No. 2, and they shall require time to do more urgent and pressing matters.
8. Mr. Wandera Ogalo, appearing with Dr. Byamugisha for the Respondent No. 1, on his part, in light of my intimation that I would sit on 11th February 2002, applied for an adjournment of the hearing of this case as he was to be in Arusha between 11th and 13th February 2002, attending to East African Legislative Assembly business. He applied that

the hearing be fixed to commence the afternoon of 14th February 2002. He explained that in accepting the instructions, and taking on other engagements, it had been his estimation that this matter would be finished within one week.

9. Mr. Deus Byamugisha confirmed what Dr. Byamugisha had said about their agreement. He submitted that the availability of witnesses be staggered. He referred both to Section 64 (9) of the Parliamentary Elections Act and Rule 13 of the Rules. He submitted that though a petition must be determined one year from date of filing, once the hearing of the same commences it must be completed within 30 days including determination of the same. And the hearing must be from day to day. Their fear now, Mr. Byamugisha stated, is that it will now take more than 30 days. Time limits are provided for because a petition is a public right and not a private right.
10. In scheduling witnesses, Mr. D. Byamugisha urged me to take into account several factors including the gravity and importance of an election petition; that counsel have got more important matters both within in the country and outside the country; the witnesses include public officers in charge of security both in local and central government, big businessmen who can not afford 3 or more days outside their businesses, and peasants who can't stay here until there are called.
11. Mr. Mohamed Mbabazi, appearing with Mr. Walubiri for the Petitioner, agreed with Mr. Deus Byamugisha's summation of the law on the point but disagreed with his application to stagger witnesses. He prayed that this petition be heard from day to day and that this court should proceed with scheduling of witnesses.
12. It appears to me that in light of the foregoing applications and submissions by Counsel I have to issue some directions (a) in relation to appearance of witnesses that will ensure that witnesses do not have to congregate in Mbarara long before they are to appear on the witness stand; (b) with regard to the sitting of this court in hearing of this petition.
13. Counsel for the Petitioner have, by way of estimation, provided the time they would require to cross-examine the witnesses, parties have agreed be called for cross-examination. Counsel for the Respondents have likewise indicated the amount of time they would need for objections and re-examination. I take these times as estimates prompted by each side's knowledge of the case it has to present. Dr. Byamugisha and Mr. Deus Byamugisha argue that accepting to work on the estimates provided by the

Petitioner's counsel would imply that this Petition can not be heard and determined within 30 days as required by the Rules.

14. At this stage of the case I am prepared to accept the estimates of time provided by each side. Determining what is reasonable time for cross-examination depends on a number of factors including the behaviour and response, on the witness stand, of the witness being cross-examined. It is an exercise I am not undertaking at this stage of the proceedings.
15. As to whether it will be necessary to extend the hearing and determination of this petition beyond the 30 days provided for under Rule 13, that is a decision I will not take at the beginning of the 30 day period but at an appropriate time before the expiry of the thirty days. I began hearing this petition only on 5th February and it is now 8th February 2002.
16. We now have a rough estimate of the probable time each witness is expected to spend on the witness stand. When we begun these proceedings Dr. Byamugisha indicated that the order of production of each witness was to be determined by the Respondents. I assume that to be the position still. It shall now be up to the Respondents to produce the witnesses, so as to be available at the time and on the days this court will be sitting, given the time estimated for each witness now known to the Respondents' Counsel and the court. That should allow for the witnesses present to go back and to come only when it is necessary, in the order the Respondents will have determined. Without knowing that order I am not able to draw up schedule for the appearance of those witnesses.
17. As to the sitting of this court, I will, initially review the law as it stands on the point. The relevant provisions of the law are Section 64 of The Parliamentary Elections Act, 2001 hereinafter called the Act, and Rule 13 of the Rules. I will set out the relevant portions of both provisions.
18. "64. (1) Every election petition, filed under this Act, shall be tried in open court. (2) The High Court shall proceed to hear and determine the matter expeditiously and may, for that purpose suspend any other matter pending before it. (9) The High Court shall determine an election petition before it within twelve months after the petition was lodged in that Court."
19. "13 (1) The Court shall, in accordance with subsection (2) of Section 93 of the Statute, hear and determine the petition expeditiously; and it shall declare its findings not later than thirty days from the date it commenced the hearing of the petition unless the Court

for sufficient reason, extends the time. (2) The Court shall sit from day-to-day and may, for the purpose of hearing and determining the petition, suspend any other matter before it.”

20. It is clear that hearing and determining a petition is afforded the highest priority by the law. If necessary, under both the Act and the Rules, any pending business before the court may be suspended. I take it that if a court has to suspend any business before it to attend to an election petition the same is impliedly demanded of officers of the court, appearing before it for that purpose. Under Rule 13 hearing is to be from day to day and under Rule 14 adjournments are to be in exceptional cases only. I intend to proceed as the law directs and hearings of this petition shall be from day to day unless for some exceptional cause an adjournment is granted either on application by counsel or on the court’s own motion.
21. I now turn to the application for adjournment between the dates of 11th February 2002 and 14th February 2002 by Mr. Wandera Ogalo. Mr. Wandera Ogalo is a member of the East African Legislative Assembly. He has to be in Arusha on business as a member of that August Body. This is in the ordinary course of business of being such a member. In my view, it cannot amount to exceptional circumstances under Rule 14 of the Rules. I accordingly decline to grant the application for adjournment by Mr. Wandera Ogalo.
22. In the result I adjourn the hearing of this petition to the 11th February 2002 commencing at 9.00am. And we shall continue from day to day as we have done this week. I understand that elections for District Council Chairmen are due to be held on the 14th February 2002. Participation in this election is public duty, and I suppose that many of those involved with this proceeding may wish to exercise their right to vote in those elections. I shall consider this an exceptional case, and shall not sit on that day, and the day following. I shall resume sittings thereafter on the 18th February 2002 and continue from day to day. This should provide some information for the Respondents to schedule their witnesses accordingly.

Delivered at Mbarara this 8th day of February 2002.

FMS Egonda-Ntende
Judge