

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS APPLICATION NO 10 OF 2005

IN THE MATTER OF JUDICATURE (AMENDMENT) ACT 2002
IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL
REVIEW (EXPARTE)

IN THE MATTER OF HON. ZACHARY OLUM
AND MR. MARIANO DRAMETU..... APPLICANTS

VERSUS

THE REGISTRAR GENERAL..... DEFENDANT

1st February, 2005

BEFORE: HON. MR. JUSTICE E.K. MUHANGUZI:

RULING:

In their application for leave to file an application for an order of mandamus against the respondent the applicants herein proceeded under rule 4 (2) of the CPR, among other enabling provisions. As required by that rule they have proceeded ex-parte by a notice in Form A in the Appendix FF containing a statement of:

- (i) the names and descriptions of the applicants.
- (ii) The reliefs sought and the grounds upon which it is sought
- (iii) The names and address of their advocates
- (iv) Their (applicants) address for service
- (v)
- (vi) Two affidavits, one by each of the two applicants verifying the facts they are relying on.

When the matter was called for hearing Mr. Donge, learned counsel for the applicants who were also present in person, submitted that the applicants filed an application to register a political party with the respondent on 17/12/2004. That applicants paid fees and complied with all requirements of the Political Parties and Organizations Act. That the respondent was by that law obliged to gazette the applicant's application within 30 days from the filing date of 17/12/2004 but that to-date the respondent has not done so. As a consequence that the applicants cannot exercise their right to associate with others in a political organization of their choice guaranteed by Article 29 (1) (e) of the Constitution. That the applicant's right aforesaid is under threat of extinction because their said application for registration may be time barred in the context of the 6 months period within which parties have to register set by the judgment in constitutional petition No. 7/2002 from the date of that judgment i.e. 17/11/2004. That so far about 2½ months have expired and about 3½ months are remaining to have their application finally processed. Finally Learned Counsel for the applicants submitted that it is fair and just that the applicants be granted leave to have the respondent compelled by this court to perform the statutory duty of gazetting the applicants' application for registration of their party.

Upon perusal of the application and the two affidavits of the applicants both dated 24/1/2005 and after listening to the submission of learned counsel for the applicants I find as follows:-

1. That the application is properly filed under order 42A rules 2 and 4 (2) of the Civil Procedure Rules as amended by S.I.No.75 of 2003, section 36 (1)(a) of the Act Judicature Act as amended by Act 3 of 2003 and section 98 of the Civil Procedure Act.
2. That all required particulars under rule 4(2) of order 42A of the Civil Procedure Rules have been furnished.
3. In terms of rule 4 (7) of order 42A of the Civil Procedure Rules the averments in the supporting affidavits and Learned Counsel's submissions show that the applicants are substantially interested in the gazetting of their application which they are seeking to compel the respondent to do after the respondent has failed to do so as a statutory duty.

4. In terms of rule 2 of order 42A of the Civil Procedure Rules the facts disclosed in the supporting affidavits constitute a proper case for an application for an order of mandamus, namely:

When a public office as the respondent in the instant application refuses, fails or neglects to perform a statutory duty vested in that office to the prejudice of the applicant.

5. Finally the respondent's non-gazetting of the applicants' application should be enquired into to establish whether there exists any justifications or lack of justifications therefore. This is just, fair and a good reason to allow the applicant to file the application for the order of mandamus so that the respondent is also afforded an opportunity to offer such explanation, if any. This is necessary to serve the ends of justice. Accordingly I grant leave to the applicants to file the application for an order of mandamus against the respondent.

I make no order as to costs as none was asked for.

E.K. Muhanguzi

AG. JUDGE

01/02/2005 3.27 p.m

Mr. Donge for the applicants

Applicants present

Mr. Mukwaya – Clerk/Interpreter

Court:

Ruling read and signed.

E.K. Muhanguzi

AG. JUDGE

1/2/2005