

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA**

HOLDEN AT MBALE

HCT-04-CV-EP-0003-2010

- 1. WANINGA STEPHEN**
 - 2. WANGOTA ALFRED**
 - 3. MALISA CHARLES**
 - 4. MAFABI MICHAEL & 11 OTHERS.....PETITIONERS**
- VERSUS**
- 1. NATIONAL RESISTANCE MOVEMENT**
 - 2. WAKYAYA STEVEN**
 - 3. MELU PATRICK KULOBA**
 - 4. LUBANGO PHOEB**
 - 5. MASABA DAMASCUS**
 - 6. WAKWAALE BASE.....RESPONDENTS**

BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN

RULING

M/s Nyote & Co. Advocates filed this petition on behalf of the 15 petitioners for orders from this court nullifying the election of the 2nd, 3rd, 4th, 5th and 6th Respondents.

According to the petition, the petitioners aver that they lined up at Bududa District Administration for election of the executive committee of NRM representatives for Bududa District on 2nd August 2010. That they were told by one David Mafabi who represented the NRM Electoral Commission that

election had been postponed to 3rd August 2010. The petitioners then dispersed. That when the petitioners turned up to vote, they were informed they were informed that voting took place on 2nd August 2010 and the 2nd, 3rd, 4th, 5th and 6th respondents had been elected unopposed as chairperson, vice chairperson, finance secretary, General Secretary and publicity secretary respectively. That by so doing, the NRM Disenfranchised the petitioners and therefore the respondents were improperly elected to their present offices which contravened the NRM constitution.

During the hearing, the petitioners were represented by Mr. Piwang while the respondents were represented by Mr. Dagira.

At the commencement to hearing the petition, Mr. Dagira learned counsel for the respondents raised preliminary points of objection to the petition that:

- (1) The Petitioners have no *locus standi* to bring this petition since they are not members of the Electoral College that was entitled to vote at District level.
- (2) That the petition is premature.

I allowed respective counsel to file written submissions in support of their respective cases for and against the objections.

I have studied the respective submissions. I have related the same to the NRM Party Constitution and guidelines. I am inclined to uphold the preliminary objection by Mr. Dagira for the respondents.

Although the petitioners describe themselves as Ugandans of sound mind and NRM eligible members and voters as per attached copies of their membership cards, they did not plead as such or that they were entitled to vote in the election of the District NRM Executive for Bududa District.

According to the NRM Constitution chapter 4, under Article 10 thereof, one of the administrative organs of the party is the District Executive Committee to which the respondents were elected respectively. The body that elects the District Executive Committee is the District Conference. See Article 17 (4). The District Conference is comprised of,

- (a) The Chairperson of the Conference.
- (b) The NRM members of Parliament from the District.
- (c) Members of NRM Historical leaders from the District.
- (d) NRM Candidates in the preceding Parliamentary election from the District.
- (e) Members of the NRM District Executive.
- (f) NRM Candidates in the preceding election for the office of District Chairperson.
- (g) NRM District councilors or candidates for District Council in the preceding elections within the District.
- (h) Members of the Executive Committees of the Special organs at District level.
- (i) Members of the NRM Sub-county Executive Committees; and,
- (j) NRM members of the Sub-county Local Government Executive Committees.

In view of the above provisions it means that for a person to be an eligible voter in the NRM elections for a District Executive Committee he or she must be a member of the Electoral College i.e. a member of the District Conference. The petitioners are not members of the District Conference.

As members of the NRM party, the petitioner's duties are enumerated under Article 9 (2) of the NRM Constitution. Electing the District Executive is not one of those duties.

Further to the above, under the ***NRM ELECTION MANAGEMENT AND DISPUTES RESOLUTION REGULATIONS NO.1 OF 2009***, Regulation 14, for one to have a *locus standi* to petition or challenge an election in the party, he or she must have been a contestant who lost the elections. Therefore, the petitioners herein lacked a right to present this petition. This petition is therefore incompetent.

Regarding the second objection even if the petitioners herein had the *locus standi* to file this petition it would have been premature. This is because according to the NRM Regulations No.1 of 2009 a challenge to an election should first be to an appropriate body. Regulation 14 2(b) defines, "appropriate body" for purposes of election for the Special District NRM Organs such as the District Executive Committee to be the NRM District Elections Tribunal not the NRM Electoral Commission as submitted by Mr. Dagira. The same applies to election of executives of the special organs at Sub-county, Town Council or Municipal Division Level!

In the circumstances, the thing to do would be for the petitioners to have complained to this court after the decision of the District NRM Elections Tribunal. This petition would be considered premature had the petitioners had a *locus standi*.

Finally I agree with Mr. Dagira that it was irregular for learned counsel for the petitioners to introduce new matters and documents which did not comprise the petition at the time of hearing in his submissions in reply. Court made its orders on the basis that each party was to rely on the pleadings as they were on court record then. The petitioners or their counsel was estopped by record and conduct from introducing what was not part of the petition or any other piece of evidence or document which was not taken cognizance of by court at the time of making its orders. I will therefore find that the affidavit of Walumoli George dated 21st December 2010 is on record irregularly and will be struck off and ignored.

In any case given my above findings, the correct forum to run to, to dispute the elections in questions would have been the NRM District Elections Tribunal not the Electoral Commission.

For the reasons given hereinabove this petition is struck out with costs.

Musota Stephen

JUDGE

8.2.2011

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Kamba on brief for Nyote for petitioners.

9 petitioners in court.

Dagira for 2nd to 6th Respondents.

Respondent in court.

1st Respondent not represented.

Kimono Interpreter.

Kamba: Matter for Ruling and we are ready to receive it.

Court: Ruling delivered.

Musota Stephen

JUDGE

8.2.2011