

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
IN THE MATTER OF PARLIAMENTARY ELECTION ACT 2005
AND
IN THE MATTER OF PARLIAMENTARY ELECTIONS (INTERIM PROVISIONS)
(APPEALS TO THE HIGH COURT FROM COMMISSION)
ELECTION PETITION NO. 002 OF 2011

KABUGO CHARLES KAKUNTA:.....:PETITIONER

VERSUS

1. LULE DAVID MUZZANGANDA
2. ELECTORAL COMMISSION
3. DEMOCRATIC PARTY } **.....:RESPONDENTS**

BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE

JUDGMENT

This petition is brought under the Parliamentary Elections (Interim Provisions) (Appeals to the High Court from Commission) Rules S.1 -141-2 Parliamentary Elections Act 2005 as amended and the 1995 Constitution as amended.

When the matter came up for hearing, Mr. Kugonza who had been appearing for the 2nd respondent, did not show up. Court decided to proceed without him as he had been in court when the matter was adjourned to that date.

Mr. Akile Sunday Igu Rocks represented the Petitioner, Mr. Wetaka Andrew, the 1st respondent, while Mr. C.D. Opwonya represented the 3rd respondent, the Democratic Party.

At the commencement of hearing, Mr. Wetaka alerted court that he had Preliminary Objections to raise which he hoped would dispose of the whole suit. The court decided to take on the Preliminary Objections together with the submissions for the main application because time was of essence as the matter had to be resolved before the general elections which were that very week.

The 1st Preliminary Objection was that the matter was filed out of time contrary to Rule 5 of S.1 1-141 which is to the effect that presentation of the Petition should be within 5 days after the decision of the Commission complained of. This was however abandoned as the 1st respondent failed to produce the letter communicating the

decision of the 2nd respondent. Efforts to file it in court after the hearing were resisted. This Preliminary Objections was therefore considered abandoned.

The 2nd Preliminary Objection was that there was no cause of action against the 1st respondent, since the suit was brought under S. 15 of the Parliamentary 2005, Elections Act, re-enacted as Section 16 of the Parliamentary Elections (Amendment) Act 2010, which states that where a nomination paper of a person has been rejected as void, the person shall have the right to complain against the decision within 7 days from the date of receipt of the complaint. The petition under S. 15 (now S. 16) should only result from the rejection of a nomination paper. The current petition related to Flag bearership; and did not fall under the law it was brought under.

The 3rd Preliminary Objection related to the affidavit which Mr. Wetaka contented was false as the date of the affidavit was 14/12/2010, while it was commissioned on 16/12/2010, which meant it was not made before a Commissioner for Oaths.

The affidavit was further stated to have offended Rule 8 of the Commissioner for Oaths Rules in that the annexures were only signed and stamped but were not related to the affidavit.

In response to the Preliminary Objections, Mr. Akile for the Petitioner submitted that there was a cause of action when the Petitioner was robbed of flag bearership, which was his right and the 1st respondent was responsible.

On the law on which the Petition was based, Mr. Akile, in a document filed on 15/2/2011 (with court's permission) insisted the Petition was brought under the correct law, but added the Constitution, Parliamentary Elections Act (as amended) and the Rules S.1 141-2.

On the different dates of deponement and commissioning, Counsel Akile submitted that these dates do not necessarily have to be the same since the deponent could swear and sign before the Commissioner, who on his part may then take time to sign his part.

Counsel further referred to the Preliminary Objection on annexures to the affidavit as a technicality.

I have considered the Preliminary Objections raised by Counsel for the 1st respondent. I find the Preliminary Objections relating to the affidavit to be mere technicalities which cannot render the affidavit void. As for the Preliminary Objection related to the lack

of cause of action, I am unable to agree that this petition was brought under Section 16 of the Parliamentary Elections Act as amended. After reading the Parliamentary Elections (Amendment) Act 2010, I find no amendment relating to the original Sections 15 and 16 of the Parliamentary Elections Act, 2005. They remained intact. The Petition was based on the Parliamentary Elections Act, 2005 and the Rules S.I 141 – 1, then the 1995 Constitution. Section 15 of the Parliamentary Elections Act allows the complaint as the one from which the present petition arose to be lodged with the Commission.

Article 61 (1) (f) of the Constitution 1995, also empowers the Commission to hear such complaints. And Article 64 (1) is to the effect that any person aggrieved by the decision of the Electoral Commission in respect of any of the complaints referred to in Article 61 (1) (f) of the Constitution to appeal to the High Court.

I therefore find that the preliminary objection to the effect that there is no cause of action is untenable, in light of the above provisions of the law. The preliminary objections are all disallowed.

Regarding the substantive petition, Mr. Akile for the Petitioner submitted that the petition was to effect that the 1st respondent, Lule David Muzanganda, was wrongly nominated as DP Flag bearer, as the 1st respondent was not elected in the DP Primaries. The nomination of Lule David Muzanganda, 1st respondent, as a Party Flag bearer was irregular illegal and procured with fraud and without the approval of DP and its officials. The particulars are contained in the affidavit in support by the Petitioner. According to the said affidavit which was dated 14/12/2010 the Petitioner deponed that on 10th October he participated in DP's primaries seeking to be the Party's Flag bearer for Katikamu South Constituency. They were 4 participants, i.e. David Muzanganda, Kyewalyanga R. Joseph, Lutu Abdnul, and Kabugo Charles Kakunta. On the polling day, only 3 turned up. The 1st respondent, D.L. Muzanganda, did not turn up. The Petitioner emerged winner and was declared winner and DP Flag bearer to contest as a Member of Parliament, Katikamu South. (Annexure A to the affidavit in support). Petitioner went ahead and prepared for nomination as the Party Flag Bearer, through preparation of fliers and posters, brochures etc associated with the general elections. To his surprise Mr. D.L. Muzanganda was endorsed Flag bearer though he did not participate in the polls.

The Petitioner lodged a complaint to the National Party Elections Committee which reacted by writing to the 2nd respondent and a letter was written by the Petitioner to the

DP, 3rd respondent. (See Annexure C). The DP Secretary General sought to correct the same by substituting the 1st respondent with Kabugo C. Kakunta, as the DP Party Flag bearer. This was on 2/12/2011, a week after nomination.

According to the Petitioner, it is wrong for Electoral Commission to continue recognizing the 1st respondent as the Party Flag bearer. Counsel further submitted that the 1st respondent remains unsponsored by the Party because S. 10 of Parliamentary Election Act 17/2005, says;

Under the Multiparty Political System, nomination of candidates may be made by a political party or organization sponsoring a candidate or by a candidate standing for election as an independent without being sponsored by a political party.

In light of the Withdrawal Notice by the Secretary General of DP, (Annexure C to affidavit in support), the Party was no longer sponsoring the said Lule David Muzanganda as the Party Flag bearer.

In reply to Mr. Akile's submission, Mr. Wetaka for the 1st respondent submitted that under paragraph 3 of affidavit in reply, the 1st respondent deponed that he was the duly nominated Flag bearer for the Democratic Party for MP Katikamu South Constituency, having been so declared on 25/1/2010 at 4.15 by the Electoral Commission. His nomination as official DP Flag bearer was endorsed by Mr. Vincent Mayanja, the

Deputy Secretary General of DP, one of the authorized signatories for party candidates, and Kibirango Evasto, the DP Chairman Luweero District. A signed and sealed copy of the nomination paper was annexed as Annexure A to the 1st respondent's affidavit in reply. His endorsement by DP as the Party Flag bearer was lawful. Counsel relied on S. 11 (2) of the Parliamentary Elections Act (Supra) to state that the 1st respondent was sponsored by the 3rd respondent, and the authorized representative of the 3rd respondent endorsed and sealed his nomination paper.

Secondly; the Deputy Secretary General of the Democratic Party who endorsed the 1st respondent as the Party Flag bearer appears on the notification of authorized signatories to nomination papers annexed to the 1st respondent's affidavit as Annexure B. The notification was addressed to the Chairman Electoral Commission. The Deputy Secretary General having so endorsed as duly authorized cannot be taken to have acted fraudulently or in error or wrongdoing. This notification has not been controverted by DP or the Petitioner.

On his part, Mr. Opwonya C.D., Counsel for the 3rd respondent, submitted that Section 10 (1) of the Political Parties and Organization Act, 2005 enjoined Political parties or organizations in its internal organization to comply with the Constitution in particular Article 71 and 72 of Constitution, to conform to democratic principles.

In the affidavit in reply by Mr. Mathias Nsubuga, it is deponed in paragraph 4 that the Petitioner had won the DP Party Primaries for Katikamu South, but was forced to resign from the party to stand as an independent due to a fraudulent error within the party. It would be against the Constitution of the Republic of Uganda for DP to elect a Flag bearer, and then another person is endorsed. If a mistake was done, it had to be corrected. He prayed that court rids DP of the 1st respondent as the Flag bearer.

I have considered the pleadings and annexures thereto, the submissions of learned Counsel for both sides, and the law relied on.

Section 10 of the Parliamentary Elections Act States:

“10. Sponsorship of candidates by political organizations or political parties.

Under the multiparty political system, nomination of candidates may be made by a political organization or political party sponsoring a candidate or by a candidate standing for election as an independent candidate without being sponsored by a political organization or political party”.

Section 11 (2) as amended by the Act 12 of 2010 states:

“Where under the multiparty political system, a candidate is sponsored by a political organization or a party, the nomination paper shall be endorsed and sealed by the political party or organization sponsoring the candidate”.

On the 20/10/2010, a letter signed by the Secretary General and the Deputy Secretary General of Democratic Party was addressed to the Chairman Electoral Commission as follows:

“October 20, 2010

*The Chairman
Electoral Commission
Plot 55 Jinja Road
Kampala*

Dear Sir

Re: Democratic Party Authorized Signatories

After the National Delegates Conference of the Party which sat in Mbale from 18th – 21st February 2010, new leaders were elected who are steering the Party under the able leadership of Hon. Norbert Mao as per the list of the National Executive Committee earlier on submitted to your office.

However, there is a group of people which purports to be the leaders of the Party and have gone ahead to confuse our members and the country at large.

Consequently, as per Presidential (Amendment) Act 2010 17 (2a) and Parliamentary Elections (Amendment) Act Section 19 (2a), this is to inform you that the Secretary General of the Party Hon. Mathias B. Nsubuga or his deputy Mr. Vincent Mayanja whose specimen signatures are appended herewith are the ONLY AUTHORIZED signatories of Presidential and Parliamentary Party sponsored candidates. The only authenticated and authorized seal of the Party will be the one used with the signatures below.

For Local and Urban Council elections, a list of authorized Chairpersons/Secretaries of various districts and urban councils will be communicated to you in due course.

Please oblige and implement to avoid any confusion.

Thanking you for your usual co-operation.

-----*(Signed)*-----
Hon. Mathias B. Nsubuga (MP)
Secretary General

-----*(Signed)*-----
Vincent Mayanja
Deputy Secretary General

c.c. The Secretary Electoral Commission
c.c. President DP
c.c. Legal Advisor DP”

The nomination of the 1st respondent was done in accordance with Sections 10 and 11 (2) of the Parliamentary Elections Act as amended.

According to the affidavit in support of the Petition and another affidavit deponed to by the Secretary General, it is deponed that primary elections were held and the Petitioner emerged winner, but instead the 1st respondent was nominated as the Party Flag bearer. The 1st respondent in his affidavit in answer to the Petition deponed that no elections took place because they had been cancelled by the DP District Chairman Luweero. All the parties attached evidence in support of their allegations in the form of Annexure “A” to the affidavit in support of the petition and Annexure “C” to the 1st respondent’s answer to the Petition. These were the results of the preprimary elections, and the letter of the District Chairman, Luweero, cancelling the elections.

Amid all the above, it appears from the nomination paper of the 1st respondent, whose contents are not controverted, that he was nominated by the DP's Deputy Secretary General, who according to the notification to Electoral Commission dated October 20, 2010, was one of the persons authorized by the Democratic Party to endorse nomination papers of candidates sponsored by the Party. The nomination was, therefore, lawful.

After the nominations, the party found some reasons to support a different candidate, which reasons they gave as already indicated. However, denominating the 1st respondent at this point in time will unfairly prejudice him when there is no proof at all that he procured the endorsement through fraud. He would be prejudiced because he cannot now go back and stand for nomination as an independent, after being disowned belatedly by his own party. On the other hand the Petitioner was nominated as an independent candidate. Furthermore, the Petitioner has not shown court any nomination paper with an endorsement from the party (3rd respondent) as their sponsored candidate. He was neither sponsored for nomination by the Secretary General or the Deputy Secretary General as the Party Flag bearer.

I am afraid the decision to change Flag bearers came a bit too late. I am unable to fault the decision of the 2nd respondent, to maintain the 1st respondent as the DP Flag bearer.

The Petition is dismissed with costs to the 1st and 2nd respondents to be paid by the 3rd respondent who caused the confusion leading to this petition.

The petition is dismissed. It is so ordered.

Elizabeth Musoke

JUDGE

17/2/2011