

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

**HCT-04-CV-MA 0055 OF 2011**

**[FROM PARLIAMENTARY ELECTION PETITION NO 10 OF 2011]**

**MUKONI COLLINS.....APPLICANT**

**VRS**

- 1. ELECTORAL COMMISSION.....RESPONDENTS**
- 2. SIMON MULONGO**

**BEFORE: THE HONOURABLE MR. JUSTICE PAUL MUGAMBA**

**RULING**

Mukoni Collins filed this application by Notice of Motion seeking for enlargement of time for him to serve the respondents with his Petition. The application is made under rule 19 of the Parliamentary Elections (Election Petitions) Rules, Statutory Instrument 141-2. The motion is supported by an affidavit of Annet Namutosi, a lawyer employed as a legal assistant with M/S Nyote & Co., Advocates based in Mbale Municipality. It is upon the averments in that affidavit grants of this application are being justified.

The background to this application is not that complicated. Parliamentary Elections were held nationally and for the Constituency of Bubulo East in particular on 18<sup>th</sup> February 2011. On 23<sup>rd</sup> March 2011 Ms Namutosi aforesaid received applicant's Petition from Kampala for filing against the Respondents. She states in her affidavit that she was able to file the process at the High Court in Mbale, though she was not able to pay the fees owing to the absence of the cashier. It was on the following day she received assessment forms from the cashier. She made the necessary payment and returned the receipts to the High Court the same day, 24<sup>th</sup> March 2011. It was then clerks told her to return on the 25<sup>th</sup> March 2011 for signed copies of the Notice of presentation of the Petition. On the

25<sup>th</sup> March 2011 the deponent was told she could not have the signed copies, given that the Registrar had not signed the Notice. Similar checks with court happened on 28<sup>th</sup>, 29<sup>th</sup>, 30<sup>th</sup> and 31<sup>st</sup> March 2011 and the response given by Catherine was not different. It was on 1<sup>st</sup> April 2011 she finally received the Petition with the Notice, which showed it had been signed as far back as 24<sup>th</sup> March 2011. It is the evidence of Ms Namutosi that the days for service of the petition had expired when she received the Notice of presentation of petition on 1<sup>st</sup> April 2011. Failure to serve the petition within the statutory time is attributed by the deponent to what she refers to as the mix up at the court registry.

Rule 19 which is alluded to relates to enlargement or abridgement of time and provides;

‘ The court may of its own motion or on application by any party to the proceedings, and upon such terms as the justice of the case may require, enlarge or abridge the time appointed by the Rules for doing any act if, in the opinion of the Court, there exists such special circumstances as make it expedient to do so’.

The emphasis above is added but the essence of the provision is that any discretion ought not to be exercised lightly but very sparingly. This is particularly so in the circumstances of this application where S. 62 of the parliamentary Elections Act, ordains:

*‘Notice in writing of the presentation of petition accompanied by a copy of the petition shall, within seven days after the filing of the petition, be served by the petitioner on the respondents, as the case may be.’*

Again, the emphasis on “shall” in the above text is added. However, it is clear from the provision that notice of the presentation of the petition and its accompaniments ought to be served within seven days of the filing of the petition. According to the evidence in the affidavit the petition was filed on 23<sup>rd</sup> March 2011 but fees for filing was paid on 24<sup>th</sup> March 2011. Effectively therefore the petition was filed on the day the fees was paid. At the time of presenting the petition for filing rule 5 (a) provides for payment of a fee as well as a deposit for security of costs. It is not correct therefore to say that the petition

was filed on 23<sup>rd</sup> March 2011. What is more, the averment regarding filing and payment of fees is not backed up by any other evidence in this application. Also unsupported is the alleged role of court staff such as Catherine and other clerks, the cashier as well as the Registrar. It is very difficult to believe the evidence of the deponent in view of all that, particularly when it is observed that the date borne by the notice of presentation of the petition is 24<sup>th</sup> March 2011. It appears in the circumstances that after due payment was made on 24<sup>th</sup> March 2011 the Registrar signed the Notice but it remained uncollected until 1<sup>st</sup> April 2011. That is evidence of dilatory conduct on the part of the Petitioner. Was it a one-off?

This application refers to what transpired at the time of filing the petition and the fall out. Curiously no disclosure is made concerning when the election results for Bubulo East Constituency appeared in the Gazette. This is important bearing in mind Section 60 (3) of the Parliamentary Elections Act which requires every election petition to be filed within thirty days after the day on which the result of the election is published by the Commission in the Gazette. This court takes judicial notice of the fact that for Bubulo East Constituency the results were published in the Gazette of 21st February 2011. Clearly the thirty days started running on 22<sup>nd</sup> February 2011 and the period in which the petition had to be filed ended on 23<sup>rd</sup> March 2011. In light of all this fees and effective filing of the petition transpired outside the statutory period of filing. It is idle to contend that time ran out on the applicant after 24<sup>th</sup> March 2011 following the various excuses the application seeks to grandstand. I am not persuaded a person seriously intent on prosecuting a petition, like the applicant wants this court to believe he was, would approach his mission in such a band aid fashion. He had 30 days within which he should have accomplished his desired goal. Once again he procrastinated. Perhaps his evidence would have better explained why he was tardy throughout. Such evidence sadly is missing by design or by default.

Having taken into account all the above manifestations on one hand and this application seeking enlargement of time on the other I find no special circumstances why I should grant this application. It is accordingly dismissed with costs.

**Paul Mugamba**

**Judge**

**2<sup>nd</sup> June 2011.**