

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT -05-CV-MA-NO. 225/2013
(ARISING FROM MA NO. 224/2013

BYANYIMA NATHAN.....APPLICANT

VS

THE NATIONAL RESISTANCE MOVEMENT.....RESPONDENT

BEFORE: HON. JUSTICE V T ZUHURIKIZE

RULING:

This ruling is in respect of an application for an interim order of injunction to restrain the respondent from conducting a re-run of the NRM primaries in Ngarama sub county Bukanga constituency.

The simple background to this application is that the NRM Primaries for Bukanga constituency were won by applicant.

But thereafter the electoral commission of the respondent found it necessary to conduct a re-run of the election in Ngarama Sub County. The elections of this re-run are going on today. This state of affairs prompted the applicant to make this application.

According to the endorsement on the pleadings the matter was filed at Kampala High Court Civil Division on 7/11/2013 and today has been refiled in this court.

This application for an interim order arises from the substantive application for judicial review also filed in this court today.

This court has time and again stated that there is no express provision for the grant of an interim order of injunction.

Formally, under O.37. r 3 of the Civil Procedure Rules court could entertain and grant an interim order if the delay to be caused by service on the opposite party would defeat the purpose of the application.

But the clause that allowed court to grant interim orders was removed by the Rules Committee by statutory instrument no 217 of 1994.

The law on injunctions as it stands today is that “The court shall in all cases, before granting an injunction, direct notice of the application for the injunction to be given to the opposite party” See O41 r 3 of CPR.

Further and formerly under the repealed judicial review rules, on granting leave to the applicant to apply for judicial review, court could order that the proceedings being challenged be stayed.

But the current Judicature (Judicial Review) rules 2009 removed the need for leave to be granted before applying for Judicial Review. The almost automatic stay of proceedings was also removed.

The Rules Committee did not provide for interim orders in applications for judicial review as in the instant case.

It is common knowledge that the removal of interim orders in our Civil Procedure Rules was necessitated by the abuse of that process.

It follows therefore that an interim order can only be granted in rare and deserving cases to avoid circumventing the reason for doing away with them.

In my view in a situation like the present one an interim order will be granted if it is proved to the satisfaction of the court that the applicant will not get any remedy in the main application if the order sought in this application is not granted. This has not been done.

A perusal of the main application for judicial review clearly shows that there are still remedies available to the applicant if the interim order is not granted. The election being conducted now can be nullified and he remains the NRM flag bearer for the by election if he succeeds in the main application.

But if the order is granted and he does not succeed in the main application and yet the contested elections have been halted with all the attendant consequences and the NRM Electoral Commission has to arrange for another re-run, it is clear to me that granting the order will have caused gross injustice which can easily be avoided by disallowing this application.

In my view the balance of convenience would dictate that this application be disallowed.

I do not find it a proper case in which court should invoke its inherent powers to entertain and grant this application.

Orders of this nature are discretionary and court would not exercise its discretion where the order would create unnecessary confusion and crisis. Issuing the order sought at this point in time when voters have almost gone through the polling exercise would only serve to create confusion and despair.

For the above reasons the application is disallowed. Since the respondent was not served there will be no order as to costs.

.....

V T ZEHURIKIZE
JUDGE
8/11/2013