

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL SUIT NO. 157 OF 2015

AKAMPURIRA LABANPLAINTIFF

V

- 1. THE DEMOCRATIC PARTY**
- 2. MATHIUS NSUBUGA (SECRETARY GENERAL DEMOCRATIC PARTY)**
- 3. VICENT P. MAYANJA (CHAIRMAN DEMOCRATIC PARTY KAMPALA DISTRICT)**
- 4. BUKENYA EDWARD**
- 5. KASIRYE ALI NGANDA**
- 6. ALLAN SEWANYANA**
- 7. ABDU MAYANJA**
- 8. SEKIBENGO WILLIAM**
- 9. KABOGOZA YUSUF**
- 10. NAMUKASA ROSE**
- 11. SEMUJJU ROSE.....DEFENDANTS**

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The plaintiff sued the defendants for breach of the party constitution when the 1st , 2nd and 3rd defendants organised elections between April and May 2015 in Makindye Division where the 4th to 11th defendants were elected office bearers within the Democratic Party contrary to articles 4 , 64 (a) (iii) and (iv) of the party constitution.

The defendants denied breaching the party constitution and averred that the elections were a statutory requirement by virtue of the Political Parties Organisation Act that required parties to hold delegates conference prior to the 2016 general elections. That therefore, defendants Nos. 4 to 11 were elected to various offices in Kibuye II, Katwe II, Lukuli Makindye parishes in Makindye division to fill party posts of Chairpersons, vice chairpersons, secretaries, treasurers , women leaders among others.

Furthermore, that the 4th to 11th defendants were party members and therefore eligible to participate in the elections.

Shwekyerera Kalera & Co. Advocates appeared for the plaintiff while Messrs. Semuyaba & Co. Advocates and Mbidde & Co. Advocates appeared for the defendants.

Preliminary matters

A preliminary point raised by counsel for the plaintiff is that the witness statements of the 2nd, 3rd and 4th defendants were not commissioned and not formally admitted in court as their evidence in chief.

On the contrary, these statements are on oath . Moreover, it was agreed in court that the court determines the case on the basis of witness statements and documents. In other words, both counsel agreed to go by the evidence as is without cross examination.

The other point raised by counsel for the plaintiff in his written submissions is that the witness statements have errors and that they are made in the format of affidavits.

As rightly submitted by counsel for the defendants, courts take a liberal approach to matters of form which means the errors or omissions pointed out by counsel for the plaintiff are curable under article 126 (2) (e) of the Constitution.

Issues for trial

Two issues were framed for trial in the scheduling memo filed on 10th July 2015.

1. Whether the 4th to 11th defendants are members of the Democratic Party who have actively participated in its activities for more than three years.
2. Whether the 4th to 11th defendants were duly elected in their positions in the grass root elections organised and conducted by the 1st defendant in Makindye Division to fill posts including chairpersons, vice chairpersons, secretaries, treasurers, women leaders up to the level of constituency delegates in accordance with the Democratic party constitution.

On 29.9.2016 when parties appeared before me, it was agreed that the court determines the dispute on the witness statements , documentary evidence and written submissions.

Both counsel filed written submissions that I have carefully considered.

Whether the 4th to 11th defendants are members of the Democratic Party who have actively participated in its activities for more than three years.

From the witness statements of both parties, it is not disputed that the 4th to 11th defendants were elected to various offices in Makindye Divisions during party elections held between April and May 2015.

The 3rd defendant Vincent Mayanja swears his witness statement in his capacity as DP chairperson Kampala district.

4th defendant Bukenya Edward confirms in para. 9 of his witness statement that he was elected in his absence to the post of Treasurer Makindye West constituency .

The 5th defendant Kasirye Ali Nganda confirms he is the DP chairperson Katwe parish II .

The 6th defendant Allan Ssewanyana confirms in his witness statement that he is the DP chairperson Kibuye II .

The 9th defendant Kabogoza Yusuf confirms he is the DP chairperson Kizungu zone and Secretary Makindye II parish .

The 11th defendant confirms she is the DP treasurer Kalule Zone and deputy woman leader .

All defendants attached party membership cards to their witness statements.

The plaintiff did not challenge the authenticity of these cards . Indeed he too had attached a similar card to his statement.

Articles 4 and 64 of the DP constitution. (party membership)

Article 4 stipulates that membership of the party is open to any citizen of Uganda who is open to the policies, and discipline of the party.

Article 64 provides for qualification for party offices.

A person shall qualify to be elected Parliamentary candidate of the Party if he has been an active member for at least five years.

iii) to any other office of the party if he has been an active member for at least three years, iV) candidates for urban or district council election should have active for at least two years.

The defining concept here is '*active membership of the party*' for different periods depending on whether it is a Parliamentary election, party office election or local council election.

I note that the plaintiff did not seriously challenge the party membership cards of the defendants, a position that is at odds with that of his witnesses Kiwanuka Mayambala who avers in para. 5 that the 6th defendant was not a member of DP because he was the LCV councillor as an independent. While Kaliballa Richard averred in para. 5 that the 5th to 11th defendants had not been active for some 'good years'.

On a balance of probabilities, I find that the membership cards availed by the defendants is prima facie evidence of party membership that has not been rebutted by the plaintiff and his witnesses.

Issue No. 2

Whether the 4th to 11th defendants were duly elected in their positions in the grass root elections organised and conducted by the Democratic party in Makindye Division to fill posts including chairpersons, vice chairpersons, secretaries, treasurers, women leaders up to the level of constituency delegates in accordance with the Democratic party constitution.

The 11th defendant Semuju in para. 8 by implication admits she once stood on an independent ticket but avers that this is an internal matter to be handled under the party disciplinary committee mechanisms.

The 5th defendant Kasirye Nganda in para. 9 and 10 denies being a member of the Liberal Democratic party but the plaintiff avers in his evidence that this is the case.

The 6th defendant alludes to participation in elections as an independent a fact that is categorically averred by the plaintiff in his statement in which he states that the 6th defendant

is the LC V councillor at Kampala Capital City Authority on an independent ticket but he was elected as DP flag bearer for Member of Parliament.

The 9th defendant Kabogoza in para. 7 and 9 admits to have previously contested in general elections as an independent.

The eight defendants previously participated in inter party elections as independents or members of the liberal democratic party . Although the plaintiff does not clearly state in which elections this happened, it is obvious that he refers to the 2011 general elections because in para. 6 and 7 he avers that the 6th defendant was elected LC V councillor at KCCA on an independent ticket.

Consequently, the 4th to 11th defendants were elected as office bearers within the democratic party between April and May 2015 and then became members of the party executive committee in order to comply with the Electoral Commission road map to the 2016 General Elections issued on 1st April 2015. In his submissions, counsel for the defendants explains that the 1st defendant was under a statutory duty to conduct these elections in accordance with the requirements of the Political Organizations Act that requires every political party to elect members of party executive committee every five years . Section 10(3) thereof.

The executive committee is defined in the Act as the '*governing body of a political party or organisation*'.

By implication, it is this committee that was expected to prepare and organise the party for the 2016 General Elections using the EC road map as a blue print.

What is crucial is that the plaintiff complains that the defendants were wrongly elected to party offices in 2015 when they previously contested on a different party ticket or were serving in elective positions elected on a party ticket other than the democratic party ticket c/s articles 4, 64 (a) (iii) of the DP constitution.

This brings me to the main thrust of the plaintiff's case, that the defendants had not relinquished party membership of other political parties before the DP elections in April and May 2015.

Const. Petition No 38 of 2010

Counsel for the plaintiff relied on **George Owor v Attorney General and Hon. William Okecho Const, Petition No. 38 of 2010**. The respondent was member of NRM party but on 4.1.2006, he formally withdrew from the NRM party and immediately offered himself as an independent candidate and was elected to the 8th Parliament.

Subsequently, he offered himself for election for the 9th Parliament on NRM ticket. After holding that he ought to have vacated his seat in the 8th Parliament, the court found that he was not entitled to continue to represent the people of Budama North constituency as an independent.

Counsel for the defendants submitted that in the Oketcho case, the court deemed that the respondent in that case had vacated his seat as an independent member of Parliament. The respondent did not vacate his seat in the 9th Parliament after he re-joined the NRM party. Therefore, when a sitting member of Parliament a member of Parliament joins another political party, the member loses his right to represent the party on whose ticket was successfully elected. That is the effect of the constitutional court decision delivered on 1.2.2011.

Subsequently on 24.8.2015, article 83 of the Constitution was amended by Constitutional Amendment Act, 2015 rendering it unnecessary for a member of Parliament to vacate his or her seat if the member joins a different party twelve months before the end of term of Parliament the member was elected to.

Application of article 83 as amended to local government elections.

Counsel for the defendants submitted that const. petition No. 38 of 2010 and the Constitution Amendment Act 2015 regulates effect of changing a party at the level of Parliament only. I agree with him.

I note that the plaintiff in his pleadings cited alleged breaches of the party constitution but then argued the 1995 constitution in the submissions. This was a departure from

pleadings without seeking an amendment contrary to order 6 rule 7 of the CPR. It appears to me that the plaintiff could not cite violation of article 83 of the Constitution in his pleadings because it refers to members of Parliament.

In Supreme Court Civil Appeal No. 33 of 1992 Interfreight Forwarders (U) Ltd v East Africa Development Bank U(ulii) where the plaintiff did not plead that the defendant was a common carrier , the court restated the principle on departure from pleadings in the following terms:

‘ a party is expected and bound to prove the case as alleged by him and as covered in the issues framed, he will not be allowed to succeed on a case not so set up by him and be allowed at the trial to change his case or set up a case inconsistent with what he alleged in his pleadings except by amendment of pleadings’

Nevertheless, none of the defendants was a sitting member of Parliament when they participated in the April 2015 DP elections for party positions. Apart from defendant 6 who was a sitting LC V councillor in KCCA, the others had run on independent or liberal democratic party tickets in the previous general election.

I will therefore not attempt to apply the constitutional principle in Oketcho’s case or the Constitutional Amendment Act 2015 to the current defendants because those principles regulate members of Parliament only.

As earlier found, the defendants are members of the 1st defendant and as such were eligible to participate in the elections for party offices in April –May 2015.

The plaintiff failed to prove an a balance of probabilities that they did not qualify for the various offices. The plaintiff failed to prove that the 4th to 11th defendants had not been active members of the party to be disqualified from competing for party positions.

Furthermore, in the absence of a provision in the DP constitution that precludes members who previously run on other tickets from holding party offices , the plaintiff failed to prove that the 4th to 11th defendants were not eligible to participate in the 2015 elections of party office bearers .

In the result, this suit is dismissed with no order as to costs as this is a public interest litigation.

DATED AT KAMPALA THIS 8TH DAY OF JUNE 2017

HON. LADY JUSTICE H. WOLAYO