

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KABALE**  
**CIVIL SUIT NO.42 OF 2015**

**1. KENNETH TUMUHAMYE**

**2. ALLEN ATUHAIRE**

**PLAINTIFFS**

**VERSUS**

**1.HARRIET NAKAMYA**

**2.JOHN BYARUHANGA**

**DEFENDANTS**

**BEFORE HON.JUSTICE MOSES KAZIBWE KAWUMI**

**RULING .**

The Plaintiffs are registered members of the National Resistance Movement, a registered political party who expressed interest to compete for elective positions on the party ticket in the 2016 Elections. The 1<sup>st</sup> Plaintiff was in the Party elections nominated to contest for the position of Nyakikoni Sub-County NRM Chairperson .The 2<sup>nd</sup> Plaintiff was nominated to contest for the position of Kanungu District Woman Councilor. The Plaintiffs' nomination was however cancelled by the 2<sup>nd</sup> defendant for reasons that the two candidates had campaigned against the NRM Party and its sole flag bearer. The purported cancellation hence rendered the Plaintiffs ineligible to contest for the positions in the Party .

The Plaintiffs brought this suit in Public interest to enforce their rights and those of “*other citizens*” denied access to leadership Positions. Their claim is premised on the National Objectives and Articles 1,2,20,21,24,28 and 203 of the Constitution of the Republic of Uganda that were allegedly violated by the defendants .The Plaintiffs sought Declaratory Orders, General damages and Costs. The defendants filed a Written Statement of Defence contending that the suit was prematurely filed and did not disclose a cause of actions against them.

At the hearing of the suit, Counsel for the defendants raised three Preliminary objections contending that the suit was prematurely filed before exhausting the internal NRM Party avenues for resolving electoral disputes; that the suit was a representative action without leave of Court disguised as Public Interest Litigation and that the defendants enjoyed immunity from suits filed in relation to acts done in their official capacity. The 1<sup>st</sup> defendant was a Resident District Commissioner then posted at Kanungu District while the 2<sup>nd</sup> defendant was the NRM Returning officer for the District. It was argued by Counsel for the defendant that as a Resident District Commissioner, the 1<sup>st</sup> defendant enjoyed immunity

under the Local Government Act and that the NRM Party should have been sued for any acts attributed to the 2<sup>nd</sup> defendant. I was invited to dismiss the suit.

Counsel for the Plaintiffs maintained that the suit was properly filed since the Plaintiffs were nominated candidates and hence the 2<sup>nd</sup> defendant did not have the mandate to cancel their nomination. It was further argued that leave of Court to file the suit in its present form was not required since it was not a representative suit. Regarding the qualified immunity raised by Counsel for the defendants, it was argued in rebuttal that the actions of the defendants were contrary to the official mandates of the offices they held which made them liable in their personal capacity.

Mr. Bwagi Jonathan represented the Plaintiffs while Mr. Usaama Sebuwufu represented the Defendants. I will consider the objections in the order they were presented and responded to by Counsel.

I was referred to Regulation 12(1) and (2) of the Regulations for NRM Primary Elections, 2015 to support the argument that the Plaintiffs did not exhaust the internal party mechanisms for dispute resolution. Counsel for the Plaintiffs on the other hand argued that his clients had gone past the nomination stage and hence the cited Regulation was not applicable to them as nominated candidates on the campaign trail.

Regulation 12 provides;

**“RIGHT TO COMPLAIN TO THE NRM ELECTORAL COMMISSION UPON REJECTION OF A NOMINATION PAPER;**

*Where a nomination paper of a person has been rejected or has been regarded as void:-*

- (1) The returning officer shall immediately notify the affected person of the decision giving reasons for the decision; and*
- (2) The person shall have the right to complain against the decision to the party Electoral Commission and the party Electoral Commission may confirm or reverse the decision of the official concerned.”*

Regulation 11.0 spells out factors which invalidate nomination in the following terms;

*“A person shall not be regarded as duly nominated and the nomination paper of any person shall be regarded as void if:-*

- (i) The person’s nomination paper was not signed and seconded in accordance with the provisions of these regulations;*
- (ii) The nomination paper of the person was not accompanied by a list of names of registered voters as required by these regulations*
- (iii) The Person has not complied with these regulations”*

The 2<sup>nd</sup> defendant wrote cancelling the Plaintiffs nomination on the 18<sup>th</sup> September 2015 well after the nomination stage had been concluded and couched the communication in the following words;

**RE; CANCELLATION OF YOUR NOMINATION**

*This is to inform you that your nomination as a candidate has been cancelled. For that matter you are not allowed to participate in any election of NRM sub-county structures and in the election of 25<sup>th</sup> September 2015 of electing NRM leaders.*

*This is because on several occasions you have been implicated de-campaigning the NRM Party and in particular the party President who was declared a sole candidate of NRM Party.*

*This is contrary to the NRM GUIDELINES that govern the members' code of conduct.*

*For that matter your nomination has cancelled.*

*NB. This letter takes precedence of all the letters which you had already been served."*

*Signed: Byaruhanga John.*

*District Election Officer."*

The Plaintiffs' nomination papers had been validated since they did not breach any of the requirements set out in Regulation 11.0 of the guidelines and that explains why they had already hit the campaign trail and as indeed confirmed by the letter authored by the 2<sup>nd</sup> defendant. Counsel for the defendants equated the cancellation of the Plaintiffs' nomination to the rejection of their nomination papers in regulation 12 of the guidelines which is contested by the Plaintiffs.

Regulation 12 must be read in tandem with Regulation 11.0 to derive the actual import of the two regulations. Right from their headings, the two regulations cater for the nomination stage in the NRM Electoral process and that is why they refer to the '*NOMINATION PAPER*.'"The Plaintiffs had been validated to start campaigning and as correctly argued by Counsel for the Plaintiffs, they could not be eliminated from the process by the 2<sup>nd</sup> defendant. It is the finding of this Court that the purported cancellation of the Plaintiffs' nomination by the 2<sup>nd</sup> defendant was against the regulations and hence null and void.

The recourse open to the Plaintiffs was to invoke Regulation 13.0 of the Regulations which provides;

**13.0 CAMPAIGNS**

*13 (3); Any cases or complaints arising from the campaigns shall be filed with the NRM Electoral Commission whose decision on the matter shall be final."*

The Plaintiffs did not attach any evidence on the pleadings and/or refer to any at the scheduling stage to confirm that they reported their complaint to the Electoral Commission

and how it was resolved. This process should have been exhausted before the suit was prematurely filed. I find merit in this Preliminary Objection.

Counsel for the defendants objected to the Plaint and argued that it is a representative suit filed without leave of Court. It was maintained by the Plaintiffs that it was a class action. Order 1 rule 8 of the Civil Procedure Rules provides;

*“Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend in such suit on behalf of or for the benefit of all persons so interested. But the Court shall in such case give notice of the institution of the suit to all such persons either by personal service or, where, from the number of persons or any other cause, such service is not reasonably practicable, by public advertisement as the court in each case may direct.”*

Public Interest litigation is provided for under Article 50 (2) of the Constitution which provides;

*“Any person or organization may bring an action against the violation of another person’s or group’s human rights.”*

The Plaint in Paragraph 5 states;

*‘The Plaintiffs bring this suit in public interest to enforce their rights and that of other citizens to have access to leadership positions at all levels provided for under Objectives ii ,iii ,xxi and xxix of the National Objectives and Directive Principles of state policy and under Articles 1,2,20,21,24,28 and 203 of the Constitution which rights have been violated by the personal acts and/or omissions of the defendants jointly and severally and they shall seek Declarations and Orders....’*

The Declarations sought by the Plaintiffs are that the defendants’ interference with the NRM Electoral process was unlawful. An order restraining the defendants from interference with the NRM Primaries in Kanungu District should be issued by Court. That the act of cancelling the Plaintiffs’ nomination was unlawful and that the elections held to the exclusion of the Plaintiffs be declared null and void by Court. The Plaintiffs further seek an Order for fresh elections to be organized in Kanungu District.

The distinction between Representative suits and Public Interest Litigation is that the former is in relation to parties who must have the same interest while the latter relates to all persons who due to various constraints cannot sue or defend their rights.

**See; The Environmental Action Network V Attorney General HCMA No.39/2001; BAT V The Environmental Action Network HCMA 70/2002.**

The Plaintiffs brought the suit as members of the NRM party in the first instance. Their complaint relates to the conduct of the 2<sup>nd</sup> defendant who for election purposes is an official of the NRM Party and the 1st defendant is accused of interfering in the elections of the Party. The elections were in respect of the NRM party and for a particular geographical area of

Kanungu District and for any person to claim violation of their rights set out in the Plaint, he/she had to be a member of the party who should have expressed interest to contest for a leadership position using the NRM Party as the vehicle for that purpose.

The Plaint has attachments relating to the nomination and payment receipts of several other people whose nomination was cancelled by the 2<sup>nd</sup> defendant. These people are not Plaintiffs but variously referred to as “*other nominees*” in the Plaint. What links those other nominees with the Plaintiffs is their membership to the NRM Party and their expression of interest to stand for positions as NRM Candidates.

The above peculiarities render the “*other nominees*” to be a group of persons with a common interest and they are *not* “*any other citizen*” who may not even be a member of the NRM Party. An Order to file a representative suit should therefore have been obtained before the suit was filed since it is for the benefit of a particular group of people with a common interest of being NRM members wishing to compete for leadership positions and within the NRM Party.

Failure to obtain an Order to file a representative suit renders it incompetent and it is hereby struck out.

**Henry. B.Kamoga & Ors V Bank of Uganda HCCS NO.62/2009.Paul Kanyima v Rugoora [1982]HCB 33**

I do not deem it necessary to delve into the third preliminary objection raised by Counsel for the defendants. It suffices to state that under Section 6 of the Political Parties Registration Act, the NRM Party for the actions of its officers carried out in execution of Party duties while the 1<sup>st</sup> Defendant is protected by the Local Government Act for actions relating to her office as the Resident District Commissioner.

The Plaintiffs and the 2<sup>nd</sup> defendant are all members of the NRM Party. In the interest of building harmony in the party and especially in Kanungu District, I will not make any orders as to costs. Let each party meet its costs.

Moses Kazibwe Kawumi

Judge

18<sup>th</sup> September 2017.