

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**Miscellaneous Application No. 14 of 2019**  
**[Arising from Miscellaneous Cause No. 223 of 2018]**  
**HOPE TUMWEBAZE.....APPLICANT**  
**VERSUS**  
**ELECTORAL COMMISSION.....RESPONDENT**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**RULING**

**BRIEF FACTS**

The Respondent organized and conducted Women Councils and Committees Elections Country wide. In Mbaguta Zone/Village, Ruharo Ward, Kamukuzi Division, Mbarara District a One Monica Mutabarura was nominated for election as a Secretary for Publicity and declared elected unopposed on 6<sup>th</sup> November, 2017.

The said Monica Mutabarura upon being declared elected unopposed at the Zone/ Village Level, was nominated for election as a General Secretary of Ruharo Ward and declared elected unopposed on 13<sup>th</sup> July, 2018.

That on 1<sup>st</sup> August, 2018, Monica Mutabarura was nominated for the office of Chairperson, Kamukuzi Division, Mbarara District and declared elected unopposed on the same day.

That upon ascending to the Division Level, Monica Mutabarura was nominated and declared elected unopposed Chairperson Women Council Mbarara District on 8<sup>th</sup> August, 2018.

On 8<sup>th</sup> August 2018 a complaint was lodged challenging her election at the Ruharo Ward level by a one Hope Tumwebaze. The complaint was heard on 10<sup>th</sup> August 2018 wherein the parties were invited by the Commission for a hearing and each presented their respective cases as per the minute extract of 10<sup>th</sup> August 2018.

During the said meeting it was resolved that a decision would be made after Monica presenting her Passport together with her Original Nomination Form to the Presiding Officer for verification.

That instead, Monica Mutabarura through a letter dated 13<sup>th</sup> August, 2018 by her lawyers made a response in which she objected to the Respondent's jurisdiction in respect to the Applicant's complaint filed on 8<sup>th</sup> August, 2018.

That on 20<sup>th</sup> August 2018, when the Commission convened it was noted that an interim order dated 17<sup>th</sup> August 2018 had been issued restraining interference with Monica Mutabarura's assumption of office as Chairperson Mbarara District Women Council until further orders of Court.

On 22<sup>nd</sup> August, 2018, the Applicant filed Judicial Review proceedings seeking the High Court to compel the Respondent to deliver its verdict vide the Applicant's complaint filed on 8<sup>th</sup> August, 2018.

On 30<sup>th</sup> November, 2018, the High Court delivered its ruling in which on Page 12 made a finding to the effect that, the Respondent is empowered to

handle all complaints arising before and during the polling and what this means is that they are supposed to take any decision over such complaints, further, on Page 16 of the ruling, the Court ordered the 3<sup>rd</sup> Respondent to deliver its decision/ruling in respect of the Applicant's complaint lodged on 8/08/2018.

On 9<sup>th</sup> January, 2019, the Applicant filed contempt of Court proceedings vide Misc.Application No. 014 of 2019.

- 1. Whether the respondent is in contempt of the court order?*
- 2. Whether the respondent can be appropriately be punished for the alleged contempt by payment of 100,000,000/=.*

The Applicant filed an affidavit in support of the Application and an affidavit in rejoinder dated 8<sup>th</sup> January 2019.

The applicant contended that the respondent in blatant and wilful disregard, disrespect and contempt of the said court order has not delivered its decision/ruling in respect of the applicant's complaint.

The Respondent filed an affidavit in reply dated 18<sup>th</sup> February 2019.

The respondent in specific answer to the application stated in his affidavit reply, that the applicant's complaint was resolved as follows;

- i. That Ms Mutabarura Monica was declared elected unopposed at Parish/ Ward and Sub-county/Municipal Division level;
- ii. That the Applicant's complaint was lodged with the respondent on 8<sup>th</sup> August, 2018 after Ms Mutabarura Monica was declared unopposed at the said respective levels.

- iii. That according to Article 61(f) of the Constitution, Section 15 of the Electoral Commission Act, Cap 140 and Section 6B of the National Council's Women's Act Cap 318, the respondent is empowered to hear and determine election complaints before and during polling. After the results have been declared, any complaint pertaining to the process that led the outcome of an electoral process is outside the jurisdiction of the Respondent; and
- iv. That it is only the courts of law that can inquire into any anomaly in the said electoral process and determine any dispute therefrom.

The respondent under MIN.CM.15/2019 resolved that it is not vested with authority to determine the applicant's complaint challenging the nomination of Mutabarura Monica as a Member of Parish/Ward Women's council and Committee since the elections had been concluded with Ms Mutabarura Monica declared elected unopposed.

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and consider in the determination of this application.

### Determination

When the matter came up for hearing on 18<sup>th</sup> February 2019, the applicant's counsel was absent but the applicant was in court. The court noted as follows;

*"This application was filed in order to force the respondent to take a decision.*

*The said decision was made on 22<sup>nd</sup> January-2019 after the applicant had filed an application for contempt and to-date the said decision has not been availed to the applicant.*

*I hereby order that the said decision must be served on the applicant within 7 days from today and failure of which the contempt proceedings shall commence.*

*I so order.*

*Judge”*

It would appear the applicant’s counsel in accordance with the said order received the decision of the applicant and accordingly filed an affidavit in rejoinder.

At that stage the issue of contempt ceased since the respondent had earlier been ordered to give a decision without any timelines. It only becomes contempt depending on the circumstances of the case. The court would not consider it contemptuous of the respondent since the order to deliver a decision was not capped with any specific time period within which it was to be delivered.

The rest of the arguments by applicant’s counsel are issues for determining the merits of the decision which can only be considered by way of an appeal against the decision of the respondent. The said issues cannot be considered in an application for contempt which is being considered by this court.

The Court could not order the respondent to take a decision in any particular manner, which would amount to usurping the statutory mandate of the Electoral commission.

**Black’s Law Dictionary** (*Ninth Edition*) defines contempt of court as:

*“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”*

*In the Matter of Collins Odumba [2016] eKLR*, the Employment & Labour Relations Court of Kenya at Kericho extensively discussed the contempt of court. D. K. N. MARETE held that:

*“The law and practice on contempt of court has come out clearly that the essence of contempt proceedings is not to assuage the feelings of the judge or install the dignity of the court. Far from this, it is intended to safeguard the supremacy of the law. In*

*the authority of Johnson vs Grant, 1923 SC 789 at 790 Lord President Clyde stated that;*

*"...The law does not exist to protect the personal dignity of the judiciary nor the private rights of parties or litigants. It is not the dignity of the court which is offended. It is the fundamental supremacy of the law which is challenged."*

The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed.

A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.

In the case of *Kenya Tea Growers Association v Francis Atwoli and 5 ors [2012] eKLR* Lenaola J cited with approval the case of *Clarke and Others v Chadburn & Others [1985] 1All E.R (PC), 211* in which the court observed that;

*"I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, wilful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal....even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it."*

This clearly illustrates why courts will not sit and watch in the wake of contempt of court. Disobedience of court orders and or summons would in total disparage the rule of law and lead to anarchy. This would be too much for any of us to await and face. Judges and judicial officers may risk being accused or seen to defend their lofty positions in this exercise, but this would be worth every coin bearing in mind the possible alternatives.

In the instant case the order was not specific about the date when the order was to be enforced or the respondent was duty bound to take a decision in respect of the complaint. This Court was mindful that the respondent had been stopped from taking a decision because of the court order from Mbarara High Court.

I find that the respondent's took a decision thereafter and the same was handed to the applicant. The application at that stage was overtaken by events. I make no order as to costs.

I so order.

***SSEKAANA MUSA***

***JUDGE***

***4<sup>th</sup>/11/2019***