

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**MISC CAUSE NO.59 OF 2020**

- 1. SSEMWANGA GODFREY**
- 2. WALUGEMBE GEORGE WILLIAM SSALONGO**
- 3. KULABAKO MUTUBEI KASSIM**
- 4. SSALONGO MUTEBI SENTOBEKO F.X**
- 5. LULE JOHN PAUL**
- 6. FEDINAND BALIKUDEMBE DEMBE**
- 7. SEBUGENYI HENRY**
- 8. NYOMBI ABDU KITIKYAMUWOGO**
- 9. KAKOOZA DANIEL**
- 10. GITTA YUSUF**
- 11. KATAMBA ROBERT**
- 12. KAYIZI MUHAMMED**
- 13. PAUL SSALI**
- 14. WALUGAMYA MATHIAS**
- 15. KILAGA FRED**
- 16. KAWEESI IBRAHIM**
- 17. ZIWA CHRISANT**
- 18. KASAMBA FREDRICK**
- 19. KALONGO LAWRENCE**
- 20. KABALI FREDRICK**
- 21. MATOVU JOHN**
- 22. KAKUMBA GODFREY**

**23. KASAMBA RONALD**

**24. KITAYIMBA PAUL**

**25. SSEMPIJJA EMMANUEL**

**26. NYENJE ABBAS**

**27. MUSAZI RICHARD**

**28. KATONGOLE FRANCIS**

**29. KAWEESA EDDY**

**30. NTUYO STEPHEN**

**31. SALONGO GITA LWANGA**

**32. SALONGO KAGOGWA MICAH.....: APPLICANT**

***VERSUS***

**DEMOCRATIC PARTY .....:RESPONDENT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

This is an Application brought under Articles 38 (1) and 45 of the Constitution of Uganda, Sections 33 and 36 Judicature Act, Rule 3(1) and (2), Rule 6 (2) and Rule 8 of the Judicature (Judicial Review) Rules 2009) for prerogative orders that;

- a) A declaration that the decision of the Respondent, its agents or servants in halting the election of the executive committees of the Democratic Party leadership for Makindye Ssabagabo Municipality that had been completed up to the Municipality levels through the grass root party structure electoral process is irrational, unreasonable, illegal, and constitutes an egregious infringement and abuse of the Applicants rights to participate in the political affairs of the democratic party in Makindye Ssabagabo Municipality, Wakiso District.

- b) An order of Certiorari quashing decision of the Respondent, its agents or servants in halting the election of the executive committees of the Democratic Party leadership for Makindye Ssabagabo Municipality that had been completed up to the Municipality levels through the grass root party structure electoral process.
- c) A declaration that the decision of the Respondent, its agents in holding secret fresh election of the executive committees of the Democratic Party leadership for Makindye Ssabagabo Municipality that had been completed up to the Division levels through the grass root party structure electoral process is irrational, unreasonable, illegal, and constitutes an egregious infringement and abuse of the Applicants rights to participate in the political affairs of the democratic party in Makindye Ssabagabo Municipality and Wakiso District.
- d) An order of Certiorari quashing the decision of the Respondent, its agents in holding secret fresh election of the executive committees of the Democratic Party leadership for Makindye Ssabagabo Municipality that had been completed up to the Division levels through the grass root party structure electoral process is irrational, unreasonable, illegal, and constitutes an egregious infringement and abuse of the Applicants rights to participate in the political affairs of the democratic party in Makindye Ssabagabo Municipality and Wakiso District.
- e) A declaration that the swearing in of the executive committees of the Democratic Party leadership at the level of villages, parishes Sub counties, Divisions and constituencies in Wakiso District without going through the grass root party structures of the party is irrational, unreasonable, illegal, and constitutes an egregious infringement and abuse of the Applicants rights to participate in the political affairs of the Democratic Party in Makindye Ssabagabo Municipality, Wakiso District.

- f) An order of Certiorari quashing the swearing in of the executive committees of the Democratic Party leadership at the level of villages, parishes Sub counties, Divisions and constituencies in Makindye Ssabagabo Municipality in Wakiso District.
- g) An order of Prohibition restraining, stopping and preventing the Respondent, its agents and servants from holding further secret elections for the Wakiso District executive committee of the Democratic Party without passing through the Democratic Party executive committees or the grass root party structures.
- h) An order of injunction restraining, stopping and preventing the respondent, its agents, servants and any one claiming under the Respondent from holding further election for the leaders of the Democratic Party at Village levels, Parish levels Division levels and Municipality level in Makindye Ssabagabo Municipality in secret and without going through the established grass root party structures.
- i) An award of costs of this cause and any other relief Court may deem fit.

The grounds of the application are specifically spelt out in the affidavits of **SSEMWANGA GODFREY, WALUGEMBE GEORGE WILLIAM SSALONGO, KULABAKO MUTUBEI KASSIM**, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants herein, which shall be read and relied on at the hearing but briefly are that;

1. The Applicants are the elected leaders of the Democratic Party at Village levels, Parish levels and Division levels in Makindye Ssabagabo Municipality having been elected in the recently held grass root party structure electoral process in Makindye Ssabagabo Municipality.

2. The Respondent through Seranda Gerald, its Acting Secretary General arbitrarily in his communication ordered for the halting of the process of election on the basis that he had received petitions challenging the manner in which the electoral process was being conducted whereas not.
3. The Respondent through its agents fragrantly started holding secret fresh election for the leaders of the Democratic Party at Village levels, Parish levels Division levels and Municipality level in Makindye Ssabagabo Municipality with the help of Dick Lukyamuzi and Elijah Kazibwe without going through the established grass root party structures thereby infringing the Applicants' civic rights guaranteed under article 38 of the Constitution of the Republic of Uganda.
4. The Applicants were never informed of the decision to carry out the fresh elections, and neither were the established grass root party structures and therefore none of them or their electorate participated in the fresh election thereby infringing the Applicants' rights guaranteed under article 20, 28, 42 and 44 of the Constitution of the Republic of Uganda.
5. The Respondent swore in the said "leaders" of the Democratic Party at Village levels, Parish levels Division levels and Municipality level in Makindye Ssabagabo Municipality without going through the established grass root party structures thereby infringing the Applicants' civic rights guaranteed under article 38 of the Constitution of the Republic of Uganda.
6. That the Applicants have been subjected to horrendous inconveniences, mental anguish and emotional stress for which the Respondent is liable.
7. That it is in the interest of justice that the prerogative orders of certiorari, prohibition, declaration and injunction be granted to the Applicants.

The respondent filed an affidavit in reply sworn by **Siranda Gerald Blacks** as well as supplementary affidavits in reply sworn by **Sekikubo Jamada, George William Ssemukasa** and **Hon. Nobert Mao** opposing the application whose grounds are briefly that;

1. That this application is incompetent, and bad in law for the applicants' failure to utilize the internal dispute resolution mechanism available in the Democratic Party, the respondent and a preliminary point of law shall be raised to that effect this application is incompetent for that reason to which this Honourable Court shall be moved to dismiss this application with costs.
2. That without prejudice respond to the application as follows that the Democratic Party National Executive Committee (NEC) sitting in January approved the Party Grass Root Structure Elections and Leadership Renewal and the forms or materials for elections were sent to the Branch Leadership.
3. That the leaders of the branch and sub branch were to adhere to the NEC directives to use white Registration and Return Forms that bore the Respondent Party Seal however the leadership in Makindye Ssabagabo didn't adhere to the same.
4. That on the 14<sup>th</sup> February 2020, The Democratic Party National Executive Committee (NEC) resolved to take over the management of Kampala, Mukono and Wakiso Districts Branches in a way of micro-management in regards to grass root structure and leadership renewal.
5. That the Democratic Party National Executive Committee is empowered under **Article 18 of the Respondent's constitution** to supervise administrative

machinery of the respondent at all levels and to take all measures to enforce the party decisions.

6. That on 28<sup>th</sup> February 2020 as the Ag Secretary General of the Respondent Party wrote to all Branch Chairpersons in Kampala, Mukono and Wakiso copied to all Sub Branch Leaders including that of Makindye Ssabagabo notifying them of the DP NEC decision of taking over the management of the renewal elections and that a NEC official would be assigned to oversee the process of grass root election.
7. That the dates for fresh registration of members and elections of branch leaders of Makindye Ssabagabo thereof were well communicated to the entire electorate of Makindye Ssabagabo including the applicants herein and they were of right to participate but they just opted to boycott for the reasons well known to them.
8. That despite all the threats and violence, the normalization team successfully conducted the fresh registration process of the members and election of the branch leaders thereof.
9. That on the 8<sup>th</sup> March 2020, the President General of the respondent Hon. Nobert Mao presided over the swearing in the new leaders of Makindye Ssabagabo Municipality Branch and all returns were handed over to the Respondent.
10. That any purported election of the applicants if any was done in total defiance to the DP NEC decision to take over management of grassroots structure elections and leadership renewal for the Districts of Kampala, Mukono and Wakiso within which Makindye Ssabagabo fell.

The applicants and respondent raised preliminary objections that this court will now proceed to determine.

The applicants raised a preliminary objection in respect of the affidavit in reply of Siranda Gerald Blacks and the supplementary affidavits of Hon. Nobert Mao, Lumbuye Gerald, George William Semukasa and Sekikubo Jamada to the effect that they were filed late.

The applicants submitted that the instant application was filed on 17<sup>th</sup> March, 2020 and served onto the Respondent on the same date as indicated in the affidavit of Benon Kirigola dated 17<sup>th</sup> day of March 2020. However, the respondent filed a reply and the accompanying supplementary affidavits on 17<sup>th</sup> June, 2020, approximately three months after the initial service of the instant suit.

Counsel further submitted that they are aware that on 19<sup>th</sup> March, 2020, the Chief Justice through a circular suspended all court hearings and appearances for 32 days with effect from 20<sup>th</sup> March, 2020, during this period, all judicial officers and staff continued to be on duty. The Honourable Chief Justice went on to make other circulars on 26<sup>th</sup> March, 29<sup>th</sup> April and 5<sup>th</sup> May, 2020. On 27<sup>th</sup> March, 2020, the Honourable Chief Justice made another circular and directed that the courts operations be reinstated while observing the presidential objectives and the ministry of health guidelines and standard of operations procedure, under **paragraph 1 (iv)** of that circular, the officials in the court registries were to attend to clients in the registry in a social distancing manner.

Counsel submitted that since the registry was left open and cases continued to be filed in the courts, the Respondent filed the affidavit in reply together with supplementary affidavits out of time and prayed that the said affidavits in reply of Siranda Gerald Blacks and the supplementary affidavits of Hon. Nobert Mao, Lumbuye Gerald, George William Semukasa and Sekikubo Jamada be struck out with costs, we are buttressed in



our reasoning by the authority of *Stop and See [u] Ltd] vs Tropical Africa Bank Ltd; Misc. Application No. 333 of 2010* which quoted **Order 12 rule 3 sub rule 2 of the Civil Procedure Rules** which rule requires that all replies to interlocutory applications be made within 15 days from date of service.

In response to the applicants' preliminary objection, counsel for the respondent prayed that the court dismiss the same on grounds that between the said dates, the government had ordered a lockdown making movement of witnesses very difficult if not impossible and thus made it impossible for their respective affidavits to be recorded. Counsel prayed that this court take judicial notice of the fact that in March 2020 the Government of Uganda issued a number of measures to limit the spread of COVID-19. The Chief Justice issued a circular suspending all court hearings and appearances for a period of thirty two days unless one applied for a certificate of urgency that a case is serious and the applicant has not shown that they applied for this matter to be heard urgently hence any delays in this matter are excusable.

Counsel for the respondent cited the case of **Dr. Lam-Lagord James v Muni University Misc. Cause No. 0007 of 2016** quoting that **Justice Stephen Mubiru** took a different position and held that an affidavit in reply unlike a written statement of defence which is a pleading, is evidence on oath and time constraints applied to defences may be misplaced when applied to affidavits.

On the other hand, the respondent also raised two preliminary objections that;

- I. The applicants being members of the respondent a duly registered political party with a constitution didn't utilize and/or exhaust the party internal dispute resolution mechanisms. The respondent party National Executive Committee (NEC) under Article 18 is vested with the executive powers including handling and settling internal disputes within the party. Counsel further submitted that

NEC had assigned its management committee the responsibility of dealing and handling petitions which were as a result of the disputed decisions which the applicants deliberately disregarded and by-passed. Counsel cited the case of *Hon. Erias Lukwago & 13 Ors vs Electoral Commission & Ors HCCM No. 431 of 2019* that where there an alternative remedy it's desirable that such remedy must be pursued before recourse to court via judicial review.

- II. The application is challenging elections and therefore not properly before court for judicial review. Counsel submitted that the applicants' notice of motion and the affidavits in support thereof, the applicants are clearly challenging the election of different individuals to the respondent Makindye Ssabagabo sub-branch Executive Committees. Counsel submitted that the applicants based their complaint on the fact that an election took place and a swearing in ceremony took place, it became an acknowledgment that the elected office bearers who are not even parties to this cause are entitled to act in their respective positions until their election is properly set aside. By bringing their grievances to court through judicial review application against the respondent alone, it also denies the elected and current occupiers of the executive committee leadership positions their none derogable right to be heard since the orders sought from court will make them lose their respective offices.

Counsel for the applicants responded to the respondent's preliminary objections and submitted as follows;

That the Applicants would have exhausted all the remedies that were available to them in the Democratic Party structures save that the same would have led to kangaroo court under the supervision of the NEC. Counsel cited *Kitgum Municipal Council and others versus Suzan Adokorach and others; Civil Appeal No. 083 of 2019*, when a matter of similar nature was brought to his attention, where Justice Stephen Mubiru held that;

*In determining whether to entertain an ordinary suit rather than requiring a plaintiff to proceed through a statutory appeal procedure, courts should consider; the convenience of the alternative remedy, the nature of the error, and the nature of the appellate body (i.e., its investigatory, decision-making and remedial capacities). The category of factors should not be closed, as it is for courts in particular circumstances to isolate and balance the factors that are relevant see (Canadian Pacific Ltd. v. Matsqui Indian Band [1995] 1 SCR 3).*

The learned Judge Justice Stephen Mubiru continued and stated that;

*Furthermore, since the rule of exclusion of a suit by availability of an alternative statutory remedy is a rule of discretion and not one of compulsion (see King vs. Postmaster-General; Ex parte Carmichael, [1928]1 KB 29), in an appropriate case in spite of availability of the alternative remedy, the Court having jurisdiction may still exercise its jurisdiction in at least three exceptions:*

- (i) where the suit seeks enforcement of any of the fundamental rights;*
- (ii) where there is failure of principles of natural justice (see Rex v. Wands-worth Justices; Ex parte Read, [1942]1 KB 281) or,*
- (iii) where the orders or proceedings are wholly without jurisdiction or the vires of the Act and is challenged as such.*

Counsel submitted that the instant application is on all fours with the above holdings. The Respondent has not demonstrated to Court the alternative remedy that would have been available to the Applicants in the circumstances after religiously following Article 65 of the constitution of the Democratic Party that provides for the right channels to be followed, which the applicants did follow until the Respondent NEC, unilaterally without any Constitutional right halted the elections in Makindye Sabagabo Municipality and held a secret one.

Counsel concurred with the Respondent's submissions that this Court recently in *Misc. Application No. 167 of 2020 (arising from Misc. Cause No. 89 of 2019) Democratic Party v Senkubuge Rajab*, held that the National Executive Committee is the directorate of the party and in particular its functions include;

- a) To supervise the administrative machinery of the party at all levels and take such measures as it deems fit to enforce decisions and programs of the party.
- b) To do all other acts and things as it shall deem necessary for the efficient functioning of the party.

Counsel submitted that the function of the NEC, however, if this is taken to mean as the Respondents counsel seems to claim that the NEC has unchecked powers to interfere with the party structures without following the right principles laid down in the Democratic Constitution to wit; Article 65, then the authority is quoted out of context. The NEC only functions as far as the Democratic Constitution can allow it and it does not have the mandate to supervise elections in the Municipality but rather the District Executive Committee was clothed such mandate. Counsel invited court to find that the eventual directing of the cancellation of the elections was illegal and prayed that this Preliminary Objection be dismissed.

On the second preliminary objection, counsel for the applicants submitted that the applicants are not challenging the elections of the certain persons who were allegedly voted into positions in the grass root elections, instead the applicants' are challenging the process in which the decision that cancelled the elections was made (decision making process) and their main contention is that the National Executive Committee decision of 14<sup>th</sup> February, 2020 that halted and cancelled the elections of the Democratic party executive committees that had been concluded up to Municipality level in Makindye Ssabagabo Municipality and its decision of conducting secret elections of the

members of the same committees who were ultimately sworn in by the party president as the new members of the same executive committees for Makindye Ssabagabo Municipality was procedurally wrong, illegal and ultra vires the powers of NEC(National Executive Committee).

In the Court of Appeal decision of *National Drug Authority and another vs. Nakachwa Florence Obiocha, Civil Appeal No. 281 and 286 of 2017*, it was held that; Judicial review is not concerned with determining the merits of the decision the Applicant is aggrieved about, but the decision making process itself, the purpose of the remedy of judicial review is to ensure that the individual is given a fair treatment by the authority to which he or she has been subjected, it is a legal process of subjecting to judicial control, the exercise of powers affecting people's rights and obligations enforceable at law by those in public office.

It was counsel's submission that the applicants are before this court to challenge the National Executive Committee decision making process/ decision of 14<sup>th</sup> February, 2020 that halted and cancelled the elections of the Democratic party executive committees that had been concluded up to Municipality level in Makindye Ssabagabo Municipality and its decision of conducting secret elections of the members of the same committees who were ultimately sworn in by the party president as the new members of the same executive committees for Makindye Ssabagabo Municipality.

Counsel further submitted that the applicants have also highlighted that the process leading to the Respondent's decision and the decision itself was tainted with procedural impropriety in all aspects be it administrative or substantive warranting intervention of this honorable Court by way of judicial review.

Counsel submitted that the respondent's arguments that applicants are challenging the elections by way of judicial review is misconceived. The definition of an election

petition is the calling into question of any election if one of the following grounds is presented;

- a) Non qualification of a candidate
- b) That some corrupt practice was committed by a candidate
- c) That nomination was improperly rejected
- d) That the results of the elections was materially affected (*see section 59 of the Presidential Elections Act, 2005, Section 61 of the Parliamentary Elections Act, 2006 and Section 139 of the Local Government Act, Cap 143*)

It was counsel's submission that if this were an election petition, the applicants would have filed the same in the requisite courts but as it is also trite law that a decision of any public officer would be amenable to judicial review, if he/she has exercised powers not vested by law while making a decision, the applicants would only seek to challenge that decision. Indeed as it has been demonstrated, the applicants are challenging the decision making process of the Respondent. Counsel prayed that this Preliminary Objection also be dismissed.

The respondent's counsel filed submissions in rejoinder to the applicants' submissions on the preliminary objections.

Counsel submitted that on the first point of objection, counsel reiterated their point that the respondent has internal dispute mechanisms i.e. petitioning the NEC which the applicants admit to in their submissions in rejoinder, but they deliberately ignored to take use of the said mechanism. The argument by the applicants that even if they had gone to NEC, the same would have led to a kangaroo hearing is a mere assumption not supported by any facts and which affects the operations of the respondent party

internal structures. The respondent NEC had set up a committee to entertain and handle all grievances arising thereof which the applicants ignored with a lot of ease.

**Rule 7A of the Judicature (Judicial Review) (Amendment) Rules 2019** which requires the exhaustion of the internal dispute mechanisms of a public body is coached in a mandatory manner and thus non observance of the same by the applicants makes their application premature and incompetent. See decision in **Hon. Elias Lukwago & 13 others vs Electoral Commission & others item No. 431/2019.**

The DP Constitution to which the applicants subscribe sets up structures which must always be permitted to perform their obligations thereof and must be followed by all members without reservations. We reiterate as earlier submitted on the functions of NEC.

Counsel submitted that the applicants' issues are political in nature which would best be resolved through the respondent party political mechanisms which would in turn lead to its democratic growth and development. Counsel prayed that the application be dismissed preliminarily on this ground.

On the second point of objection that the applicants are challenging elections by Judicial Review which is a very inappropriate procedure, counsel submitted that whereas the applicants are denying to be challenging elections, the substance of the application and the prayers made thereof shows to a contrary.

Counsel submitted that the applicants are contending that the DP constitution wasn't followed in the whole exercise, elections were held secretly and that certain individuals were elected and consequently sworn in to occupy the executive committees of the respondent's Makindye Ssabagabo to which they claim to have been earlier elected. Among the prayers made by the applicants in the application is to have the swearing in of the current office bearers (who have not been given an opportunity to be heard) be

quashed which in substance is a challenge against elections on merits which this Honourable court cannot adequately handle through Judicial Review.

Counsel reiterated their earlier submission that what prompted NEC to take over the Elections in Kampala, Wakiso and Mukono Regions because of the chaos and use of no approved electoral materials. And the other areas have not raised any complaint about the process.

Counsel concluded that all the above together with the fact that current office bearers of Makindye Ssabagabo executive Committees were not served and or made parties hereto so as to be heard, should lead to the dismissal of this application with costs to the respondent.

## **RESOLUTION**

I shall first determine the applicants' preliminary objection that the respondent's affidavit in reply and consequent supplementary affidavits were filed out of time.

This court takes judicial notice of the sanctions put in place by the Government of Uganda to curb the spread of COVID-19 and the subsequent directives of the **Chief Justice Bart Katureebe** suspending all court hearings and appearances for a period of 32 days unless one applied for a certificate of urgency.

The sanctions put in place by the Government strained movement of people all over and restricted the usual course of business in the country; it would therefore be impractical to expect the respondent to have filed the affidavits in reply within the prescribed time period.

The applicants' preliminary objection is therefore dismissed.

I shall now turn to determine the respondent's preliminary objections.



First was; the applicants being members of the respondent a duly registered political party with a constitution didn't utilize and/or exhaust the party internal dispute resolution mechanisms.

It is the respondent's submission that the applicants did not utilize/exhaust the party internal dispute resolution mechanisms.

**Rule 7A of the Judicature (Judicial Review) (Amendment) Rules 2019** requires the exhaustion of the internal dispute mechanisms of a public body is coached in a mandatory manner and thus non observance of the same by the applicants makes their application premature and incompetent. There is a plethora of decisions that re-echo that rule.

In *Sewanyana Jimmy vs Kampala International University Hcmc No. 207 Of 2016*. The court dismissing a similar application for failure to exhaust existing remedies within the body held that;

*Where there exists an alternative remedy through statutory law then it is desirable that such statutory remedy should be pursued first. A court's inherent jurisdiction should not be invoked where there is a specific statutory provision which would meet the necessities of the case. This is the only way institutions and their structures will be strengthened and respected.*

In **Fuelex Uganda Ltd vs AG & 2 others High Court Miscellaneous Cause No. 48 Of 2014**, Hon Justice Stephen Musota (as he then was) referring to the case of **Micro Care Insurance Limited vs Uganda Insurance Commission Miscellaneous Cause No. 218 of 2009** wherein Justice Bamwine (as he then was) cited the case of **Preston vs IRC [1995] 2 All ER 327 at 330** where Lord Scarman said; " My fourth position is that a remedy by way of Judicial Review is not available where an alternative remedy exists. This is a position of great importance. Judicial review is a collateral challenge; where Parliament has provided appeal

*procedures, as in taxing state, it will only be rarely that the court will allow collateral process of judicial review to be used to attack an appealable decision."*

Similarly Justice Geoffrey Kiryabwire (as he then was) in the case of **Classy Photo Mart Ltd vs The Commissioner Customs URA Miscellaneous Cause No. 30 of 2009** re-echoed the same position and the words of Bamwine J (as he then was) that "*I should perhaps add that it is becoming increasingly fashionable these days to seek judicial review orders even in the clearest of cases where alternative procedures are more convenient. This trend is undesirable and must be checked..... In this era of case management, it is the duty of a trial judge to see that cases are tried as expeditiously and inexpensively as possible....and this also means ensuring that unjustified short cuts to the judge's docket are eliminated."*

In the present circumstances, the applicants did not explore the alternative internal dispute resolution mechanism alleging under paragraph 4 of the 1<sup>st</sup> applicant's affidavit that it was worthless to seek the intervention of the internal party structures which are under the control of the National Executive Committee (NEC). They alleged *that the internal remedies could not be exhausted due to the fact National Executive Committee which is the directorate of the Democratic Party with powers to supervise the administrative machinery of the party with the responsibility of supervising the activities of the party through the established party structures had disregarded the functions of party executive committees by illegally taking over the process of conducting registering members, convening village general meetings, parish delegates conferences, division delegates conferences and Constituency delegates conference and conducting and supervising the election without going through the party structures.*

It is therefore not disputed that the applicants breached the rule to exhaust alternative remedies before filing this application for judicial review.

With regard to the second preliminary objection that the application is challenging elections and therefore not properly before court for judicial review. Judicial review

could issue in some electoral matters if it involves the transgressions of the law or abuse of authority. This therefore means that the applicants can seek judicial review if there was abuse of authority or transgressions of the law in the electoral process. This preliminary objection is therefore dismissed.

On this note and with reference to the above decisions, this application should be dismissed on the respondent's first preliminary objection however for purposes of completeness I shall proceed to determine the merits of the application.

I have already pronounced myself on issue 1, the application is not properly before this court owing to the fact that the applicants did not utilize the alternative internal dispute resolution mechanisms.

**Whether the decision of the respondent in cancelling the results of the elections in Makindye Ssabagabo municipality was illegal and whether the decision of the respondent in holding fresh elections in Makindye Ssabagabo municipality was lawful.**

According to the evidence on record, the Respondent National executive committee (NEC) took over the whole leadership renewal exercise for the districts of Mukono, Kampala and Wakiso as a result of its resolution dated 14<sup>th</sup> February 2020 following the use of parallel unauthorized members' registration and election materials, and it was therefore lawful. The Acting Secretary General of the Respondent stated that he received 20 petitions from Makindye Ssabagabo Municipality complaining how the chairman and his leadership were mismanaging the process in the said sub branches, this number is inconsistent with the letter that he sent to the chairman Makindye Ssabagabo Municipality, Mr. John Mary Luberenga which states that he had received fourteen complaints.

The applicants submitted that the Ag Secretary General of the respondent neither mentioned who the petitioners were nor provided the said petitions and worse still he does not attach the same to his affidavit to enable court make an informed finding on the same which would mean that the National Executive Committee made a decision on an erroneous allegation that was meant to benefit a few members without affording the applicants a right to be heard on the alleged petitions.

The applicants allege that by halting the elections without being heard from, their rights under **Article 42**, which provides that any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.

I however have not found that the circumstances as they were called for the applicants be heard before the NEC exercised its authority to enforce party decisions.

Under Article 18 (b) of the respondent's constitution, *the NEC supervises the administrative machinery of the party at all levels and takes such measures as it deems fit to enforce decisions and programmes of the party as laid down by the National Delegates conference or the National Council.*

I concur with the respondent's counsel's submission that the NEC is empowered and duty bound to supervise administrative machinery of the respondent party at all levels and to take all necessary measures to enforce the party decisions. And for the purpose of elections in the respondent party including at the grassroot levels, the NEC is the party's electoral body and whatever the district executive committee does in regards to supervising constituency elections is done on behalf of the NEC and it has powers to take over the conduct and supervision of elections from such district executive committee . This duty can even be assigned by the very NEC to individual persons as it was done in the instant matter. Therefore, the taking over, halting and organizing of

fresh election by the NEC through a normalization committee headed by a one Lukyamuzi Richard Dick which was in fact for the good of the party intended to have an election in an organized way and which follows the respondent constitution was lawful.

With the circumstances presented before the respondent's NEC I find that it was only logical for the mismanaged elections to be halted and consequently for new elections to be conducted.

I find no fault in the manner in which the DP NEC exercised its mandate hence both issues are answered in the negative.

From the foregoing, the applicants are not granted the remedies sought.

The matter is dismissed with costs to the respondent.

I so order

**SSEKAANA MUSA**

**JUDGE**

**18<sup>th</sup> September 2020**