

5

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL REVISION NO. 003 OF 2023**

**(ARISING FROM MA NO. 006 OF 2023)**

**(ARISING FROM MA NO. 005 OF 2023)**

10

**(ARISING FROM MC NO. 003 OF 2023)**

**(ALL ARISING FROM MC NO. 142 OF 2022)**

**1. UGANDA MUSLIM SUPREME COUNCIL**

**2. HIS EMINENCE SHEIKH SHABAN RAMATHAN MUBAJE :::::::::::::::APPLICANTS**

**VERSUS**

15

**1. HASSAN BASSAJJABALABA**

**2. SEWANTE UMARU**

**3. GULE ISSA**

**4. KIGONGO SULAINA ::::::::::::::: RESPONDENTS**

**BEFORE: HON. JUSTICE ESTA NAMBAYO**

20

**RULING**

The Applicants brought this application under **S. 17 & 33 of the Judicature Act, S. 83 & 98 CPA and Order 52 rules 1 & 3 of the Civil Procedure Rules** against the Respondents seeking for orders of this court that: -

25

**1. The ex-parte proceedings, ruling and orders in Misc. Application No. 006 of 2023 and Misc. Application No. 0142 of 2022 be revised and set aside.**

2. A declaration that the trial Chief Magistrate's Court irregularly and/or illegally exercised jurisdiction vested in it.

30 3. A declaration that the trial Chief Magistrate failed to exercise jurisdiction vested and/or acted in the exercise of his jurisdiction illegally or with material irregularity or injustice without due regard to the rule of fairness and natural justice, thereby coming to a wrong decision to the detriment of the Applicants.

4. Costs of this application be provided for.

35 The grounds of this application are well laid out in the affidavit in support of the application by Learned Counsel Atulinda Majda, from Kabega, Bogezi & Bukenya Advocates, but briefly are that: -

1. The 1<sup>st</sup> Respondent on the 2<sup>nd</sup> December, 2022 filed an ex parte application, vide; Misc. Cause No. 142 of 2022 against the Applicants seeking among others, orders that;

40 a) The invitation of the Applicant for a meeting by the Respondent's Independent Electoral Commission slated for 2<sup>nd</sup> December, 2022 at 5:00 p.m. be halted.

b) That a mandatory injunction doth issue directing the electoral process for the position of chairperson Uganda Muslim Supreme Council to be conducted as earlier slated/scheduled by the Independent Electoral Commission of the Respondent.

45 c) That the letter dated 1<sup>st</sup> December, 2022 be set aside/quashed as it is of no effect in law.

50 d) A permanent injunction doth issue against the Respondent's Independent Electoral Commission restraining them from interfering with the Applicant's candidature.

2. That when the 1<sup>st</sup> Respondent filed his application before court on the 2<sup>nd</sup> December, 2022, his Counsel made an ex-parte oral application upon which court granted an interim administrative order directing the 1<sup>st</sup> Applicant's Independent Electoral Commission to conduct the electoral process for the position of  
55 Chairperson of the 1<sup>st</sup> Applicant on the 3<sup>rd</sup> December, 2022 as earlier slated for all duly/already nominated candidates.

3. That the said interim administrative order resultantly fully determined Misc. Cause No. 0142 of 2022 which was fixed for hearing on the 5<sup>th</sup> December, 2022.

4. The Applicants were never served with court process and the alleged interim  
60 administrative order issued by court.

5. The said interim administrative order was to last for 3 days ending on the 5<sup>th</sup> December, 2022 when Misc. Cause No. 142 of 2022 would be heard.

6. That the 1<sup>st</sup> Respondent on the 5<sup>th</sup> day of December, 2022 withdrew Misc. Cause No. 142 of 2022 before it was heard; and the Applicants had not been served with  
65 any court process for the application or hearing of the matter.

7. That the 1<sup>st</sup> Respondent on the 21<sup>st</sup> December, 2022 filed in the High Court (Civil Division) HCCS No. 367 of 2022 seeking to challenge the elections made on the 3<sup>rd</sup> day of December, 2022, together with Misc. Application No. 700 and 701 of 2022 seeking interim reliefs.

70 8. That the Respondents on the 4<sup>th</sup> January, 2023 filed a contempt of court application vide; Misc. Cause No. 003 of 2023 arising out of the withdrawn Misc. Cause No. 0142 of 2022 against the Applicants and no service of the court process in respect of the same was ever effected on the Applicants.

9. The Respondents also on the same day filed Misc. Application No. 006 of 2023  
75 which was fixed for hearing on the 10<sup>th</sup> January, 2023 and no service of court process was ever effected upon the Applicants.

10. That Court on the 10<sup>th</sup> day of January, 2023 heard Misc. Application No. 006 of 2023 ex-parte and granted an interim order against the Applicants restraining them, their agents and their employees from carrying out and/or conducting any functions and/or activity incidental to the Uganda Muslim Supreme Council, until the final determination of the main application or until further orders of court.

11. That as a result of the said order, the activities of the first Applicant, a purely religious organization, have been brought to a halt.

12. That the 1<sup>st</sup> Applicant is a religious body that brings together all the Muslims in Uganda and its duties include organizing for daily prayers, coordinating Muslim leadership all over the country, planning for the annual pilgrimage, coordinating the collection of zakat, organizing meetings through its organs for the day to day management and coordination of activities country wide, among others.

13. That the 1<sup>st</sup> Applicant works through its officials and organs who include the 2<sup>nd</sup> Applicant, the Secretary General's office and Imams of mosques, joint session committees, management committees, executive committees and the General Assembly; among others.

14. That in effect the Order granted on the 10<sup>th</sup> January, 2023 stopping any of the officials of the 1<sup>st</sup> Applicant from carrying out any of its duties until determination of the main Application for a temporary injunction, is catastrophic for the operations of the 1<sup>st</sup> Applicant.

15. That all proceedings arising from MA No. 006 of 2023; MA No. 005 of 2023; MC No. 003 of 2023 and MC No. 0142 of 2022 were conducted ex-parte and without service on the Applicants by the Respondents.

16. That MC No. 0142 of 2022 from which CR. No. 003 of 2023 - the contempt application arose, was withdrawn from court on the 5<sup>th</sup> December, 2022 and as such MC No. 003 of 2023 has no basis in law.

105 17. The failure to serve the Applicants with court process in MA No. 006 of 2023 and the consequent ex-parte hearing was contrary to the law and guidelines on the grant of interim orders.

18. That this application is brought without undue delay.

19. The learned Chief Magistrate exercised jurisdiction illegally and with material irregularity when he;

110 a) failed to establish that he had no jurisdiction to handle Misc. Cause No. 0142 of 2022 and even if he had;

b) he entertained an oral application in Misc. Cause No. 0142 of 2022 and granted an interim administrative order to last until the 5<sup>th</sup> December, 2022 well aware that there was no service of court process upon the Applicants.

115 c) he heard and granted orders in Misc. Cause No. 0142 of 2022 and Misc. No. 006 of 2023 in total disregard of the Applicants' non-derogable right to a fair hearing and/or right to be heard and in total violation of the guidelines on issuance of interim orders by the Principal Judge.

d) granted an interim administrative order which had the effect of fully determining Misc. Cause No. 0142 of 2022.

120 e) he entertained Misc. Application No. 006 of 2023 well aware that it was arising from a matter withdrawn on the 5<sup>th</sup> day of December, 2022 and the same having been filed long after the withdrawal of Misc. Cause No. 0142 of 2022.

125 f) he entertained Misc. Application No. 006 of 2023 introducing new parties in the contempt application; that is the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents who were not parties to the original claim in Misc. Cause No. 0142 of 2022 in which the order allegedly violated arose,

- 130 g) he entertained Misc. Application No. 006 of 2023 when there was another suit filed in the High Court (Civil Division) by the 1<sup>st</sup> Respondent against the 1<sup>st</sup> and 2<sup>nd</sup> Applicants in which the same matters are raised.
- h) he issued an order ex-parte which is vague, ambiguous with a resultant effect of determining the main cause

135 20. The learned Chief Magistrate exercised his jurisdiction illegally and with material irregularity when he ignored and/or refused to follow the procedural requirements and rules of natural justice when he granted orders vide Misc. Cause No. 0142 of 2022 and Misc. Application No. 006 of 2023 ex-parte.

21. That this honorable court is vested with power to revise decisions of the Chief Magistrate made with material irregularity in the exercise of jurisdiction and/or made without any jurisdiction,

140 22. That it is fair, just and in the interest of substantive justice that this application is granted.

The 1<sup>st</sup> Respondent filed an affidavit – in- reply opposing this application.

### **Background to this application**

145 The background to this application is that the 1<sup>st</sup> Respondent was nominated to contest for the office of Chairperson of the Uganda Moslem Supreme Council, (UMSC) where elections were scheduled to take place on the 3<sup>rd</sup> December, 2022.

150 On the 1<sup>st</sup> December, 2022, the Secretary General of the UMSC received a letter from the 2<sup>nd</sup> Applicant informing him that the 1<sup>st</sup> Respondent was not eligible for the office of Chairperson, UMSC. The Secretary General referred the matter to the Chairman of the 1<sup>st</sup> Applicant's Independent Electoral Commission to handle. So the Chairman summoned the 1<sup>st</sup> Respondent to appear before the Independent Electoral Commission of the 1<sup>st</sup> Applicant on the 2<sup>nd</sup> December, 2022 before 5:00p.m. to answer queries in regard to his nomination.

155 Instead of appearing before the Commission as required, the 1<sup>st</sup> Respondent filed a  
suit; vide MC No. 0142 of 2022 before the Chief Magistrate's Court at Mengo seeking  
for orders to halt his appearance before the Commission, he also sought a Mandatory  
Injunction to issue directing the Commission not to halt the elections for the office of  
the Chairperson for the UMSC, he sought for orders of court to quash the letter dated  
1<sup>st</sup> December, 2022 inviting the 1<sup>st</sup> Respondent to appear before the Electoral  
160 Commission to show cause why his nomination should not be cancelled, a permanent  
injunction restraining the Independent Electoral Commission from interfering with the  
1<sup>st</sup> Respondent's candidature and costs of the application.

Counsel for the 1<sup>st</sup> Respondent then made an application viva voce before HW Patrick  
Talisuna Ngereza, the Trial Chief Magistrate, for an administrative interim order which  
165 he issued ex-parte directing the UMSC's Independent Electoral Commission to conduct  
elections for the position of Chairperson of the UMSC on the 3<sup>rd</sup> December, 2022 as  
earlier slated for all the duly nominated candidates and that the orders he made would  
stay in place for three days. He fixed MC No. 0142 of 2022 for hearing inter-parties  
on the 5<sup>th</sup> December, 2022.

170 It would appear that elections were conducted on the 3<sup>rd</sup> December, 2022, although  
not as scheduled.

On the 5<sup>th</sup> December, 2022, Counsel for the Applicant wrote a letter to court  
requesting to withdraw MC No. 0142 of 2022 and court granted the withdrawal of the  
matter from court.

175 On the 21<sup>st</sup> December, 2022, the 1<sup>st</sup> Respondent filed Civil Suit No.367 of 2022 before  
the High Court Civil Division seeking for, inter alia, declarations that the elections  
conducted on the 3<sup>rd</sup> December, 2022 were in breach of the provisions of the UMSC  
constitution and as such they were illegal and unlawful and that Hajji Dr. Lubega  
Muhamadi, (the 4<sup>th</sup> Defendant) be restrained from performing the duties and functions

180 attendant to the position of Chairman UMSC, (see paragraph 4(viii) of the Complaint). This matter is before Hon. Justice Boniface Wamala and it is yet to be heard.

On the 4<sup>th</sup> January, 2023, the 1<sup>st</sup> Respondent filed another matter, vide MC No. 003 of 2023, before Mengo Chief Magistrates Court against the Applicants for contempt of court orders. He then filed MA No. 005 of 2023 for a temporary injunction and MA  
185 No. 006 of 2023 for an interim order. The application for the interim order was again heard and granted ex-parte. It restrained the Applicants in this case from carrying out any functions of or on behalf of UMSC until determination of MA No. 005 of 2023, the application for a temporary injunction, hence this application.

### **Representation**

190 Learned Counsel Moses Kabega together with Abbas Bukonya appeared for the Applicants while Learned Counsel Swabur and Ssekyaze Ivan are for the Respondents.

There were two preliminary issues raised that I need to attend to before proceeding to the merits of the application, if at all. They are that;

- 195 i. failure of the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Respondents to file their affidavits -in -reply confirms that they admit the facts stated in the Applicants' affidavit in support of the application
- ii. the affidavit in support of the application having been deponed by Counsel, offends the law governing affidavit evidence.

I will address the objections in the order of their presentation.

### **200 Failure of the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Respondents to file their affidavits –in - reply.**

Counsel for the Applicants submitted that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents' lawyers were served with the Notice of Motion and affidavit in support of this application but they did not file their replies to the application and yet, the 1<sup>st</sup> Respondent's affidavit in reply was not deponed to in representative capacity.



205 Counsel relied on the case ***Shelton Okabo -v- Standard Chartered Bank (U) Ltd, HCMA No.51 of 1992***, where it was held that: -

*"failure to file an affidavit in reply to the supporting affidavit filed by Counsel for the applicant, the statement of facts contained in the affidavit in support of the application remained uncontroverted, and is an admission."*

210 He also cited the case of ***Energo Projekt -v- Brigadier Kasirye Gwanga & Anor HCMA No.558 of 2009***, where court held that;

*"Where facts are sworn in an affidavit and they are not denied or rebutted by the opposite party, the presumption is that such facts are admitted."*

Counsel submitted that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents having failed to file their  
215 affidavits in reply, this Court be pleased to find that they conceded to the evidence presented by the Applicants in the application.

In reply, Counsel for the Respondents submitted that revision is a matter between the lower court and the High Court to determine whether the orders of the lower court are amenable to revision. That such an application can be determined by examination  
220 of the lower court record and submissions of Counsel, if any. That it does not require any affidavit evidence in support or opposition. Counsel explained that in this case, the affidavit of the 1<sup>st</sup> Respondent is enough for this court to have a clear view of what transpired in the lower court. He relied on the revision case of ***Wadri & 4 others -v- Dranilla, Civil Revision Cause No. 7 of 2019***.

## 225 **Analysis**

S.83 of the Civil Procedure Act mandates the High Court to call for record from the Magistrates Court for purposes of revision.

Under S.83 (d) of the CPA, before making any orders as it deems fit in a revision case, the High Court is required and it must ensure that parties have been given an  
230 opportunity to be heard. How would court give a party the opportunity to be heard

without evidence from that party? Allowing submissions from Counsel for such party may result in Counsel giving evidence from the bar. To avoid such a scenario, this court took the initiative to require and direct that a formal application be filed so that the Respondents are able to reply. Only the 1<sup>st</sup> Respondent filed his affidavit –in -  
235 reply to the application. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents did not file their affidavits -  
in -reply and yet there is proof that their Lawyers were served. Counsel for the Respondents submitted that an application for revision can be determined basing on the submissions for Counsel if any and without affidavit evidence either in support or in opposition. I find Counsel’s submission not viable under S.83(d) of the CPA, which  
240 requires that both parties must be given an opportunity to be heard.

Since the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents did not authorize the 1<sup>st</sup> Respondent to file an affidavit in reply on their behalf, I would presume that they admit the evidence presented by the Applicants, see the case of ***Samwiri Massa -v- Rose Achen (1978) HCB 297***, where it was held that;

245 *“where facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party, the presumption is that such facts are accepted.”*

### **Affidavit deponed by Counsel**

Counsel for the Applicants submitted that the 1<sup>st</sup> Respondent raised an objection in paragraph 3 of his affidavit in reply stating that it was wrong for Counsel Aturinda  
250 Majda to swear the affidavit in support of the application. That by so doing, Counsel contravened regulation 9 of the Advocates (Professional Conduct) regulations. Counsel relied on the case of ***Electro –Maxx Uganda Limited –v- Oryx Oil Uganda Limited HCMA No. 251 of 2020, where court while citing the supreme court case of Uganda Development Bank –v- Kasirye Byaruhanga & Co Advocates SCCA No.35 of 1994***, noted among others that where an Advocate depones to an affidavit  
255 in support of an application in a contentious matter, his or her professional duty is not to, at the same time appear in personal conduct of the matter.

He explained that in this case, Counsel Aturinda's affidavit was not based on contentious matters. That she only made a narration of what transpired in court and that as such she was not prevented to depone the affidavit in support of the application. Counsel referred this court to Order 19 rule 3(1) CPR and explained that paragraphs 1 and 28 of the affidavit in support of the application fall within the ambit of Order 19 rule 3(1) of the CPR.

In reply, Counsel for the Respondents submitted that the affidavit in support of the application offends Order 19 rule 3 of the CPR. That the deponent is neither a party to the suit nor an employee of the 1<sup>st</sup> Applicant and yet she swore a contentious affidavit testifying to matters of facts. He relied on the case of ***Wadri & 4 others –v- Dranilla Revision Cause No. 7 of 2019.***

### **Analysis**

Regulation 9 of the Advocates (Professional Conduct) Regulations S.I 267 provides that: -

*“Personal involvement in a client’s case. No advocate may appear before any court or tribunal in any matter in which he or she has reason to believe that he or she will be required as a 6 witness to give evidence, whether verbally or by affidavit; and if, while appearing in any matter, it becomes apparent that he or she will be required as a witness to give evidence whether verbally or by affidavit, he or she shall not continue to appear; except that this regulation shall not prevent an advocate from giving evidence whether verbally or by declaration or affidavit on a formal or non-contentious matter or fact in any matter in which he or she acts or appears.” (I have underlined for emphasis)*

My understanding of the above provision is that an Advocate is not prevented from giving evidence verbally or by declaration or affidavit on formal or non-contentious matters in which he acts or appears. In this case, the evidence that is presented in the affidavit in support of the application is a narration of the court proceedings in the

285 Magistrates Court. The same proceedings were forwarded to this court for revision and are a part of the court record before this court. There is nothing contentious. I find that Counsel Aturinda did not contravene the provisions of regulation 9 of the Advocates (Professional Conduct) Regulations. The regulation does not prevent Advocates from presenting non contentious evidence in matters where they appear.

## 290 **Merits of the application**

### **Submissions for the Applicants**

Counsel for the Applicants relied on S. 83 of the CPA and submitted that the trial Magistrate exercised jurisdiction illegally and with material irregularity when he entertained MC No. 142 of 2022 and MA No. 006 of 2023 ex-parte and in total  
295 disregard of the Applicants non- derogable right to a fair hearing under Art. 28 and 44 (C) of the 1995 Constitution. He relied on the cases of ***Geofrey Gatete & Anor – v- William Kyobe and the case of Kessington Africa Ltd –v- Pankaj Kumar Shar & Anor*** and explained that in both cases, court noted that the only way that the defendant can be made aware that a suit has been filed against him or her so that  
300 he/she is given an opportunity to respond either by defending or admitting liability and submitting to judgement is by effecting court process upon her or him. That in this case, the Respondents did not effect court process against the Applicants, neither did they file proof of service as required under Order 5 rule 16 of the CPR.

The second ground is that the Chief Magistrate entertained MC No. 142 of 2022  
305 without jurisdiction. That the matter was a disguised application for judicial review which is under the jurisdiction of the High Court under sections 36 and 37 of the Judicature Act. That the trial Chief Magistrate contravened S. 5 of the Civil Procedure Act when he went ahead to entertain a matter where he had no jurisdiction. That the ex-parte administrative interim orders that were made in effect disposed of the entire  
310 suit before even the case was heard.

Counsel also drew this court's attention to HCCS No. 367 of 2022 and explained that it addresses the same subject matter with MC No.0142 of 2022 which the 1<sup>st</sup> Respondent filed at the Chief Magistrates Court. That HCCS No. 367 of 2022, before Hon. Justice Boniface Wamala is still pending. Counsel submitted that the 1<sup>st</sup> Respondent filing another application for contempt of court, vide MC No. 003 of 2023 and all the interlocutory applications arising therefrom, well knowing that his case before the High Court is still pending contravenes S. 6 of the CPA and offends the lis pendens rule. He relied on the case of ***Equity Bank (U) Ltd –v- Buyinza John MC No. 33 of 2018*** for guidelines in determining whether the suit or proceedings offend the lis pendens rule. He further submitted that it is an abuse of court process for a party to file separate suits in different courts over the same matter and referred this court to the case of ***Kamurasi Charles –v- Accord Properties & Anor SCCA No. 3 of 1996.***

Counsel submitted that MA No. 006 of 2023, where the learned trial Chief Magistrate granted an interim order (ex-parte) after a formal hearing, the Applicants were not served and there is no reason given for not serving them and by so doing the learned trial Chief Magistrate contravened Order 50 rule 3A (4) of the Civil Procedure, (Amendment) Rules, 2019.

Finally, Counsel averred that the learned trial Chief Magistrate exercised jurisdiction with material irregularly when he entertained granted interim orders in MA No. 006 of 2023 arising from MC No. 003 of 2023 for contempt of Court where the applications bore names of parties who were not party to MC No. 0142 of 2022 from which the contempt proceedings arose and the same case, (MC No. 0142 of 2022) having been withdrawn from court. That MC No. 0142 of 2022 was filed by only the 1<sup>st</sup> Respondent (Basajjabalaba) against only the 1<sup>st</sup> Applicant (UMSC) and withdrawn from court on the 5<sup>th</sup> December 2022. That in the application for contempt of court, vide MC No. 003 of 2023 and in MA No. 006 of 2023 where the Chief Magistrate granted an interim order, there were four Applicants and two Respondents. Counsel submitted that the conduct of the trial Chief Magistrate allowing new Applicants who were not party to

the main suit to apply for contempt of court and granting an interim order arising  
340 from the said application was a material irregularity and an abuse of court process.  
That matters were even made worse when there was no related matter pending before  
the Chief Magistrate as the Main Suit, MC No. 0142 of 2022, from which the contempt  
of court proceedings arose had already been withdrawn from court before the same  
learned Chief Magistrate. Counsel relied on the cases of *Specioza Nassuna –v-  
345 Kampala City Council HCCS No. 274 of 1993 and Asa Nabirye & ors –v- Isiko Paul  
HCCA No. 062 of 2016* for emphasis on the effect of withdraw of suits and explained  
that upon withdraw of the main suit, all applications and orders arising therefrom  
collapse with the withdraw. He prayed, basing on the above, that this court be pleased  
to revise and set aside all the orders made by the Chief Magistrate on grounds that  
350 he acted with material irregularity and in abuse of the court process.

### **Submissions for the Respondents**

In reply, Counsel for the Respondents submitted that the Chief Magistrate had  
jurisdiction to entertain the matter in MC No. 0142 of 2022. That the submission of  
Counsel for the Applicants that the orders sought by the 1<sup>st</sup> Respondent were a  
355 preserve of the High Court have no basis and that Counsel did not avail any law that  
bars the Chief Magistrate from handling such application. He relied on the cases of  
*Sentamu Jamilu & 2 others –v- Sekalawa Revision Cause No. 21 of 2018* and *Amir  
Khan –v- sheo Baksh Singh (1885) II C.A. 16, A 237* where the Court held that;

360 *“where a court has jurisdiction to determine a question, it cannot be said that it acted  
illegally or with material irregularity because it has come to an erroneous decision on  
the question of fact or even law.”*

Counsel argued that since the Chief Magistrate had jurisdiction to entertain MC No.  
0142 of 2022, he did not act with material irregularity when he entertained an oral ex-  
parte application for the interim order which he granted.

365 In regard to MC No. 003 of 2023 for contempt of court orders, Counsel submitted that even when the main suit, MC No. 0142 of 2022 was withdrawn, the Applicants violated the orders of the Learned Chief Magistrate while the matter subsisted. That the withdraw of the application, MC No. 0142 of 2022 on the 5<sup>th</sup> December, 2022 does not take away the force of the order of court which had already been issued on  
370 the 2<sup>nd</sup> December, 2022. Counsel clarified that it was MC No. 0142 of 2022 that was withdrawn and not the orders that were issued by the learned Chief Magistrate on the 2<sup>nd</sup> December, 2022. He relied on the case of **Jane Ssempebwa –v- Ndibalekera Magdalene HCMA No.176 of 2019**, where the case of **Hadkinson –v-Hadkison [1952] ALLER** was cited with approval, with court noting that;

375 *“a party who knows of an order of court whether null or valid, regular or irregular, cannot be permitted to disobey it...as long as it existed.”*

Counsel explained that in this case, the election took place on the 3<sup>rd</sup> of December, 2022 after the Chief Magistrate had made orders staying them.

In regard to MA No. 006 of 2023, Counsel argued that the learned trial Chief  
380 Magistrate granted interim orders, pending disposal of the application for a temporary injunction and the main application for contempt of court, which was also still pending before court and the Applicants were served. That the trial Chief Magistrate was guided by the case of **Hadkinson –v- Hadkinson [1952] ALLER 578 which was cited with approval in Kabale University –v-Henry Rwaganika & Anor C.C Appeal No.**  
385 **007 of 2016** where court noted that a party in contempt by disobeying an existing order cannot be heard in a different but related cause of action, until such a person has purged him/herself of the contempt. Counsel further relied on the case of **Wildlife Lodge Ltd. –v- County Council of Narok cited in Kitokyo Wilber William –v- John Kagwa HCMA No. 278 of 2019** where court held that a court of law never acts in  
390 vain and as such issues touching on contempt of court take precedent over any other cases of innovation of the jurisdiction of the court. He averred that the orders in MA

No. 006 of 2023 were not final orders and the Applicants had an opportunity to apply for variation of the orders before the trial Chief Magistrates on the 16<sup>th</sup> January, 2023 when the parties were required to appear in court.

395 On the ground of new parties being brought on board in the application for contempt of court, Counsel argued that the new parties only brought to the attention of the Chief Magistrate's court facts constituting the contempt of its orders. That the new parties (Respondents in this case) only acted in *sui generis* by assisting the Chief Magistrate with information that shows that his orders were violated. He relied on the  
400 case of ***Attorney General –v- Male Mabirizi K. Kiwanuka HCMA No. 843 of 2021 arising from MC No. 287 of 2021.***

In regard to the case pending before the High Court, vide HCCS No. 367 of 2022, Counsel explained that it was different from the case that was filed at Mengo.

All in all, Counsel submitted that this application was brought in bad faith, it is  
405 premature as there are still related suits, vide; MA No. 005 of 2023 and MC No. 003 of 2023 pending before the learned trial Chief Magistrate. That the Applicants are aware and should have filed an appeal as stated in the letter from their lawyers dated 13<sup>th</sup> January, 2023. He prayed that this court finds that this application is devoid of merit, it is not fit for revision and that it should be dismissed with costs.

#### 410 **Analysis**

High Court can only revise a matter after parties have first been given the opportunity to be heard. Where any of the parties have filed an appeal, Court cannot entertain an application for revision.

S. 83 of the Civil Procedure Act, provides for Revision. It states that the High Court  
415 may call for the record of any Magistrate's Court, and if that court appears to have: -

(a) exercised a jurisdiction not vested in it in law;

(b) failed to exercise a jurisdiction so vested; or



(c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice,

420 the High Court may revise the case and may make such orders in it as it thinks fit. Under paragraph 83 (d), parties must first be given an opportunity to be heard before the Revision and under 83 (e) revision should not be made if due to lapse of time or other cause, the revision would cause hardship to any person. There is no pending appeal in this case.

425 Counsel for the Applicants has raised many grounds to show that the learned trial Chief Magistrate exercised his jurisdiction illegally and with material irregularity. I will address the grounds as presented.

**a) Ex-parte interim orders.**

Court record shows that when the Secretary General of the UMSC summoned the 1<sup>st</sup> Respondent to appear before the Commission on the 2<sup>nd</sup> December, 2022 to show cause why his nomination should not be cancelled, the 1<sup>st</sup> Respondent filed a suit; vide; MC No. 0142 of 2022 before the Chief Magistrate's Court at Mengo seeking for orders to quash the invitation to appear before the Electoral Commission. On the very day that the suit was filed, the Chief Magistrate heard an ex-parte oral application by  
435 Counsel for the 1<sup>st</sup> Respondent for an interim order and granted what he called an administrative interim order, directing the 1<sup>st</sup> Applicant, (UMSC), to carry on with the elections of persons already nominated to contest for the office of Chairman General Assembly of the UMSC. The orders would stay in place for three days. The case was then fixed for hearing on the 5<sup>th</sup> December, 2022. When the matter came up for  
440 hearing on the 5<sup>th</sup> December, 2022 as scheduled, Counsel for the 1<sup>st</sup> Respondent presented a letter requesting to withdraw the matter from Court and the Chief Magistrate allowed the withdrawal.

In *Giuliano Gariggio-v- Calaudio Casadio, Civil Application No. 3 of 2013, Court noted that;*

445 *"The granting of interim orders is meant to help the parties to preserve the status quo  
and then have the main issues between them determined."*

It is trite law that in an application for interim order, the Applicant must adduce  
evidence to show that the matter is so urgent that it deserves an interim intervention  
to meet the ends of justice. Where the Applicant alleges that his or her rights are in  
450 danger of being violated, he or she must prove to court that if the order sought is  
not granted the Applicant will suffer irreparable injury or loss which cannot be  
compensated by way of damages. Court intervenes only if it is proved that no useful  
remedy will be available to the Applicant at the end of the trial if the interim order is  
not granted.

455 In this case, there was no formal application for interim orders before the Chief  
Magistrate, which means that there was no evidence before the Chief Magistrate.  
Counsel for the Applicant only made an oral submission without evidence and the  
trial Chief Magistrate went ahead to grant orders directing the 1<sup>st</sup> Applicant to execute  
the electoral process as earlier slated. The directives would in effect alter the status  
460 quo and dispose of the suit before court contrary to the purpose of interim orders,  
which is to maintain the status quo. I find that the trial Chief Magistrate exercised his  
jurisdiction with material irregularity when he entertained an application for interim  
orders without evidence/formal application before him and went ahead to make  
orders which were altering the status quo and in effect disposing of the main suit  
465 before court.

In MA No. 006 of 2023, the matter was filed in court on the 4<sup>th</sup> of January, 2023, heard  
ex-parte and granted by the learned Chief Magistrate on the 10<sup>th</sup> January, 2023. There  
is no evidence on court record to show that the Applicants were served with the  
application and yet the period of 6 days between filing and hearing of the application  
470 was, in my view, enough for the Applicants to be served. All that the Applicants saw  
were an ex-parte interim order staying all activities of the 1<sup>st</sup> Applicant. It is a

fundamental principle of natural justice to always let the other side to be heard as well, (*audi alteram partem*). Each person must have reasonable notice of the case he/she has to meet, and given an opportunity of stating his/her case and answering where possible or necessary, any arguments or accusations put forward against him/her.

Court record also shows that MA No. 006 of 2023 (for the interim order), MA No. 005 of 2023 (for temporary injunction) and MC No. 003 of 2023 for contempt of court were neither dated nor endorsed by court.

In *Hussein Badda –v- Iganga District Land Board and Others MA No. 479 of 2011* Zehurikize, J, (as he then was) noted that;

*“An application is by its nature a summons issued by court requiring the respondent to attend court on the appointed date and time. It becomes valid only when it has been given a date, signed and sealed. It is after the above has been done by the court that the application is capable of validity giving rise to another application”.* (see also **Order 5 rule 1(5) CPR**).

In view of the above legal position, I would find that all the above applications were not valid as they were neither dated, signed nor sealed as required by law when the learned trial Chief Magistrate proceeded ex-parte to hear the application for interim orders. The orders that were issued in MA No. 006 of 2023 halting all the activities of the 1<sup>st</sup> Respondent, arising from an application which is not valid, are a nullity. Therefore, I find that the learned trial Chief Magistrate exercised his jurisdiction with illegally and with material irregularity when he entertained and granted ex- parte interim orders in MA No. 006 of 2023 which was not dated, with a signature and the seal of court.

## 2. Lack of jurisdiction by the Chief Magistrate to entertain MC No. 0142 of 2022

I find no merit in this ground because the matter was withdrawn from court on the  
500 5<sup>th</sup> December, 2022 before it was heard. This also applies to submissions in respect of  
HCCS No. 367 of 2022, before Hon. Justice Boniface Wamala and the *lis pendens* rule.  
There is no case pending before the Chief Magistrate's Court at Mengo. Counsel for  
the 1<sup>st</sup> Respondent withdrew, with leave of court, MC No. 0142 of 2022 on the 5<sup>th</sup>  
December, 2022. The administrative orders that the Chief Magistrate gave on the 2<sup>nd</sup>  
505 December, 2022, lapsed three days after the date they were issued, meaning that they  
also lapsed on the 5<sup>th</sup> December, 2022.

I would also find that MC No. 003 of 2023 for contempt of court proceedings cannot  
stand as it has no foundation case from which it arises. Be that as it may, in the case  
of ***Hon. Sitenda Sebalu –v- The Secretary General of the East African Community,***  
510 ***Reference No. 8 of 2012***, court noted that to prove contempt, the complainant must  
prove the four elements of contempt as follows: -

- i. existence of a lawful order;*
- ii. the potential contemnor's knowledge of the order;*
- iii. the potential contemnor's ability to comply; and*
- 515 *iv. the potential contemnor's failure to comply*

In this case, there is no existence of a lawful order. The orders that the Applicants are  
said to have disobeyed in MC No. 0142 of 2022 have been established to have been  
arrived at by the trial Chief Magistrate illegally and in exercise of his jurisdiction  
irregularly. They also lapsed on the 5<sup>th</sup> December, 2022 and the suit from which they  
520 arose was withdrawn from court on the same day when they lapsed. So, there are no  
lawful orders in place for the application of contempt.

I find it not necessary to address my mind on the ground of new Applicants in MC  
No. 003 of 2023 for contempt and the applications arising therefrom because I have  
already established that they are not valid applications.

525 Therefore, I find merit in this application which I do hereby allow with orders and  
declarations that: -

1. The learned trial Chief Magistrate at Mengo Court illegally and irregularly exercised his jurisdiction when he granted ex-parte interim orders in MC No. 0142 of 2022 and in MA No. 006 of 2023.
- 530 2. The ex-parte proceedings, ruling and orders in Misc. Application No. 006 of 2023 be and are hereby revised and set aside.
3. It is hereby declared that MA No. 003 of 2023 for contempt of court, MA No. 005 of 2023 for temporary injunction and MA No. 006 of 2023 for interim orders are not valid applications before court and are hereby struck  
535 off the court record.
4. The Respondents pay costs of this application.

I so order.

Dated, signed and delivered by mail at Kampala this 14<sup>th</sup> day of February, 2023.

540 **Esta Nambayo**  
**JUDGE**  
**14<sup>th</sup> February, 2023.**