THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO. 306 OF 2020

KIWANUKA BENDICTO GALIKO========== APPLICANT

VERSUS

DEMOCRATIC PARTY========== RESPONDENT

BEFORE: HON. MR. JUSTICE PHILLIP ODOKI

RULING

Introduction

[1] The Applicant filed this application for Judicial Review under Section 33 and 36 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71 and Rules 3,4,5,6 &7 of the Judicature (Judicial Review) Rules, 2009 and Article 9 of the Democratic Party Constitution.

[2] The application seeks for, a declaration that the acts of the Respondent of denying him the opportunity to freely participate in the National Delegates Conference of the Respondent after he fulfilled all the requirements was discriminatory, illegal, ultra vires, null and void, contrary to the rules of natural justice and amounts to inhuman and degrading treatment; a declaration that the Respondent's Electoral Commission that conducted the elections was not legally constituted; an order of certiorari quashing the declaration of Gerald Sirande and other office bearers of the Respondent for having been marred with irregularities; an injunction to restrain the Respondent from future undemocratic practices manifested in the previous electoral process; a writ of mandamus compelling and directing the Respondent to hold credible free and fair elections of its leaders in which he should be allowed to freely take part; general and exemplary damages; and costs of the application.

The Applicant's case:

[3] The Applicant's case as deduced from the Notice of Motion, the affidavit in support and the affidavit in rejoinder, is that the Applicant has been an active member of the Respondent since 1990. He expressed interest to contest for the post of Secretary General of the Respondent. He picked nomination forms, filled them, returned them and paid the nomination fees as had been advised by the Respondent's leadership. On the 18th – 20th September, 2020 the Respondent organized the National Delegates Conference at Sir Samuel Baker School, in Gulu District. The Respondent deliberately and without any lawful justification, refused to invite him to attend the conference. However, through a tip from a friend, he attended the conference. The Chairperson Electoral Commission of the Respondent struck off his name from the lists of candidates, denied him an opportunity to declare his candidature to the delegates/electorates, unjustifiably denied him the right, as a candidate, to attend and participate in the Respondent's Delegates Conference. He further contended that the Chairperson Electoral Commission of the Respondent fraughted the democratic process and announced members who had not participated in the electoral process including Gerald Siranda as the Respondent's office bearers. The Applicant deponed that he lodged a complaint to the office of the Secretary General of the Respondent but no action was taken to address the irregularities. He further deponed that the Respondent's Constitution was amended to include qualifications that were not required of a person to contest for leadership of the party in contravention of the law.

[4] The Applicant thus contended that, the elections conducted at the Delegates Conference on the 18th – 20th of September, 2020 at Sir Samuel Baker School, Gulu, were not free and fair and undermined the democratic principles enshrined in Article 9 of the Constitution of the Respondent; the Delegates Conference was illegally convened, the Electoral Commission was illegally constituted; the office bearers were announced on a pre–prepared list; the constitutions was amended without following the law; all the irregularities were reported but ignored; and all efforts to have a fair hearing were frustrated by the Respondent.

The Respondent's case:

[5] The Respondent opposed this application. It relied on the affidavit in reply sworn by Mr. Mutenyu Kennedy - the Chairperson of the Elections Management Committee of the Respondent. He deponed that the Applicant was not eligible to contest for the position of Secretary General of the Respondent because, for one to occupy that position, he or she must have been an active member of the Respondent for at least three years. According to the Respondent, the Applicant did not have the locus standi to file this application, the application is incompetent, grossly misconceived, bad in law, barred by law, frivolous and vexatious, an abuse of court process and this court has no jurisdiction whatsoever to entertain it. The Respondent prayed that this application should be dismissed with costs.

Legal representation:

[6] At the hearing, the Applicant was self – represented. The Respondent was represented by Mr. Luyimbazi Nalukoola of M/s Nalukoola, Kakeeto Advocates and Solicitors.

Legal submissions:

[7] At the close of the hearing, the court gave the parties directives to file written submissions, which directives were complied with. The Applicant basically repeated the averments in his affidavits. In their submissions, counsel for the Respondent raised 2 preliminary objections regarding the competency of this application. First, counsel submitted that the application was served on the Respondent outside time. Counsel pointed out that although the application was filed on the 14th of October 2020 and endorsed by the Registrar on the 20th October 2020, the Respondent was served on 1st December 2020 outside time. Counsel relied on the authority of ***Nazziwa Resty vs. Mwesigye Bernice & ors, Misc. Cause no. 360 of 2020*** where this court dismissed an application which had been served outside the timelines provided for under Order 5 of the Civil procedure rules. Secondly, counsel submitted that the Applicant has no locus standi to bring this application since the Applicant was not an active member of the Respondent, he was not eligible to

contest for the position of Secretary General of the Respondent. He further submitted that the Applicant did not pay the requisite fees for anyone intending to contest for the position of Secretary General of the Respondent and the documents presented by the Applicant to the court do not belong to him but instead they belong to Benedicto Kiwanuka.

Consideration and determination of the court.

[8] Before determining the preliminary objections raised by counsel for the Respondent and the merits of this application, I have noted that long after both parties had closed their respective cases by filing their respective affidavits and written submissions, on the 21st April 2021 the Applicant filed 2 affidavits. One was sworn by himself and another was sworn by Mayanja Vincent. They were referred to as supplementary affidavits. The two affidavits contained several documents which were not part of the affidavit in support of the application and the affidavit in rejoinder. I have also noted that the Applicant, in his written submissions, attached and relied on documents which had not been part of his affidavit in support of the application and in rejoinder.

[9] Rule 6 of the ***Judicature (Judicial Review) Rules, 2009*** provides that applications for Judicial Review have to be by Notice of Motion. The Notice of Motion has to be in the form specified in the Schedule to the Rules. The Schedules to the Rules mandates the applicant to attach all the affidavits and exhibits he or she intends to use at the hearing. In addition, Rule 7(4) of the Rules makes it mandatory for each party to an application for judicial review to supply to every other party copies of every affidavit which he or she proposes to use at the hearing. Affidavits are a way of giving evidence to the court other than by giving oral evidence. They are intended to allow a case to run more quickly and efficiently as all parties know what evidence is before the Court. Once the hearing has commenced and even submissions filed, as in the instant case, a party cannot be permitted to file more affidavits or adduce evidence through their written submissions. Such a procedure not only offends the provisions of the law, but also deprives the opposite party of the opportunity to respond to such evidence and therefore violate the right to fair hearing.

The affidavit of the Applicant and that of Mayanja Vincent filed on the 21st April 2021are accordingly struck off the court record. Similarly, the documents attached to the Written submissions of the Applicant are struck off the court record.

[10] I also note that counsel for the Respondent, in their submission, introduced a matter which was not raised in their affidavit in reply. That is, that the Applicant did not pay the requisite fees for nomination. This was an attempt, from the bar, to rebut the evidence of the Applicant that he paid the relevant fees. This practice is unacceptable and I wish to condemn it. That part of the submissions of counsel for the Respondent is accordingly disregarded.

[11] I shall now proceed to deal with the preliminary objections of counsel for the Respondent. On the 1st preliminary objection which was that the application was served out of time, Order 5(1) of the Civil Procedure Rules provides that;

> *"(2) Service of summons issued under subrule (1) of this rule shall be effected within twenty-one days from the date of issue; except that the time may be extended on application to the court, made within fifteen days after the expiration of the twenty-one days, showing sufficient reasons for the extension."*

[12] Whereas the above provision relates to service of summons, it also applies to service of Notice of Motion. In ***M.M Sheikh Dawood versus Kenshwala and Sons HCCS No. 14 of 2009***, Madrama J, as he then was, held that;

> *"The motion must be served on the respondent before the date stipulated in the motion for hearing at the time of its issuance by the court. Failure to serve a summons within 21 days under order 5 rule 1 of the CPR is fatal and if time is not extended, it shall be dismissed. The general rules on service of summons under order 5 of the Civil Procedure Rules must apply."*

[13] In the instant case, the court record shows that the Notice of Motion was lodged in court on the 14th October 2020, signed by the Registrar on 20th October 2020 and was issued for service on 29th October 2020. On 13th November, Namakula Patience Yunia, a court process server, swore an affidavit indicating that she received the Notice of Motion on 29th October 2020 and served it on the Respondent on the same day. The affidavit of service indicates that service was effected at the Respondent's offices on the 2nd floor, City House, William Street, Kampala. According to the affidavit of service, the Notice of Motion was received by Semanda Mayini an Administrative Officer of the Respondent. This affidavit was not challenged by the Respondent.

[14] In addition, in their letter dated 27th November 2020 which was filed on the court record on the 30th November 2020, counsel for the Respondent indicated that their Secretary General brought to their attention, by WhatsApp, the affidavit in support of the application. In that letter, counsel for the Respondent requested the Applicant to serve them with the application. The Respondent did not explain how their Secretary General got the affidavit in support of the application. The fact that the Secretary General had the affidavit in support of the application is a clear indication that the Respondent was served with the application as indicated by the court process server. Given that the Notice of motion was issued on the 20th October 2020 and served on the 29th October 2020, I find that service was within the 21 days prescribed by the law. This preliminary objection is accordingly overruled.

[15] On the 2nd preliminary objection, regarding the locus standi of the Applicant to file the instant application, in ***Hon. Sekikubo Theodore and 2 others versus Attorney General, HCMC No. 092 of 2015***, Musota J. (as he then was) held that;

> *"It is trite law that locus standi is the way in which the courts determine who may be an applicant for Judicial Review. It is only those with locus standi that can be permitted to have their request heard.... A person found to have no locus standi will*

ordinarily not have standing to bring an action and the courts cannot hear his/her complaint." (Underlined for emphasis).

[16] Rule 3A of the ***Judicature (Judicial Review) Rules, 2009*** (***as amended by S.I. 32 of 2019***) provides that;

"Any person who has a direct or sufficient interest in the matter may apply for judicial review." (Underlined for emphasis).

[17] In addition to the above rule, Rule 7A (b) of the same rules make reference to an aggrieved person. It states that;

"The court shall in determining an application for judicial review, satisfy itself of the following-
(a)…
(b) that the aggrieved person has exhausted the existing available remedies within the public body or under the law; and
(c)…" (Underlined for emphasis).

[18] In the case of ***Dickens Kagarura Versus Minister of Works and Transport and 3 others HCMC No.149 of 2012,*** Mwangusya J (as he then was), held that;

"…for one to succeed in an application for Judicial Review that party must be a 'person aggrieved' which according to the case of ***Liverpool Corporation, exparte Liverpool Taxi Fleet Operators Association [1872] OB 299, [1972]2 All 589*** *…includes any person whose interest may be prejudicially affected by what is taking place. This is what Denning J states: -*

> *"…the writ of prohibition and certiorari lie on behalf of any person whose interest may be prejudicially affected by what is taking place.*

It does not include a mere busy body who is interfering in things which do not concern him: but it does include any person who has a genuine grievance because something has been done or may be done which affects him.""

[19] In the instant case, the Applicant deponed that he expressed interest to contest for the post of Secretary General of the Respondent. He picked nomination forms, filled them, returned them and paid the nomination fees as had been advised by the Respondent's leadership. He attached to his affidavit in rejoinder evidence of payment of UGX 1,700,000/= out of UGX 2,000,000/= for nomination fees. These averments were not rebutted by the Respondent. It is trite law that where certain facts are sworn to in an affidavit, the burden to deny them is on the other party and if the opposite party does not, they are presumed to have been accepted. *See* ***Samwiri Massa versus Rose Achen [1978] HCB 297; Makerere University versus St. Mark Education Institute Ltd. & Others. [1994] KALR 26; Eridadi Ahimbisibwe versus World Food Programme & Others [1998] KALR 32; Kalyesubula Fenekansi versus Luwero District Land board & Others, Miscellaneous Application No. 367 of 2011*****.**

[20] In my view, from the time the Applicant returned his nomination forms to the Respondent and was allowed to pay nomination fees, the Applicant acquired interests in the election process and the National Delegates Conference of the Respondent. His interest could be prejudicially affected by any decisions taken by the Respondent in that regard. The contention of the Respondent that the Applicant was not its active member for 3 years and therefore not qualified to contest, is a matter that touches the merit of the decision of the Respondent. Judicial review is not concerned with the merits of the decision, but rather with the decision-making process and whether the public body has acted lawfully. I therefore find that the Applicant has locus standi to bring this application. The 2nd preliminary objection is accordingly overruled.

[21] I shall now proceed to determine the merits of this application. There are basically three issues for the determination of the court.

i. Whether this application meets all the factors to be considered in an application for judicial review.
ii. Whether this application discloses any grounds for judicial review.
iii. What remedies are available to the parties.

Issue 1: Whether this application meets all the factors to be considered in an application for judicial review.

[22] Rule 7A of the ***Judicature (Judicial Review) Rules, 2009*** (***as amended by S.I. 32 of 2019***) provides for factors that have to be considered in handling an application for judicial review. It states that:

> *"7A. **Factors to consider in handling applications for judicial review***
>
> *(1) The court shall, in considering an application for judicial review, satisfy itself of the following—*
>
> *(a) that the application is amenable for judicial review;*
>
> *(b) that the aggrieved person has exhausted the existing remedies available within the public body or under the law; and*
>
> *(c) that the matter involves an administrative public body or official."*

[23] On whether this application is amenable to judicial review, there is no unanimity on the test of what is amenable to judicial review. In ***David Edward Ames versus the Lord Chancellor and 2 others [2018] EWHC 2250 (***Admin) Holroyde L.J. held that:

> *"First there is no universal test of when a decision will have a sufficient public law element to make it amenable to judicial review. It is a question of degree. Secondly, in deciding whether a particular impugned decision is amenable to judicial review, the court must have regard not only to the nature, context and consequences of the decision, but also to the grounds on which the decision is challenged."*

[24] According to ***Ssekaana Musa, Public Law in East Africa, p. 37 (2009) LawAfrica Publishing, Nairobi),*** for an application to be amenable for judicial review, two essential elements need to be satisfied. First, the body or person whose decision is under challenge must be a public body or a person exercising functions in a public body, whose actions or failure to act can be challenged by judicial review and second, the subject matter of the challenge must involve claims based on public law principles and not the enforcement of private law rights.

[25] **In *R (Hopley) v Liverpool Health Authority* [2002] EWHC 1723 (Admin)** Pitchford J posed a three-stage test: whether the defendant was a public body exercising statutory powers; whether the function being performed in the exercise of those powers was a public or a private one; and whether the defendant was performing a public duty owed to the claimant in the particular circumstances under consideration.

[26] It therefore appears to me that the crucial consideration is whether there is sufficient public law element to a particular decision. The court has to consider the nature of the decision, the source of the power and whether the grounds of challenge raise public law issues.

[27] In the instant case, the functions which the Respondent was exercising during the delegates conference was a public function and not a private function. The subject matter of the challenge involves public law principles and not the enforcement of private law rights. The Applicant contended that, the Respondent acted illegally and in contravention of the rules of natural justice when it denied him the opportunity to participate in the Delegates Conference even after he had fulfilled all the requirements, the Delegates Conference was illegally convened, the Electoral Commission was illegally constituted, the office bearers were announced on a pre– prepared list, the constitutions was amended without following the law and all efforts to have a fair hearing were frustrated by the

Respondent. All these are matters within the domain of public law. I therefore find that this application is amenable to judicial review.

[28] On whether the matter involves an administrative public body or official, rule 2(f) of the ***Judicature (Judicial Review) Rules, 2009*** (***as amended by S.I. 32 of 2019***) provides that, a public body includes a political party. In the instant case, the Respondent is a political party. It is therefore a public body whose actions or those of its officers can be subject of judicial review.

[29] On whether the Applicant exhausted the existing remedies available within the public body or under the law, Article 9 of the Democratic Party Constitution, which was availed to the court by the parties, gives a party member the right to appeal against any decision taken against him to the National Executive Committee or any appropriate appeal organ of the party. In his paragraph 8 of the affidavit in support of the application, the Applicant stated that he lodged a complaint to the office of the Secretary General but no action was taken to address the irregularities. The Respondent did not rebut this averment. The Respondent is presumed to have accepted this averment. I therefore find that the Applicant exhausted the existing remedies available within the Respondent.

[30] In the end, I find that this application meets all the factors to be considered in an application for judicial review as provided for in Rule 7A of the ***Judicature (Judicial Review) Rules, 2009*** (***as amended by S.I. 32 of 2019***).

Issue 2: Whether the application discloses any grounds for judicial review?

[31] Rule 7A (2) of the ***Judicature (Judicial Review) Rules,*** *supra,* provides that;

> *"The court shall grant an order for judicial review where it is satisfied that the decision making body or officer did not follow due process in reaching a decision*

and that, as a result, there was unfair and unjust treatment." Underlined for emphasis.

[32] In ***Council of Civil Service Unions versus Minister of the Civil Service (1985) AC 174,*** Lord Diplock observed that;

> *"...one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality," the second "irrationality" and the third "procedural impropriety."*

Illegality:

[33] In ***John Jet Tumwebaze Vs Makerere University Council & Ors Civil Application No. 78 Of 2005*** the court held that:

> *"**Illegality** is when the decision making authority commits an error of law in the process of taking or making the act, the subject of the compliant. Acting without jurisdiction or ultra vires, or contrary to the provisions of the law or its principles are instances of illegality."* (Underlined for Emphasis).

[34] In the instant case, the Applicant alleged in the Notice of Motion that the Delegates Conference was illegally convened, the Electoral Commission was illegally constituted, the Respondent announced members on a pre – prepared list of office bearers including that of the Secretary General and the Respondent's constitution was amended without following the law. However, in his affidavits, the Applicant did not demonstrate how the Delegates Conference was illegally convened, how the Electoral Commission of the Respondent was illegally constituted and which provisions of the law were breached. Although the Applicant deponed that the Respondent's constitution was amended to include qualifications that were not required of a person to contest for leadership of the party in contravention of the law, the Applicant did not demonstrate to the court which

provision of the Respondent's constitution was amended, in contravention of which law and which qualification was introduced.

[35] Be that as it may, I have examined the constitution of the Respondent as far as it relates to the composition of the Delegates Conference, how the Delegates Conference is convened and the quorum at the Delegates Conference. Article 10 provides that:

> *"The supreme organ of the Party shall be the National Delegates Conference which shall consist of:*
>
> *a) All members of the National Council;*
>
> *b) All District Women Leaders and Deputy District Women Leaders;*
>
> *c) All District Youth Leaders and Deputy District Youth Leaders;*
>
> *d) Five delegates from each Parliamentary Constituency."*

Article 12 provides that:

> *"The National Delegates Conference shall be convened and shall meet once every year on such date and at such place as shall be determined by the National Executive Committee and such a meeting shall be called the Annual Delegates Conference."*

Article 72 provides that:

> *"The Secretary General or the Secretary of a Party organ branch or sub-branch as the case may be, shall convene any meeting by circulating a notice in writing specifying the agenda, date and venue for the meeting at least one month in the case of a delegates conference and at least 14 days in any other case, prior to the date of such meeting PROVIDED that non receipt of the notice by any person entitled to receive the same shall not invalidate such meeting and PROVIDED further that in case of urgency a shorter notice may be given."*(Underlined for emphasis).

Article 73(a) provides that:

> *"a) The quorum for the meeting of Delegates Conference shall be one third of all the persons entitled to attend and vote at the meeting."*

[36] The Applicant did not prove that the date and place of the Delegates Conference was not determined by the National Executive Committee as provided for by Article 12 of the Respondent's constitution. He did not also prove that the agenda, date and venue of the Delegates conference was not communicated in accordance with Article 72 of the Respondent's constitution. The Applicant only deponed that the Respondent deliberately refused to officially invite him to attend the conference, but he managed to attend through a tip from a friend. In my view, the manner prescribed for calling of the National Delegates Conference of the Respondent does not include any official invitation to any person. What it provides for is a notice, which the Applicant did not prove that it was not given. In any case, even though the Applicant did not receive notice of the meeting, it is clear from reading of Article 72 of the constitution of the Respondent that non receipt of the notice by any person entitled to receive the same does not invalidate such meetings.

[37] I have also examined the constitution of the Respondent on who supervises the elections at the National Delegates Conference. Article 65 provides that:

> *"a) Election by the National Delegates Conference shall be presided over and supervised by a member elected by the National Delegates Conference immediately prior to the announcement of the elections."*

[38] The Applicant did not adduce any evidence to prove that the National Delegates Conference was not presided over and supervised by a member elected by the National Delegates Conference, immediately prior to the announcement of the elections, as provided for by Article 65 of the Respondent's constitution.

[39] On whether the Respondent's Electoral Commission Chairperson announced members on a pre – prepared list of office bearers including that of the Secretary General, Article 17 (c) of the Respondent's constitution provides that;

"There shall be a National Executive Committee composed of the following who shall be elected at the Annual Delegates Conference.

a) the National Chairman and the Deputy National Chairman;
b) the President and the Vice President;
c) the Secretary General and the Deputy Secretary General;
d) the National Treasurer and the Deputy National Treasurer;
e) the National Organizing Secretary the Deputy National Organizing Secretary;
f) the National Publicity Secretary and the Deputy National Publicity Secretary;
g) the National legal Advisor and the Deputy National legal Advisor;
h) the National Women Leader, the Deputy National Women Leader and the Women Secretary;
i) the National Youth Leader, the Deputy National Youth Leader and the Deputy National Youth Secretary;
j) sixteen Regional Representatives one from each sub region of four regions of Uganda;
k) four Vice presidents one from each of the four regions of Uganda." (Underlined for emphasis).

[40] Article 74(a) of the constitution of the Respondent provides for the mode of election of office bearers. It states that:

"Voting at the meeting of any Party organ shall be by show of hands save that voting for election to the office – bearers and candidates shall be by secret ballot and save as otherwise provided for in the constitution a decision on any voting shall be by simple majority." (Underlined for emphasis).

[41] The Applicant pleaded, in the Notice of Motion, that the Respondent announced members on a pre – prepared list of office bearers including that of the Secretary General. In his affidavit in support of the application, he deponed that the Electoral Commission

Chairperson announced members who had not participated in the election process, including Gerald Sirande, as the Respondent's office bearers. The Respondent did not rebut this averment. The Respondent is thus presumed to have been accepted that fact. I therefore find that the Applicant proved that the Respondent did not conduct the elections in accordance with the party constitution, therefore acted illegally.

Irrationality

[42] In ***Council of Civil Service Unions versus Minister of the Civil Service (1985) AC 174,*** Lord Diplock observed that;

> *"By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" (Associated Provincial Pictures Houses Ltd v Wednesbury Corporation [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."* Underlined for emphasis.

[43] In the Wednesbury case, Lord Greene MR at page 229 stated that

> *"It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it*

lay within the powers of the authority. Warrington LJ in Short v Poole Corporation [1926] Ch. 66, 90, 91 gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another." Underlined for emphasis.

[44] In the instant case, the Applicant did not plead or adduce any evidence that would suggest that the Respondent's decision was irrational.

Procedural impropriety.

[45] In ***John Jet Tumwebaze*** (supra) the Court held that:

> ***"Procedural impropriety*** *is when there is a failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in the non – observance of the rules of natural justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision."*

[46] The Applicant pleaded, in the Notice of Motion, that all efforts to have a fair hearing by the Respondent was not granted. In his affidavit in support of the application, the Applicant deponed that he expressed interest to contest for the post of Secretary General of the Respondent. He picked nomination forms, filled them, returned them and paid the nomination fees as had been advised by the Respondent's leadership. However, the Respondent's Chairperson Electoral Commission struck off his name from the list of candidates, denied him an opportunity to officially declare his candidature to the delegates/electorates. He lodged a complaint to the Chairperson Electoral Commission of

the Respondent but no action was taken by the Respondent to address the irregularities and he was denied a right to fair hearing. The Respondent did not rebut the above averments of the Applicant. Mr. Mutenyo Kenedy, who swore an affidavit in reply, deponed that the Applicant was not eligible to contest for the position of Secretary General of the Respondent because he was not an active member of the Respondent for at least 3 years.

[47] As I have already stated in paragraph 20 above, the contention of the Respondent that the Applicant was not its active member for 3 years and therefore was not qualified to contest, is a matter that touches the merit of the decision of the Respondent. Judicial review is not concerned with the merits of the decision, but rather with the decision-making process and whether the public body has acted lawfully. The Applicant expressed interest to contest for the position of Secretary General of the Respondent. He picked nomination forms, filled them, returned them and paid the nomination fees. His nomination fees of UGX 1,700,000/= was duly received by the Respondent. The Respondent was under a duty to give the Applicant a fair hearing before taking a decision to deny him the opportunity to contest. I therefore find that the decision of the Respondent to strike off the name of the Applicant from the list of candidates and to deny him to contest without giving him a fair hearing was procedurally improper.

Issue 3: What remedies are available to the parties?

[48] The Applicant sought for several remedies. One of the remedies sought was for an order of certiorari to quash the declaration of Gerald Sirande and other office bearers of the Respondent for having been marred with irregularities. The other remedy which was sought by the Applicant was for a writ of mandamus compelling and directing the Respondent to hold credible free and fair elections of its leaders in which he (the Applicant) should be allowed to freely take part. I note that the Applicant did not join Gerald Sirande and the other office bearers as parties to this application. The orders of certiorari and mandamus that he sought has the effect of removing them from office without being giving them an opportunity to be heard. Those prayers are accordingly rejected.

[49] The Applicant also prayed for general and exemplary damages. In judicial review, there is no right to claim for losses caused by the unlawful administrative action. Damages may only be awarded if the applicant, in addition to establishing a cause of action in judicial review, establishes a separate cause of action related to the cause of action in judicial review, which would have entitled him or her to an award of damages in a separate suit. Rule 8(1) of the ***Judicature (Judicial Review) Rules, 2009*** thus provides that:

> *"**8. Claims for damages***
>
> *(1) On an application for judicial review the court may, subject to sub rule (2), award damages to the applicant if,*
>
> *(a) he or she has included in the motion in support of his or her application a claim for damages arising from any matter which the application relates; and*
>
> *(b) the court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his or her application, he or she could have been awarded damages.*

[50] The additional cause of action which may be added to the application for judicial review may include a claim for breach of statutory duty, misfeasance in public office or a private action in tort such as negligence, nuisance, trespass, defamation, interference with contractual relations and malicious prosecution. See the case of ***Three Rivers District Council versus Bank of England (3) [3003]2 AC 1;*** the case of ***X(Minors) versus Bedfordshire County Council [1995]2 AC 633,*** and ***Fordham, Reparation for Maladministration: Public Law Final Frontiers (2003) RR 104*** at page 104 -105.

[51] In the instant case, the Applicant did not, in addition to establishing a cause of action in judicial review, establishes a separate cause of action related to the cause of action in

judicial review, which would have entitled him to an award of damages in a separate suit. The claim for damages is accordingly rejected.

[52] The Applicant also prayed for costs of this application. The general rule is that costs follow the events and a successful party should not be deprived of costs except for good cause. See: Section 27 of the Civil Procedure Act. This application has partly succeeded and partly failed. I shall therefore only award to the Applicant half of the taxed costs of this application.

[53] In the end, after carefully considering the application, the following orders are hereby made;

i. A declaration that the decision of the Respondent to strike off the name of the Applicant from the list of candidates and to deny him to contest without giving him a fair hearing was procedurally improper.
ii. A declaration that the decision of the Respondent to announce the name of office bearers of the Respondent from a pre – prepared list was illegal and in contravention of the constitution of the Respondent.
iii. The Respondent is ordered to pay the Applicant half of the taxed bill of costs.

I so order.

Dated and delivered by email this 11th day of September 2023

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Phillip Odoki

JUDGE