

The Hon. Justice Tsekoko

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

MISC. APPLICATION NO. 20/94

KAJUMBULA ROSE NADIOPE : : : : : PETITIONER
VERSUS

1. THE RETURNING OFFICER

2. TIRUSASIRA KATONGOLE DIFAS : : : : : RESPONDENTS

BEFORE: THE HONOURABLE JUSTICE C. M. KATO

R U L I N G

This is a petition lodged by the petitioner Kajumbula Rose Nadiope requesting this court to revise the ~~decision~~ of the Ag. Chief Magistrate Jinja dated 7th July 1994. The back ground of this petition is that the present petitioner Kajumbula Nadiope Rose was one of the candidates who took part in the March 1994 Constituent Assembly Elections. She lost and filed a petition challenging the out come of the elections which were unfavourable to her. The petition was dismissed by the Ag. Chief Magistrate Jinja on the ground that it had been lodged out of time. She (Nadiope) then filed this petition requesting this court to revise the decision of the learned Ag. Chief Magistrate, Jinja.

The petition was filed under the provisions of section 84 of the Civil Procedure Act. The main ground upon which the petition was based was that the learned Ag. Chief Magistrate had dismissed the petitioner's earlier petition in an arbitrary manner after she had made her secret inquiries in the absence of the parties involved, in so doing she had acted illegally with material irregularity therefore there was miscarriage of justice.

Before I proceed to deal with the merits and demerits of this petition it is important to point out here that this court made an earlier ruling with regard to the issue of whether or not this court has jurisdiction to entertain this type of

application in view of the provisions of rule 28(3) of the Constituent Assembly Rules; in that ruling I resolved that although this court has no appellate jurisdiction to entertain appeals arising out of a petition filed under the Constituent Assembly Statute the court has jurisdiction to revise the decision of the lower courts in those matters under the provisions of sections 3(1) and 11 of the Judicature Act and also section 84 of the Civil Procedure Act. All I can do here is to emphasise that this court's jurisdiction to make a revisional order was not affected by rule 28(3) of the Constituent Assembly Court Rules.

One other preliminary matter which I would like to dispose of is the issue of the distinction between an appeal and a revision, while the powers of the court under the former are very wide its powers under the latter are restricted to the provisions of section 84 of the Civil Procedure Act. I have been prompted to bring out this distinction because Mr. Mugenyi the learned counsel who argued this petition on behalf of the petitioner appeared to have argued it as if it was an appeal which is not the case.

Turning to the merits and demerits of this petition, the learned counsel for the petitioner Mr. Mugenyi who addressed this court at a great length on a number of issues pointed out that the learned Ag. Chief Magistrate acted with material irregularities when she did not give the parties a chance to address her or to be heard after she had made her investigation into the matter and that she did not make a finding that the time to file the petition had expired under the Constituent Assembly Rules. On his part Mr. Kania who appeared for the 2nd respondent was of the view that no material irregularities had been occasioned by the finding of the Ag. Chief Magistrate and that before the Ag. Chief Magistrate had made her ruling all parties involved in this matter addressed her. At this point I must point out that the hearing of this petition proceeded ex-parte in respect to the 1st respondent under Rule 17(1)(a) of the Civil Procedure Rules because the learned counsel for the

1st respondent did not turn up at the time when this petition came up for hearing although it had been adjourned in her presence.

The provisions of section 84 of the Civil Procedure Act under which this petition was filed read as follows:-

"84. The High Court may call for the record of any case which has been determined by any subordinate or magistrate's court and if such court appears to have --

- (a) exercised a jurisdiction not vested in it in law; or
- (b) failed to exercise a jurisdiction so vested; or
- (c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice,

the High Court may revise the said case and may make such order therein as it thinks fit:

Provided that no such power of revision shall be exercised--

- (1) unless the parties shall first be given the opportunity of being heard; or
- (ii) where, from lapse of time or other cause, the exercise of such power would involve serious hardship to any person."

Although the petition itself does not specifically state under which of the 3 sub-sections of the above section the petition was filed, according to the arguments advanced in court when arguing this petition it was clear that the petition was based on subsection C of the section which is that the learned trial magistrate exercised her jurisdiction with material irregularity and injustice. The part of the learned Ag. Chief Magistrate's ruling which seems to have been the subject of this petition is contained in the following paragraph:-

However on inquiring after the preliminary objection raised by counsels for the respondents, I have found that fees were fully paid on 3/5/1994 when the petitioner was cited as having deposited in court a sum of 147,000/- vide receipt no. 1715768. The inquiry also revealed that on 3/4/1994 the petitioner deposited in court a sum of 3,000/- vide no. 1691497 that is on the date of filing the applica-

the said Court may find the same and may make such
this petition in conformity with the provisions of
McIntire's ruling which seems to have been the subject of
investigation and inquiry. The fact of the investigation itself
trial matters excepted from jurisdiction as vested; or
exercised a jurisdiction not vested in it in law; or
based on subsection C of the section which in fact the learned
Court said it had quite appears to have --
when arising this position it was clear that the petition was
which has been determined by my submission to Mr. Justice
petition was filed. According to the arguments advanced in court
#84. The learned Judge said in the record of my case
under which of the 7 subdivisions of the above section "the

[illegible]

tion. Clearly this was an outright digression from the provisions of the Constituent Assembly Rules S.I, 4/94 which rules are mandatory."

It is the case for the petitioner that the passage quoted above amounted to material irregularity because the learned Ag. Chief Magistrate had acted on her own to find more about the matter before her in the absence of the parties. With due respect I do not accept that view because in that passage ~~what~~ the learned Ag. Chief Magistrate is saying is simply that when she checked on the records she confirmed what Mr. Kania had ~~earlier~~ told her namely that the fees were not paid in time and that the last payment was made on 3/5/94. It was on that basis that she held that the case had been filed out of time. It is not therefore proper to suggest that the inquiries she carried out were irregular or were the basis of her decision. In her ruling what she referred to as an inquiry was in fact a normal step to clear up her mind on what the learned counsel had already addressed her upon. The learned counsel for the petitioner conceded that the last payment of money was on 3/5/94 and that was the finding of the learned trial magistrate ~~it was also~~ that Mr. Kania had told her in his earlier submission. I find no material irregularity which has resulted in any kind of injustice to warrant this court revising the ruling of the learned Ag. Chief Magistrate under section 84(c) of the Civil Procedure Act.

Mr. Mugenyi the learned counsel for the petitioner made a number of points in his forceful submissions but which I do not feel were relevant to this kind of petition. I will however deal with some of those issues briefly although they have no direct bearing to the final outcome of this petition.

Mr. Mugenyi contended that payment of court fees is not the price to be paid by a party for his litigation but it is revenue collection by the government and that revenue can be collected at any time even after the case has been filed. He based this argument mainly on the provision of section 100 of the Civil Procedure Act. With due respect I agree with the

the Civil Service Commission. The Commission has been organized to study the various departments of the Government and to report to the President on the results of its study. The Commission has been organized to study the various departments of the Government and to report to the President on the results of its study. The Commission has been organized to study the various departments of the Government and to report to the President on the results of its study.

It was a very fine day, and the weather was just what we needed. The children were very happy and played for hours. We had a picnic under a big tree and enjoyed it very much. The food was delicious and the company was excellent. We all had a very good time and it was a most successful day. The children were very tired when we went to bed, but they were all very happy and content. We had a very good night's sleep and woke up feeling refreshed and ready for the next day. The day was a most successful one and we all enjoyed it very much. The children were very happy and played for hours. We had a picnic under a big tree and enjoyed it very much. The food was delicious and the company was excellent. We all had a very good time and it was a most successful day. The children were very tired when we went to bed, but they were all very happy and content. We had a very good night's sleep and woke up feeling refreshed and ready for the next day.

learned counsel's argument to the extent that the court can demand for proper court fees to be paid even after the case has been filed but according to the authorities available including the case of : UNTA EXPORTS LTD. V. CUSTOMS (1970)EA 648 which Mr. Mugenyi himself quoted a case is not validly before the court until the last installment of the court fees has been paid.

The other point raised by Mr. Mugenyi is that the Constituent Assembly Statute does not state the time when the cause of action arises; with due respect to the learned counsel Rule 28(1) of the Constituent Assembly Rules clearly says that an election petition shall be filed within 30 days from the polling day which means the cause of action arises from the Polling day. Although this provision may sound not fair for a person who may not get the results of the elections until after a long time but that is not the same as saying that the statute does not provide for the day on which the cause of action arises.

Having said all that I find that this petition cannot succeed. It is accordingly dismissed with costs to the two respondents. It is hereby ordered that the ruling of the learned Ag. Chief Magistrate dated 7th July, 1994 be adhered to. Mugenyi himself quoted a case is not validly before the court until the last installment of the court fees has been paid.

C.M. KATO

JUDGE

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