

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

ELECTION PETITION NO. 0019 OF 2016

WANYAMA GILBERT MACKMOT.....PETITIONER

VERSUS

1. HISA ALBERT

2. ELECTORAL COMMISSION.....RESPONDENTS

RULING

BEFORE: THE HON. LADY JUSTICE EVA. K. LUSWATA

Counsel for the applicant sought by oral application for an order of discovery against the 2nd respondent [under O.10 r.12] for certain specified documents. The request he reasoned, would be to assist the parties and court to determine the real matters in controversy. Counsel Amujong protested stating that Rule 15 and rule 10 is applicable in the circumstances and for the former, there was need to file a formal application by Chamber Summons to that effect. She also indicated he need to raise two preliminary objections against the petition to wit: -

[1] Payment of court fees.

[2] Framing of the affidavit in support of the Petition with regard to the facts given as the deponent's knowledge or belief.

Discovery proceedings are generally provided for under Order 10 CPR. In my view, both rule 12 and 15 thereof would be applicable to a party that seek discovery against another. In my view, rule 12 [1] appears to be a rule of wider application for any party who seeks the discovery of any document, the restrictions of allowing the prayer are left to the court's discretion in rule 12[2] and the parameters that the court may consider are given.

On the other hand, rule 15 appears to permit the party seeking discovery to do so against the other party in whose pleadings certain documents are mentioned. It is a more restrictive rule. I do not see how an application can be fettered to use only Rule 15 when more accommodating provisions are available in Rule 12.

As counsel for the petitioner rightly put it, Election petitions ought to be expeditiously handled and needless applications avoided. Again these are merely matters of evidence which is yet to be proved and counsel for the 2nd respondent did not give any strong reasons why Rule 15 should be used or show any prejudice if rule 12 is followed in this case.

My decision is to allow the oral application for discovery under O.10 rule 12 CPR. The petition seeks to nullify the elections of the Sigulu Islands Subcounty and the facts both in the Petition and affidavit are indeniably centered on that aspect. Much of the contestations revolve around issues of voting, vote management and accountability. The 2nd respondent's reply likewise addresses those issues to give them opposing version.

The 2nd respondent is by law and in practice the custodian of all three documents being sought for discovery. I consider them necessary documents for the full and effective determination of the petition. It is in the interests of justice that they are produced for inspection without further delay that a formal application may entail.

Thereby Ms. Amujong's objection is overruled and I order the 2nd respondent to produce the documents mentioned to counsel for the applicant for inspection within 10 days hereof. The applicant shall met the costs thereby.

With respect to the preliminary objections, I deduce them to be matters if decided in favour of the 2nd respondent could dispose of the petition altogether.

In my opinion, they are better addressed before the petition takes off.

Let Ms. Amujong file brief written submissions by 5/10/2016 and a response by 11/10/2016 and a rejoinder if any by 13/10/2016. Matter will come up for mention on 13th October 2016 at 11.00am and counsel for the 1st respondent is accordingly informed through his client.

Costs of the day shall be in the cause.

I so order.

EVA K. LUSWATA

JUDGE

29/9/2016