

REPUBLIC OF UGANDA

**IN THE SUPREME COURT OF UGANDA
AT MENGO**

CORAM: J.W.N. TSEKOOKO, JSC. (AS SINGLE JUDGE)

CIVIL APPLICATION NO. 12 OF 2009

BETWEEN

SITENDA SEBALU.....APPLICANT

AND

- | | | |
|----|--------------------------|--------------|
| 1. | HON. SAM K. NJUBA | } RESPONDENT |
| 2. | THE ELECTORAL COMMISSION | |

(Application arising from Supreme Court Civil Appeal No.6 of 2009)

RULING OF THE COURT

This ruling relates to a notice of motion filed by Sitenda Sebalu, the applicant, under Rules 5 and 42(2) and (3) of the Supreme Court Rules and Rules 34 and 36 of the Parliamentary Election (Election Petitions Act) Rules (- SI. 141 - 2). In the application, the applicant seeks leave to be allowed to file a memorandum of Appeal and the Record of Appeal.

The notice of motion contains seven grounds upon which the application is based. The applicant has sworn an affidavit in support of his application explaining why he seeks leave. The first respondent, the Hon. Sam K. Njuba, has sworn an affidavit in reply opposing the application essentially on the ground that the applicant's affidavit's is bad in

law. The second respondent has not filed any affidavit in reply. During the hearing, the applicant was represented jointly by Mr. Bakiza of Bakiza & Co. Advocates and Mr. Semuyaba of Semuyaba Iga & Co Advocates. The respondents were represented by Mr. Yusuf Nsibambi.

Mr. Bakiza who appears as lead counsel for the applicant basically referred to the contents of the Notice of Motion and supporting affidavits. He relied on particularly two decisions of this court **Loy Kageni Kiryapawo Vs Gole Nicholas Davis** (S.ct Civil Application 15/2007) and my decision in **Joy Kabatsi Kafura Vs Anifa Kawoya Bangirana** (Sup. Ct. Civil Application No. 30 of 2007) to support the view that there are no suitable rules governing institution of Election Petition Appeals to this Court and as a result the applicant acted promptly in filing the memo and record of appeal in less than 30 days before he realized that he may have done so out of time. Mr. Bakiza and Mr. Semuyaba argued that there are therefore good grounds for allowing the application.

Mr. Nsibambi, for the two respondents, opposed the application and asked for the same to be dismissed with costs. He also asked that the memorandum and record of appeal lodge in Court by applicant be struck out.

I have carefully studied the notice of motion, the accompanying affidavit and the annexures thereto; I have studied the affidavit of the first Respondent and the arguments of each side. There is no doubt that because of the absence of relevant Election Petition (Election Petitions Act) Rules specifically regulating the institution of Election Petition Appeal to this Court, there exists a void. I held in the **Joy Kabatsi Kafura** ruling that because of the void the Rules of this Court apply in a situation like the present. I have not been persuaded to change that opinion.

Accordingly I think that the impugned Election Petition Appeal No. 6 of 2009 was filed within the period stipulated by the existing Rules of this Court. In a way therefore this application which is superfluous must succeed.

The applicant must serve the memorandum of appeal and the Record of Appeal upon the two respondents within ten (10) days from the date hereof.

Costs of this application shall abide the final decision of this Court in the appeal.

Delivered at **Mengo** this **29th** day of **July, 2009**.

J. W. N. TSEKOOKO.

JUSTICE OF SUPREME COURT.