

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA

AT KAMPALA

CONSTITUTIONAL APPLICATION NO. 27 OF 2015

(Arising out of Constitutional Petition No. 31 of 2015)

The Conservative Party :: Applicant

VERSUS

- 1. The Attorney General of Uganda
- 2. The Electoral Commission :: Respondents

CONSTITUTIONAL APPLICATION NO. 30 OF 2015

(Arising from Constitutional Petition No. 34 of 2015)

- 1. Iddi Ouma
- 2. Paul Ssembajjwe :: Applicants

VERSUS

- 1. The Attorney General
- 2. The Electoral Commission :: Respondents

CONSTITUTIONAL APPLICATION NO. 31 OF 2015

- 3. Iddi Ouma
- 4. Paul Ssembajjwe :: Applicants

VERSUS

- 3. The Attorney General
- 4. The Electoral Commission :: Respondents

(Arising from Constitutional Application No. 30 of 2015 and itself arising out of Constitutional Petition No 34 of 2015)

Coram: Hon. Justice Remmy Kasule, JA sitting as a single Justice of the Court of Appeal/Constitutional Court

RULING

This Ruling is in respect of Constitutional Application No. 27 Of 2015, 30 of 2015 and 31 of 2015 as consolidated.

3 The consolidation was at the request of Counsel for the applicants
5 and with the consent of all Counsel for respondents.

The applications were submitted upon and Court proceeded to deal with them as applications for interim orders.

The applicants in the consolidated applications seek interim orders staying the operationalisation of the ***Presidential Elections (Amendment) Act 14 of 2015*** and the ***Parliamentary Elections (Amendment) Act 15 of 2015*** pending the determination of the substantive application for a temporary order and/or final determination of ***Constitutional Petitions No. 31/2015 and 34/2015***.

In the Constitutional Petitions 31/2015 and 34/2015, the respective applicants challenge Section 1 of the ***Presidential Elections (Amended) Act, 14 of 2015*** whereby the nomination fee for a Presidential candidate to stand for an election was increased from “four Hundred” to “one thousand” currency points, that is 55 from Uganda shs. 800,000/= to Ug. Shs. 20,000,000 .

The applicants also challenge Section 1 of the ***Parliamentary Elections (Amendment) Act, 2015***, whereby the nomination fee for a Parliamentary Candidate was increased from “ten” Currency points to “one hundred and fifty” Currency points, that is from Ug.

Shs. 200,000/= to Ug. Shs. 3,000,000/=

The applications are supported by affidavits in support by Mr. Semusu Mugobansonga, Secretary General of the Conservative Party and Mr. Paul Ssembajjwe, a registered voter and a certified Political Party Flag bearer of Buvuma Constituency.

The contention of the applicants in the stated Constitutional Petitions is that the Section increasing nomination fees of candidates for both Presidential and Parliamentary Elections is unconstitutional by contravening **Articles 1(2), (3) and (4), 21(1) and 91(1) and 94 (1) of the Constitution.**

The Hon. Attorney General, Frederick Ruhindi as well as Oluka Henry, Ag. Commissioner, Directorate of Civil Litigation, Attorney General's Chambers, filed affidavits in reply opposing the applications.

Eng. Badru M. Kiggundu, Chairperson of the Electoral Commission, through affidavits filed on his behalf also opposed the applications.

At the hearing learned Counsel Rwakafuzi Ladislaus, Ssemwanga Frederick, Sserunkuma Bruno, Isaac Ssemakadde and Aaron Kiiza appeared for the applicants, while Kosea Kasibayo State Attorney and Jude Mwassa, Senior Legal Officer, Electoral Commission,

respectively represented the Attorney General and the Electoral Commission, the respondents to the applications.

The powers of this Court to determine an application for an interim order is discretionary. **Rule 2(2)** of the Judicature (Court of Appeal) Rules, which applies to this case through operation of **Rule 23(I) of the Constitutional Court (Petitions and References) Rules: SI 91 of 2005**, vests in this Court powers to the effect that **“Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the Court..... to make such orders as may be necessary for attaining the ends of justice or to prevent abuse of the process of any such Court.....”**

The granting of an interim order is meant to help the parties to preserve the status quo and then have the main issues between them determined by the full Court: See: **Uganda Supreme Court Civil Application No. 11 of 2014 Bitamisi Namuddu vs Rwabaganda Godfrey.**

In Supreme Court Civil Application No. 19 of 2008: Hwang Sung Industries Ltd vs Tajdin Hussein & 2 others, the Court (Okello, JSC,) held that:

“For an application for an interim order of stay, it suffices to show that a substantive application is pending and that there is a serious threat of execution before the hearing of the pending substantive application for stay. It is not necessary

to pre-empt consideration of matters, necessary in deciding whether or not to grant the substantive application for stay.”

Bearing the above principles of law in mind, I proceed to resolve whether an interim order should or should not be issued in this case.

It is an uncontested fact that Constitutional Petitions Numbers 31 and 34 of 2015 are still pending determination by this Court, no Thus the applicants satisfy part of the requirement for an interim order.

However, unlike in the ***Hwang Sung Industries Ltd*** case (Supra) where the application was to stay execution of a decree of the Court as between individual parties to a Civil Suit, in the present us application, the interim order sought is not merely to stay execution. The practical effect of the interim order sought, if granted, would be to put a stop to the whole election process of both Presidential and Parliamentary Elections until the substantive applications and/or the Constitutional Petitions are disposed of by 120 Court or otherwise. This obviously will take some time depending on the readiness of the parties and their respective Counsel for the determination of the same and also upon the cause list fixtures of this Court. Yet, Ugandans, as a whole Nation, must hold and complete the election exercise by February, 2016. It is through this 125 exercise that Uganda voters exercise their fundamental right to vote and through the power of the vote determine their democratic governance for the next five (5) years starting 2016.

Both respondents as the Government and the Electoral Commission as the body responsible for conducting elections in Uganda have o been involved in preparing this national exercise since the last elections, held in 2011.

Indeed as regards **Act 14 of 2015**, the **Presidential Elections**

(Amendment) Act, the candidates for Presidential Elections 2016 have already paid the increased nomination fees, been declared as duly nominated presidential candidates by the Electoral Commission and each one of them is now conducting political campaigns all over the country canvassing for votes. To issue an interim order to upset such a status is thus to cause much injustice.

As for the Parliamentary Elections (Amendment) Act 15 of 2015, the nomination of Parliamentary candidates for the parliamentary election 2016 begins to-morrow i.e. 02.12.2015, hardly a day from the date of delivery of this Ruling. Any order stopping the collection of nomination fees for Parliamentary Elections will result in stopping the nomination exercise for the said elections from being conducted.

On the other hand, on the side of applicants, the **Constitutional Petitions No. 31 and 34 of 2015** can be pursued in the course of and even after the elections and the Constitutional Court will, in the exercise of its powers, be in a position to grant appropriate reliefs to all parties, the applicants inclusive.

This will of course depend upon the ultimate merits or demerits of the stated Constitutional Petitions.

In the circumstances therefore, the applicants in this case cannot be equated to be in the same position of that applicant who is under “a serious threat of execution” and thus can only be saved from having his/her status rendered nugatory by an interim order of stay, who existed in the **Hwang Sung Industries Ltd case**, where His Lordship Okello, JSC, framed the test for Court to determine the application for an interim order of stay. In the case under consideration, the applicants even in the absence of an interim order

stopping collection of nomination fees, cannot be said to have had the reliefs they seek in the Constitutional Petitions to having been rendered nugatory.

Therefore, by reason of the special circumstances of this case, this Court has to resort, once again, to **Rule 2(2)** of the Rules of this Court. In the exercise of its inherent powers, this Court is of the considered view and thus holds that the ends of Justice are better attained in this case, by this Court not granting the interim orders prayed for by the applicants in the consolidated applications. To grant such interim orders, whatever the period the orders will last, will stop the democratic exercise of all voting Ugandans to have Presidential and Parliamentary elections during the already scheduled periods which is a Constitutional Command to both Government and the Electoral Commission and every Ugandan

citizen. That, if allowed to happen, will cause much injustice to the whole nation.

Let the applicants pursue the prosecution of the Constitutional Petitions for the reliefs they seek without any interim orders being first issued, since the Constitutional Court will, depending on the merits of the petitions, be able to award the necessary appropriate reliefs on determining those petitions.

Accordingly this Court declines to issue the interim orders prayed for by the applicants. The consolidated applications stand dismissed.

As to costs, this is a matter of great public importance in shaping democratic governance in Uganda. Court therefore orders that each party is to bear its own costs of the applications.

Dated at Kampala this 1st day of December, 2015.

Remmy Kasule
Justice of Constitutional Court