

5 **THE REPUBLIC OF UGANDA**

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

CIVIL APPLICATION NO. 22 OF 2020

(ARISING FROM CIVIL APPLICATION NO. 21 OF 2020)

10 **(ARISING FROM CIVIL APPLICATION NO. 19 OF 2020)**

(ARISING FROM CIVIL APPEAL NO. 19 OF 2016)

(Arising from High Court Misc. Cause No. 0086 of 2015)

BETWEEN

1. UGANDA PEOPLES CONGRESS

15 **2. THE UPC ELECTORAL COMMISSION :::::::::::APPLICANTS**

VERSUS

PROF. EDWARD KAKONGE ::::::::::: RESPONDENT

20 **RULING OF MIKE J. CHIBITA; JSC**

This is an application brought under **rules 2(2), 6(2)(b), 42, 43(1), 50 and 51 of the Judicature (Supreme Court Rules) Directions**, seeking for the following orders:

- 5 (i) An interim order staying execution and/or effecting part of
the decision and orders of the Court of Appeal of Uganda
at Kampala, in **Miscellaneous Application No. 19 of**
2016, delivered on the 29th day of July 2020, until the final
determination of the Applicants' substantive application
10 for stay of execution in this court.
- (ii) An interim Injunction restraining the Applicants' bankers,
to wit, Orient Bank and Housing Finance from
implementing the decision of the Court of Appeal stopping
the Applicants from operating their accounts in the said
15 banks until the disposal of the substantive Application for
Stay of execution in this court.
- (iii) Costs of the application.

The Notice of Motion is supported by an affidavit which was sworn by Hon.
James Michael Akena, the party President, on behalf of the applicants.

- 20 Prof. Edward Kakonge, life member and former National Chairman of
UPC, swore an affidavit in reply.

There was no affidavit in rejoinder.

Facts:

- An application for the writ of Certiorari, **Miscellaneous Cause No.**
25 **86 of 2015** was filed in the High Court by the Respondent, seeking
for orders, *inter alia*, to quash the decision of the 2nd Applicant
declaring James Michael Akena as President-Elect of the 1st
Applicant. The judge granted the order.

5 Justice Steven Kavuma, (DCJ), as he then was, of the Court of Appeal, granted an Interim Order, staying the orders of the High Court, in **Miscellaneous Application No. 26 of 2016**, pending disposal of the application for stay of execution.

The application for stay of execution, Court of Appeal **Miscellaneous Application No. 19 of 2016**, was disposed of on 29th July, 2020. The
10 orders of the Court of Appeal, in that application were, inter alia:

- (i) The delegates Conference of the 1st Applicant scheduled for 1st August, 2020 be stayed, and:
- (ii) The Applicants shall not operate accounts held at Orient
15 Bank and Housing Finance Bank until final disposal of **Civil Appeal No. 20 of 2016**

It is these orders that the Applicants are seeking to stay.

On the 7th of September, 2020, during the pendency of this application, the final judgment in **Civil Appeal No. 20 of 2016** was
20 delivered.

Representation.

At the hearing of the application, on 8th September, 2020, the Applicants were represented by Counsel Caleb Alaka and Counsel Fred Kato. The Respondent was represented by Counsel Fred
25 Businge. They filed written submissions in accordance with a timetable given by court.

The gist of the Applicants' submissions is centred around their dissatisfaction with part of the decision of the Court of Appeal in

50 **Miscellaneous Application No. 19 of 2016** delivered on 29th July, 2020.

They also rely on the fact that the Applicants filed Supreme Court **Civil Application No. 21 of 2020** for a substantive stay of execution of the orders arising out of Court of Appeal **Miscellaneous Application No. 19 of 2020**.

They submitted that it is only fair, just, equitable and in the interest of justice that their application for an Interim Order is granted.

The Respondent, in reply, opposed the application for an Interim Order. They based the bulk of their grounds on the fact that Court of Appeal **Civil Appeal No. 20 of 2020** was finally determined by the judgment of Justice Irene Mulyagonja delivered on 7th September, 2020.

Furthermore, that the Order for temporary stay in **Miscellaneous Application No. 19 of 2016**, the basis upon which the application was filed, was issued by the consent of both parties. Additionally, they averred, the order for stay was to operate from 29th July, 2020 until the final determination of Court of Appeal **Civil Appeal No. 20 of 2016**.

The judgment in that Appeal having been delivered therefore, the Respondent contends, there is no basis for the instant application. The Respondent also challenged the legal basis of the application.

5 **Resolution**

This application, indeed, arises from Supreme Court **Civil Application Nos. 19 and No. 20 of 2020** of the Supreme Court. It was filed pending the outcome of **Civil Appeal No. 20 of 2016**.

The orders of the Court of Appeal in **Civil Application No. 19 of 2019** read as follows:

a) The Delegates Conference slated for 1st August 2020 shall be stayed.

b) Applicant shall not operate the UPC bank accounts in Orient Bank and Housing Finance Bank until resolution of the Court of Appeal Civil Appeal Number 20 of 2016
(underlined for emphasis)

The Orders that the applicants are seeking to stay were time bound, i.e. until resolution of Court of Appeal **Civil Appeal No. 20 of 2016**.

The condition precedent upon which those orders were tagged has elapsed by delivery of the judgment in that appeal. The Orders sought to be stayed are, in effect, non-existent.

Those orders ceased being effective upon delivery of the judgment of the Court of Appeal on 7th September, 2020.

For an application for an interim order of stay to succeed, it must show that a substantive application is pending and that there is serious threat of execution before the hearing of the pending substantive application. This is trite law.

The basis for the instant application is no longer pertaining. This means that there is no legal and factual basis for the application. The

5 ground upon which the application was made shifted. The Application has no more leg to stand on.

The application has been rendered nugatory. It is moot and academic. That being the case, the application must collapse. There is no need of delving into the merits of whether the application is properly before this Court or not.

10 In the result, I would dismiss the instant application with no order as to costs.

Dated at Kampala this30th.....day ofSept.....2020

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Mike J. Chibita

JUSTICE OF THE SUPREME COURT