

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
CRIMINAL SESSION NO. 83 OF 2013

1. **KAKOOZA NURUATI**
2. **KYALIGONZA SAMUEL:::PLAINTIFFS**

VERSUS

1. **MUTEBI ERISA**
2. **NAMIRO ROSETTE::: DEFENDANTS**

BEFORE: HON. MR. JUSTICE WILSON MASALU MUSENE

RULING

The Applicants, Kakooza Nuriati and Kyaligonza filed a plaint under Article 50 of the Constitution of the Republic of Uganda against the 1st Defendant/Respondent, Mutebi Erisa a resident of Ssumbe Zone, and Namiro Rosette, a Sub-county Chief of Wakiso Sub-county. They allegedly brought the action in public interest on their own behalf, seeking for declaratory order that the 1st Defendant did not have authority and/or mandate to appoint the 1st Defendant as a Chairman LC1 Ssumbe Zone. They also sought a permanent injunction restraining the 1st Defendant from continuing to run his illegal activities, general damages and costs.

After filing of the above case, which is pending, they have now applied for a temporary injunction restraining the respondents/defendants from running or continuing to run the office of LC1 of Ssumbe Zone, Ssumbe Parish till the disposal of the main suit.

The application was supported by an affidavit of Kakooza Nuriati, a resident and registered voter of Ssumbe Zone, Ssumbe Parish, Wakiso District, and another affidavit sworn by Kyaligonza Samuel another registered voter. All those affidavits are detailed and on Court record. Also on record are written statements of Defence to the main suit by the Defendants/Respondents and an affidavit in reply in respect of the application for temporary injunction sworn by Mutebi Erisa.

The Plaintiffs/Applicants are represented by M/S Ambrose Tebyasa & Co. Advocates, while the Defendants/Respondents are represented by M/S Nammbale, Nerima & Co. Advocates and legal Consultants. And for purposes of expediency, both sides were directed and agreed to filing of written submissions in respect of the application for temporary injunction. All the written submissions are on record and have been studied and internalised by this Court. In summary, the gist of the application is that the LC1 Chairperson of Ssumbe Zone, one Sheikh Ahmed Nvule, and his Vice-Chairperson, one Kalyango Gerald resigned and have not been yet replaced. And that following those resignations, the 2nd defendant/respondent, connived with 1st Defendant/Respondent and organized a meeting and illegally appointed the 1st Defendant/Respondent Mutebi Erisa as the LC1 Chairperson of Ssumbe Zone, and that despite the denunciation of actions by the Registrar of Wakiso District, the 1st Respondent, Mutebi Erisa has continued to run the office of LC1 Chairperson illegally with the support of the 2nd Respondent, Namiiro Rosette, a sub-county Chief of the area.

M/S Ambrose Tebyasa & Co. Advocates submitted that the applicants have a prima facie case with probability of success as the election and/or appointment of Mutebi Erisa as the LC1 Chairman of Ssumbe Zone was illegal and contravened S.50 A(1) of the Local Government Act; and Article 59 of the Constitution.

They further submitted that if the Temporary injunction is not granted, the Applicants and the Public of Ssumbe Zone will suffer irreparable damage and injury as the 1st Respondent will continue to occupy the office of LC1 Chairperson illegally. They went on to elaborate on the irreparable injury and quoted the case of **David Wesley Tusugirwe Vs Attorney General, Constitutional Application No.6 of 2013** in support.

Lastly, M/S Ambrose Tebyasa & Co. Advocates submitted that the balance of convenience favours the applicants, the government and residents in respect of whom the 1st Respondent, Mutebi Erisa has illegally executed documents and the third parties. M/S Nammbale, Nerima & Co. Advocates for the Respondents on the other hand submitted that whereas the Applicants filed Civil Suit No. 83 of 2013 by way of ordinary plaint under Article 50 of the Constitution, they were seeking for an injunction under O.41 rules 1 & 3 of the Civil Procedure Rules which was a wrong procedure. They stated that the procedure of challenging LC Election as the Applicants are purporting to do under the Local Government Act is by way of filing an election petition,

which they should have done. And that since the right procedure was not followed, then there are little or no chances of success of the main suit. Counsel for the Respondents further submitted that since the 1st Respondent, Mutebi Erisa has been in the Office since 30/05/2012, an order to stop him will have the effect of removing him and thus disposing of the main case. And that a vacuum will be created which will compromise the activities of the village and maintenance of law and order.

As already noted, this Court has fully studied and internalized the submissions of both sides in this application for temporary injunction. Whereas the applicants urge that the election of Mutebi Erisa, with the support of Namiiro Rosette a sub-county Chief of Wakiso Sub-county Chief before transfer to Gombe sub-county was in contravention of the local government Act and the Constitution, the Respondents deny that it was an election. Under paragraph 6 and 7 of the affidavit in reply by Namiiro Rosette, she depones that following the resignation of LC1 Chairperson of Ssumbe Zone, and in consultation with the Resident District Commissioner and other leaders, she convened a meeting of the village council to harmonise the leadership in the area and to maintain law and order.

And that the residents chose the 1st Respondent, Mutebi Erisa to perform the duties of the village Chairperson on a temporary basis. So as far as this Court is concerned, a pertinent issue as to whether Namiiro Mutebi, a Sub-county Chief of the area should have been sued in her personal capacity when she acted in her official capacity as a sub-county Chief of the area to ensure maintenance of law and order in Ssumbe Zone, will have to be resolved first before an injunction can be granted to dismantle what she did. That is because if she was acting in her official capacity, then it should have been Wakiso District Local Government to have been sued. And if the election of Mutebi Erisa as LC 1 Chairman of Ssumbe Zone was the one in contention, then S.168 of the Local Government Act, Cap. 243 would come into play. It provides:-

“an election petition relating to elections at village, Parish or county shall be filed in the Magistrate Grade 1 Court having Jurisdiction in the Constituency.”

So before harmonizing and deciding on what procedure should have been followed and in which Court this case should have been filed, and whether against Wakiso District Local Government or Namiiro Rosette as an individual, it is now not clear whether the present suit has chances of

success or whether applicants have a prima facie case with a probability of success for purposes of securing a temporary injunction.

Secondly and as was held in **Viola Ojok & Another V Andrew Ojok, HCT Misc. Application No. 197 of 2007, arising from Civil Suit No. 63 of 2007** before Egonda Ntende J, as he then was, if the effect of the temporary injunction is to alter the status quo, then the same cannot be granted. In the present case, one Mutebi Erisa is alleged to have been chosen by a village Council Committee to perform the duties of the village Chairperson on a temporary basis, under the Administrative direction of the Sub-county Chief Namiiro Rossette. Whether that was proper or not is a matter to be decided in the main suit after hearing evidence from both sides. But for now, that status quo has to remain as the effect of grant of temporary injunction prayed for will be removing of the person performing those duties temporarily. And not only will a vacuum be created, but it will result into literally disposing off the whole case. For that matter and in view of the other reasons stated, I decline to grant the Temporary Injunction. The application for Temporary Injunction is accordingly hereby dismissed with costs.

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W. MASALU MUSENE

JUDGE

6/12/2013

M/S Nambozo Irene holding brief for Ojok Geoffrey, Counsel for Applicant.

Applicants present.

Respondents present.

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W. MASALU MUSENE

JUDGE

Court: Ruling read out in open Court.

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W. MASALU MUSENE

JUDGE