THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA

MISC. APPLICATION NO. 46/2006
(Arising from Election Petition N0. 008/2006)

ONGOLE JAMES MICHAEL .....APPLICANT

VERSUS

1. **ELECTORAL COMMISSION**
2. **EBUKALIN SAM**.....RESPONDENTS

RULING

BEFORE: HON. MR. JUSTICE MUSOTA STEPHEN

This petition was scheduled to be heard on 22/1/2006. Hearing did not start because the petitioner filed an application for review vide Misc. Application 46 of 2006. The respondents in the said application are the Electoral Commission and Ebukali Sam.

According to the Notice of Motion filed under Art. 28 of the Constitution, S. 82 (1) (b) of the Civil procedure A ct, 046 r1(1) (b) and 0.52 rr.1 and 3 of the Civil procedure rules, by M/S Twanebereho & Co. Advocates, the applicant is asking this court to review its order rejecting late affidavits filed in court without its leave. The orders sought are that:-

(1). The applicant's affidavit in rejoinder and two other affidavits be admitted in evidence.
(2). Provision be made for costs of the application.

The general grounds in the Notice of Motion are that:-
(i) The applicant/petitioner was still within the time to file more affidavits as evidence in support of the Petition.
(ii) The court had not yet given the parties the time within which to stop filing the affidavits in support of their pleadings.
(iii) It is within the interest of justice that the petitioner/applicant's affidavit in rejoinder and two other affidavits are admitted in evidence.
(iv) It can only be with the filing of these affidavits that the applicant will have a fair hearing.

The Notice of Motion is supported by the affidavit of he applicant in which he swears that he went to depone his affidavit on 13.11.206 but Magistrates were not at the station. As a result he could not depone to the affidavit. That he left the rejoinder at the registry because it was not sworn. That evidence in Election Petitions is by affidavit and court had not given time within which to stop filing affidavits in support oft he petition.

That the answers of the 1st and 2nd respondents in the petition require a rejoinder. Finally that it is within the interest of justice that court permits the remaining affidavits as evidence.

In their affidavit in reply, the 1st respondent deponed that the application filed by the applicant/petitioner is incompetent and does not meet the requirements for review. That court used its discretion in the circumstances of the case to order that new affidavits filed by the petitioner be struck out and that no new

affidavits be filed. That each case is decided on its merits and allowing new affidavits would prejudice the respondent. Finally that the conduct of the petitioner was dilatory and he gave no sufficient cause to explain why he had failed to file his affidavits in time.

Mr. Ddungu Henry deponed to the affidavit in reply in respect of the 2nd respondent. He swore that there is no new or important matter or sufficient reason to warrant review of the order of this court and the application is a hindrance to the expeditious disposal of the petition. That the applicant's Counsel served an affidavit in support a few minutes before hearing commenced, which was unfair and was going to delay the progress of the petition which is supposed to be heard expeditiously. That Counsel for he petitioner was satisfied with court's order and scheduling was completed. Finally that once the case was fixed for haring, the petitioner should have closed filing endless affidavits which would deter expeditious determination of the petition.

In his submission, Mr. Twarebireho said that there is good cause for a review of the decision rejecting late affidavits. That if the said affidavits are not allowed it will not be a fair hearing. That court can use its inherent powers to allow the affidavits as certain courts have done even after scheduling.

In reply to Mr. Twarebirehos's submission, Mr. Mwaka for the first respondent said that this court exercised its discretion and struck out the affidavits. That sufficient cause necessitating a review should be analogeous to provisions in 0.42 CPR, which is now 046. That the law refers to mistake apparent on the face of the record or sufficient cause. That under the law court has no discretion to generally consider an application for review. That words ''sufficient reason" are confined to a reason sufficient on grounds analageous to those in the law. As regard injustice, learned counsel submitted that it is a matter for appeal not review. What is a good ground for appeal may not be a good one for review. That the submissions by Mr. Twarehireho are suitable for appeal. That the application be dismissed with costs.

In this submission, Mr. Ssekaana for the 2nd respondent associated himself with Mr. Mwaka that this application does not satisfy 046 CPR because no mention is made of any new matter or evidence, mistake or sufficient cause. That injustice is a two way. Late affidavits would hinder the progress of the petition and will affect the time frame for the completion of the petition. That the application be dismissed with costs.

I have addressed my mind to the application and supporting affidavits. I have related the same to the respective submissions by learned Counsel. I have taken into account the law applicable. An order for review can successfully be sought when the legal requirements as enacted under S. 82 of the Civil procedure Act and 0.46 r. 1 of the Civil procedure Rules exist.

The applicant has not shown that my order is appellable but no appeal has been preferred. My ruling was interlocutory and made during scheduling which is a trial procedure. If an appeal is to be preferred, it has to be against a final judgment disposing of the petition.

Like wise, it has not been shown that even if my order is not appellable, the applicant has discovered a new and important matter of evidence which he could not before my ruling after exercising due diligence or that the said new and important evidence was not within their knowledge and could not be produced by the applicant. All legal requirements to secure a review have to be proved together because even if the applicant proved the requirements in 0.46 r.1 (a) and (b) CPR, he/she must prove that there is a mistake or error apparent on the face of the record and/or that sufficient cause exists to warrant a review.

Throughout the web of submission by learned counsel for the applicant, there was no mention that any of the above grounds existed to support his application. The power for review exercisable by the High Court under S. 82 of the Civil Procedure Act and 0.46 r.1 of the Civil Procedure Rules should not be exercised

for the convenience of any given legal situation. Power to review is a legal mechanism which must only be invoked in accordance with the law and in appropriate situations. It should not be an alternative to appeals.

In his application, the applicant deponed interalia that this court is duty bound to regulate the frame work for pleadings and that this was not done hence the need for review. I do not agree with this averment. Pleadings are regulated by law. Courts discretion can only come in after a litigant has done his best to follow the law and /or failed to comply for sufficient cause.

In election Petitions, the applicable law is the Parliamentary Elections (Election Petitions) Rules S.1 141-2 Rules 5,6,7 and 8 thereof , the Parliamentary Elections Act and The Local Government Act.

I am surprised that the applicant thinks that Election Petitions should be placed in a special category of suits where pleadings should never end or be regulated and that one can file affidavits even on the date of judgment and go away with it.

I find no justification of such a preposition. The law must be strictly adhered to and anything done outside the regulations should be done with leave of court and/or approval of the opposite party, for example, during scheduling. I am not convinced that this is a proper situation to make a review. This application is dismissed with costs.

Musota Stephen,
AG. JUDGE
6.12.2006