

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CV-MA-124-2010**

**(ARISING FROM ELECTION PETITION NO. 2/2010)**

**HON. SABILA HERBERT KALE.....APPLICANT**

**VERSUS**

**MAKET LATIF.....RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN**

**RULING**

**Maket Latif** who is represented by M/s Mutembuli & Co. Advocates filed Election Petition 002 of 2010 against **Hon. Sabila Herbert Kale** under Article 80 (2) (f) of the Constitution of Uganda. The petitioner sought for orders from this court that since the respondent, a sitting member of Parliament, was on 2<sup>nd</sup> March 2010 convicted by the Anti-Corruption Court of corruption contrary to section 2(b) and 6(1) of the Prevention of Corruption Act and was sentenced to a fine of 200 currency points and in default to serve 12 months imprisonment he is not qualified to contest as a member of parliament representing Tingey Constituency. That this is so because, the said conviction was for a crime involving moral turpitude.

The petitioner explains that the respondent has been nominated by the National Resistance Movement party organization to contest for primaries as one of the candidates for the said parliamentary seat.

The petition is supported by the affidavit of the petitioner reiterating the grounds of the petition.

On the same day the petition was filed, the petitioner obtained an interim order of injunction stopping the respondent from participating in the NRM parliamentary primaries which had been slated for 30<sup>th</sup> August 2010.

When the respondent got wind of this petition and the interim order, he filed Misc. Application 0124 of 2010 through M/s Ntambirweki, Kandebe & Co. Advocates. The Notice of Motion is filed under O.52 rr (1) and (2) CPR and Rules 6, 17 and 24 of the Parliamentary Elections (Petitions) Rules for orders that;

- (1) The Election Petition 2/2010 be dismissed or struck off with costs.
- (2) The costs of the application be provided for.

The grounds of this application are that:

- (i) Election Petition 2 of 2010 is premature, misconceived and untenable in law.
- (ii) There was no service of the petition effected upon the applicant within the prescribed time as required by the law.
- (iii) No election has taken place or decision by the electoral commission has been made to necessitate an election petition as envisaged by the law.
- (iv) No elections have been held and published by the commission in the Gazette this year the last general election having been in the year 2006.

- (v) The petition was not filed within 30 days after publication in the gazette by the commission.
- (vi) It is fair, just and equitable that this petition be dismissed with costs.

This application is supported by the affidavit of the applicant in which he echoes the grounds of application and further deposes that he read Act 17 of 2005 and the rules made there under. That no election petition can be filed before the electoral commission publishes results in the gazette. That the next elections are to be held in 2011 therefore no decision has been made by the electoral commission to initiate an appeal by a petition. Therefore this petition is too early because the next elections are yet to be organized.

In his affidavit in reply, the respondent to this application **Maket Latif** deposed that he filed the petition under Article 80 (2) (f) of the Constitution to declare the applicant not qualified to contest as member of parliament since he was convicted of a crime of corruption. That the petition is proper before court because it is not brought under the Parliamentary elections Act and Rules made there under but under Article 80 (2) (f) of the Constitution seeking to bar the applicant from contesting and not removing him from Parliament.

That the mere use of the word Election Petition does not mean that the petition is for nullification of elections but to stop the applicant from contesting as M.P since he does not qualify pursuant to Article 80 (2) (1) of the Constitution. That court should look at the substance/merit of the petition rather than a technicality.

I have considered this application and the submissions by respective counsel. I have related the same to the law. This petition is filed and registered as an election petition thus making the challenge by the applicant herein proper.

I agree with the submission by **Mr. Ntambirweki, Kandebe** learned counsel for the applicant that the petition filed by **Mr. Maket Latif** is premature. Although the petitioner has a noble objective of trying to stop someone he considers unqualified to stand for election as a member of parliament, the law appears not to have taken care of his timing of the petition.

Article 80 (2) of the Constitution enumerates situations where a person is not qualified for election as a member of parliament. These situations are inter alia where one is under a sentence of death or sentence exceeding nine months without option of a fine or where a person has within seven years immediately preceding the election been convicted of a crime involving dishonesty or moral turpitude or has within 7 year's immediately preceding the election been convicted of an offence under any law relating to elections conducted by the electoral commission.

This constitutional provision appears to have been operationalized under the Political Parties and Organizations Act 8 of 2005. S.10 (1) thereof a political party or organization shall in its internal organization, comply with the provisions of the Constitution, in particular articles 71 and 72 of the Constitution. Also under S.61 (1) (d) of the Parliamentary Elections Act 17 of 2005, the election of a candidate as a member of parliament shall only be set aside if the candidate was at the time of his or her election not qualified or was disqualified for election as a member of

parliament. It would appear therefore that for one to challenge somebody as not qualified to stand as a member of parliament it has to be after a process conducted by the national electoral commission under the Parliamentary Elections Act and the Parliamentary Elections (Petitions) Rules S.I 141-2.

Vetting of candidates during primaries is a political party or organization's internal matter which has to be carried out by a given party or organization in a manner envisaged under S.10 (1) of the Political Parties and Organizations Act 17 of 2005.

In the instant case, I agree with the submissions by the applicant that Election Petition 2 of 2010 is premature and untenable in law. Apart from the respondent expressing a wish to contest as a candidate for Member of Parliament, his candidature has not been taken cognizance of by the national Electoral Commission to initiate challenge by any voter or candidate who loses the elections as envisaged under the Parliamentary Elections Act. (See (S.60) and Article 64(5) of the Constitution).

By the time of this petition, the respondent had not presented himself for nomination to be a contestant in the next general elections. Article 80 (2) under which the petition is filed is not an enabling law through which a petition can be filed. In view of this holding, it is futile to consider whether the petition was duly served onto the respondent in accordance with the law.

Regarding the interim injunction by the learned assistant Registrar,

Under Rule 24 of the Parliamentary Elections (Election Petition) Rules.

*“All interlocutory questions and matters arising out of the trial of the petition other than those relating to leave to withdraw a petition shall be heard and disposed of, or dealt with, by a judge; and references in these rules to court shall be construed accordingly.”*

This is an express and mandatory provision of the law ousting the jurisdiction of a registrar from handling interlocutory matters in election petitions.

Had this petition been timely and properly before court, the learned registrar’s order would have been void *ab initio*. The interim order issued on 27<sup>th</sup> August 2010 is hereby vacated and declared to be of no legal effect.

For the reasons I have given hereinabove, I will grant this application and order that Election Petition 0002/2010 be and is hereby struck off the register. I note that the petitioner’s intentions were noble and since the respondent is accountable to his voters, I will order that each party meets its costs.

**Musota Stephen**

**JUDGE**

**26.10.2010**

26.10.2010

Both parties in court.

Court Clerk **Fatuma Muwando**.

**Court:** My instructions were to read and deliver the ruling and I have done so. Ruling delivered.

**Lillian C.N. Mwandha**

**ASSISTANT REGISTRAR**

**26/10/2010**