

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

HCT-04-CR-MA-0114-2010

(ARISING FROM MA NO. 111-2010)

WASIKE STEPHEN MUGENI.....APPLICANT

VERSUS

AGGREY AWORI SIRYOYI.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN

RULING

The applicant Mugeni Stephen Wasike appearing in person filed this application by way of a Notice of Motion *ex parte* seeking for orders from this court that:

1. The interim order restraining the applicant and all electoral bodies from contesting and allowing the applicant to contest in any election leading him to holding a public office till the hearing and final disposal of the main application for a temporary injunction be vacated/set aside.
2. Costs of the application be provided for.

The notice of motion is supported by the affidavit of the applicant which supports and reiterates the grounds of application contained in the notice of motion.

The grounds of application are that:

1. The interim order arose out of a matter that arose from Election Petition No.005 of 2006 which under rule 24 of the Parliamentary Elections (election Petition) Rules S.I. 141-2 should have been handled by a judge and not a registrar.
2. The status quo arising from the Supreme Court Constitutional Petition Appeal No.2 of 2007 is not that the applicant is prohibited from contesting for an elective office but that the leadership code cannot be enforced in its present form.
3. The applicant has filed a Constitutional Petition No.23 of 2010 in the Constitutional Court which has been fixed for hearing therefore the applicant cannot be a subject of double litigation on the same issue. That a reference to the Constitutional Court automatically stops all other proceedings because the decisions are under challenge.
4. The decisions of the Supreme Court takes precedence and are binding on all other courts.
5. There is no injustice that can be suffered by the respondent when the applicant is elected to a public office and the office the applicant is being elected to is not a public office.
6. The applicant was not given opportunity to be represented or to appear to point out the illegality of the interim order.
7. The NRM Electoral Commission nominated the applicant after overruling the respondent's attempt to block the nomination.

8. That the interim order is just an effort to continue visiting injustices on the applicant so that the election timetable can be completed with the applicant denied his rights through an unjustified court proceeding.

Amongst the annexures to this application is “D” an Amended Petition No. 23 of 2010 filed in the Constitutional Court on 28 June 2010.

Amongst the matters before Constitutional Court is the Constitutionality of the inspector General of Government’s decisions dated 28.01.2004, 10.03.2004 and 11.11.2005 against the applicant herein that he was guilty of breach of the leadership Code Act 2002 and whether the said decisions were inconsistent with Articles 2, 28, 44(c) and 83(1) (e) of the Constitution.

The decision of this court in Election Petition 0005 of 2006 where the applicant was declared guilty of breach of the leadership code is also being challenged in the said petition.

When this matter came up for hearing, I ordered service of this application to be served onto the respondent. According to an affidavit of service by the applicant, he served counsel for the respondent in the challenged application for the interim order. No response came from the respondent.

I have considered this application as a whole. I have taken into account the submission by the applicant some of which are beyond this court to decide upon since they are subjudice before the Constitutional Court.

I am in total agreement with the applicant that in view of his petition pending in the Constitutional Court which is in the process of being decided upon, it was erroneous for this court to entertain an application on the same subject matter. The existence of Constitutional Petition 23 of 2010 was not drawn to the attention of this court when misc. Application 0111 of 2010 was filed since the said application makes no mention of the same.

Since the Constitutional petition is still pending, the applicant herein should not be a subject of double litigation on the same matter. Once a subject is pending resolution by the Constitutional Court lower courts have to stay proceedings on the same subject matter until the Constitutional Court has pronounced itself. The interim order being challenged was therefore issued in an inadvertent error.

Regarding whether a registrar has jurisdiction to issue an interim order in election petition the law applicable is in rule 24 of the Parliamentary Elections (Election Petition) Rules S.I 141-2. It is provided there under that;

“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.”

I agree with the applicant that election matters and petitions are out of the jurisdiction of a Registrar. Rule 24 is drafted in mandatory terms. Therefore the learned Assistant Registrar had no jurisdiction to hear and issue an interim order in proceedings filed under the Parliamentary Elections Act 17 of 2005. The said interim order shall be set aside.

This application is allowed with costs.

Musota Stephen

JUDGE

20.10.2010

20.10.2010

Applicant in court unrepresented.

Kimono Interpreter.

Applicant: For ruling.

Court:Ruling delivered.

Musota Stephen

JUDGE

20.10.2010