

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

ELECTION PETITION NO. 003 OF 2011

OBIGA MARIO KANIA :**:** **PETITIONER**

VERSUS

1. THE ELECTORAL COMMISSION
2. WADRI KASSIANO EZATI :**:** **RESPONDENTS**

RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA

Today, 4th June, 2011 when this petition came up for hearing, both Counsel for the petitioner, Dr. James Akampumuza and Mr. Simon Tendo Kabenge, despite the urgency of the petition did not appear in Court. The petitioner was allowed to make his submissions in Court. In his submissions, he stated that he is not ready to proceed with the hearing of the petition on the following reasons:-

1. That his lawyers:-
 - (i) Dr. James Akampumuza is appearing in other election petitions in Mbarara High Court. And that the petitioner wants him to be present to defend him in this petition.
 - (ii) That Mr. Simon Tendo Kabenge is attending to the emergency of his wife and that he is unable to attend Court, yet he (the petitioner) wants him to be present during the hearing of his petition.
2. That he should not hire new lawyers as advised by Court simply because the time given to him was too short. And that in any case he had already paid his lawyers whom he has a lot of faith to represent him in this petition.
3. That he is not willing to proceed with the petition today, citing bias on the trial judge by refusing him a long adjournment. And yet the same trial Judge accorded a long adjournment to his lawyers in the **Election Petition No. 2 of 2011, Eriyo Jessica Osuna vs Ababika Jessica and the Electoral Commission** to 7th June, 2011.

Finally, he prayed that I step down from hearing this petition. And that this petition shall be placed before a neutral judge to hear it.

In reply, Counsel for both respondents vehemently objected to the petitioner's application for the trial Judge to step down from hearing this petition; and to have this petition adjourned to another date.

Before dealing with the above raised grounds, allow me to give the background of this petition, Election Petition No.3 of 2011 between the parties. This petition was filed in Court on 23/03/2011 within time. The respondents filed their answers to the petition. The petitioner filed in this Court an application to proceed *ex parte* with the petition. The said Miscellaneous Application between the parties was heard on 16th May 2011 and disposed of in consent settlement by the parties. From that time this petition was scheduled for hearing.

It is important to note that this petition has failed to take off because of the conduct of the petitioner and his lawyers. Every time this petition had been adjourned the petitioner or his lawyers could come up with flimsy applications only to cause another adjournment. And in all these instances, the petitioner could be accorded the adjournment to another date. The problem, however, of the petitioner and his lawyers is that they wanted the petition to run on their own pace and in accordance with the lawyers' time table and programmes at the expense of the respondents and the court. That conduct of the petitioners and his lawyers are unattainable. The Court has to be in control of the proceedings. In this regard, I adopt wholesale my rulings in this petition of 20th May, 2011 and that of 2nd June, 2011 to apply to these concerns of both parties in today's petitioner's oral application.

Having given the above background to this petition, I now turn to deal with the real matters raised today.

In the ruling of 2nd June, 2011, this petition was given the last adjournment and was fixed for hearing today in the presence of the petitioner. The petitioner today opted not to come with any lawyer to represent him in presenting his petition. He said in clear words that he is not ready to proceed with this petition today. Even he had not produced his witness for cross-examination as directed by Court on 2/06/2011. Yet, he knew this petition was on the last adjournment. The petitioner's failure to prosecute his petition when it is on the last adjournment offends order 9 rule 22 of the CPR and Order 17 rules 4 and 5 of the Civil Procedure Rules.

The petitioner in his submissions did not tell court when his lawyers will ever be ready to prosecute his petition. In this regard, I agree with Counsel for the respondents that the petitioner is not ready to prosecute his petition.

Further, the petitioner did not inform Court that Dr. James Akampumuza is today, Saturday, 4th June, 2011 appearing in any petition at High Court of Uganda at Mbarara. Even the petitioner's lawyers closed communication between Counsel for the respondents and the court. There is nothing on record to show the whereabouts of Counsel for the petitioner. The Court, and the respondents and their respective counsel only hear about the whereabouts of the said lawyers through the petitioner. The petitioner in his various submissions has been representing his lawyers. Then one wonders if the petitioner is interested in prosecuting his petition or is now hired by his own lawyers to represent them in these proceedings in order to justify their continued absence in these proceedings.

Also from the submissions by the petitioner in respect of his second lawyer, Mr. Simon Tendo Kabenge, the petitioner went to Kampala on 2nd June, 2011 to meet his lawyers. He only managed to talk to Mr. Simon Tendo Kabenge on phone. One wonders whether Mr. Simon Tendo Kabenge was still attending to the emergency that allegedly existed on 1st June, 2011 or not. Even the Petitioner did not find it fit to visit in Hospital his lawyer's patient. There is no evidence that has been produced by the petitioner that his two lawyers are not available today and tomorrow, so as court not to proceed with his petition.

Further, I agree with Mr. Wettaka Patrick Counsel for the 1st respondent that the Law. Firms representing the petitioner have other lawyers in those firms. The petitioner's lawyers did not find it prudent to send to Court any one of the lawyers in those firms to prosecute this petition. The failure or/and refusal of the petitioner's lawyers to appear in Court for the petitioner is clear indication that they don't intend to prosecute this petition. I can only blame those said lawyers on their failure to advise properly their client on whether to withdraw the petition or they, themselves to withdraw from representing the petitioner on application to do so in Court, rather than allowing the petitioner to allege such blackmail against the trial Judge.

In his submissions, Mr. Caleb Alaka, Counsel for the 2nd respondent quoted the conduct of Mr. James Akampumuza (as he then was) in the case of **Byanyima Winnie vs Ngoma Ngime**

in Miscellaneous Application No.9 of 2001 whereby Dr. Akampumuza James allowed Mr. Ngoma Ngime to blackmail the trial judge. Dr. James Akampumuza was not present in Court to defend himself. I then leave it at that. He should not be condemned unheard, though Counsel Caleb Alaka in his submissions insisted that he is ready to take on the said lawyer on alleged conduct.

On the issue of my being biased in this matter, I do not see any truthfulness in these allegations against me. It is on record that the petitioner had a communication with his lawyers over their respective phones. That alleged bias must have been mooted by none other than his lawyers. This is because, in his submissions on 2nd June, 2011 when all his lawyers had deserted him, the petitioner in his request for an adjournment to another date submitted at length and he never raised a point of bias on the part of the Court. Then why raise it when he had met his lawyers in Kampala? It is my view that the petitioner's conduct and that of his lawyers is intended to be disrespectful to Court and to the respondents. Their conduct is diversionary from the real issues at hand.

Consequent to the above, I rang the Registrar High Court His Worship, Asaph Ruhinda Ntenge, who confirmed to me that "today 4th June, 2011 there was only criminal session of the High Court of Uganda at Mbarara before Hon. Mr. Justice Akiiki –Kiiza. That there were no lawyers from Kampala at the High Court at Mbarara on 04th June, 2011. That to day, the High Court of Uganda at Mbarara did not sit to hear any Election Petitions". From this aforesaid confirmation from the said Registrar the petitioner's submissions that Dr. James Akampumuza is engaged in Mbarara as he spoke is not true.

Furthermore, I wish also to observe that if the Election Petition trial is to be fair, it must be handled or conducted in strict observance of the election petition laws. There is need for both parties in an election petition like this one to adhere to the election petitions laws. The Parliamentary Elections Act, No. 17 of 2005 is very strict. When the petition is fixed for hearing, the hearing has to be conducted on a day to day basis including Public Holidays until it is concluded within 30 days.

In this instant petition, the petitioner has been accorded all the adjournments on record. In that regard, the petitioner should not have been the person to state that the trial Judge is biased. Though, I am not on trial, I wish to state that I am on oath as a Judge and not biased at

all. The blackmail by the petitioner is only intended to cover the conduct of his lawyers who whenever they attended court, could seek adjournments of this petition. They were given reasonable short adjournments which they failed to utilize to prosecute his petition. His application for me to step down from concluding this petition is brought in bad faith and is accordingly dismissed. The petition was on the last adjournment and since the petitioner was not ready to prosecute the same, the petition ought to be dismissed.

All in all and for the reasons given in this ruling, I agree with Counsel for the respondents that this petition be dismissed for want of prosecution with costs. Accordingly, this petition stands dismissed with costs to the 1st and 2nd respondents pursuant to Rule 17 of the Parliamentary Petition (Election Petition) Rules; Order 9 rule 22 and Order 17 rules 4 and 5 of the Civil Procedure Rules.

Dated at Arua this 4th day of June, 2011.

MURANGIRA JOSEPH
JUDGE

Court -2:25pm

Court as before

Court: Ruling is delivered in open court to the parties in a fully packed Court.

Right of Appeal if any is explained to the parties.

Sgd

Judge

04/06/2011