

TANZANIA / JUDGMENT

19980527 TZHC Bukoba

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TZHCDECIDED
27 May 1998

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IN THE HIGH COURT OF TANZANIA AT BUKOBA MISCELLANEOUS CIVIL CAUSE NO. 12 OF 1995
IN THE MATTER OF AN ELECTION PETITION UNDER THE ELECTIONS ACT NO. 1 OF 1985 AND
THE ELECTIONS (ELECTION PETITIONS) RULES 1971. DR. MEDARD MUTUNGI; PETITIONER VERSUS THE HONOURABLE
MR. TORNEY G. NERALE; 1ST RESPONDENT SEBASTIAN RUKIZA KINYONDO
2ND RESPONDENT. JUDGMENT. This petition arises from the
parliamentary election in the Bukoba rural constituency held on 29.12.1995. The election was
contested by several candidates, including the petitioner, Dr. Medard Mutungi, and the second
respondent, Mr. Sebastian Kinyondo, who was the winner. Dr. Mutungi brought this petition
praying for, inter alia, nullification of the election. This judgment is a summary of my findings
and decision on various matters as well as on the case as a whole. Matters not mentioned in this
summary, but which will appear in the reasons for judgment to be furnished later, are matters
which were either struck out of the pleadings, or matters on which no evidence was adduced by
the petitioner, or matters not proved to the satisfaction of the court. In the course of their final
addresses learned counsel for the defence raised two preliminary matters. First, it was
argued that the verification to the petitioner's pleadings was bad because whereas the
petitioner declared that the contents of the petition were true to the best of his
knowledge in fact most of it came from informants. The court was asked to find that the petitioner was
therefore a liar. Second, the court was asked to find that the petitioner was incompetent to
contest the election and, therefore, to file the petition, because he claimed to have the support of
several opposition parties over and above his party, CHADEMA. I reject both arguments and hold
that the defect in the verification was inconsequential and further that the petitioner was
competent to contest the election and to file the petition. On the substance of the petition, three
issues were identified, i.e., non-compliance with the electoral law and procedure, corrupt
practices and defamation. In my decision there is a fourth issue, i.e., tribalism. I take up that
issue pursuant to the provisions of Rule 6 of the Elections (Election Petitions) Rules, 1971. With
non-compliance the following were established to the satisfaction of the court.

- (i) The Maiga (No.16/17/17/A2) polling station ballot box arrived at the District Headquarters, Rwamishenye, empty, (ii) Karonge (No. 16/35/35/B) polling station opened late and closed early. About 10 people were unable to vote as a result. (iii) Bugengere polling station similarly opened late and (20) closed early. About 8 people were unable to vote as a result. (iv) Musira (No.16/72/72/B1) polling station also opened late and closed early and about 15 people were unable to vote.
- (v) - At Rukoma (No.16/89/89/B) polling station CHADEMA's polling agent's signature was forged on the CF 5 and CF 6 forms to state that he had no complaint after he was refused the forms to register his complaints. (vi) At Mishenyo (No.16/3/3/B) polling station the candidate's photographs and particulars were not displayed. Additionally there was late opening and early closing and about 6 people were unable to vote. (vii) There were errors in a few RF2 forms in the number of disputed votes. In spite of these errors and non-compliances I am satisfied that the election was conducted substantially in accordance with the law and that the non-compliances did not affect the result of the election. The second issue is that of corruption. I am satisfied beyond (10) doubt that the second respondent held a campaign meeting at Bwizanduru. I am also satisfied that after the meeting he personally gave out money and khangas to leaders of women groups at the premises of Eustace Katunzi's shop. I am further satisfied that on the same occasion and at the same time, and only 250 metres away, the CCM ward chairman, Joseph Ndyetabula, entertained people with drinks and gave khangas to women, all of which he stated had been supplied by the second respondent. In my decision that statement was true. As regards defamation I am satisfied and find that the second respondent made abusive and defamatory utterances against the petitioner (20) at Bwizanduru, Makonge, Ntoma, Ibeeraizibu, Kibona, Kijongo, Nyakibimbili and Kitahya. The utterances were that the petitioner had forged or stolen academic certificates; that he was a thief who had stolen from a shop completely closed from Lonrho and had been expelled and who had stolen generators intended for Lyamahoro and Rubale Secondary Schools; that the petitioner was a rapist, sodomiser and defiler who had been expelled from Ihungo ... Secondary School because of this conduct and was continuing with same activities. ... Dar es Salaam; that his party, CHADEMA, was a party of thieves; that CHADEMA and NCCR-Mageuzi were parties of drug traffickers; that the petitioner himself was a drug trafficker in collaboration with CHADEMA and NCCR Chaggas; that he had given 300 1 000 to his sister-in-law to distribute to women in furtherance of his campaign but she had converted the money and set up a kiosk; that he was given bicycle tyres by the management of the Kagera Co-operative Union to distribute to youths for the same purpose; that he does not console the bereaved or co-operate with fellow villagers to the extent that his house was full of bat droppings; that he had failed to manage his family on account of which his wife was a prostitute and his children were delinquents; (10) and that he had expelled his wife but recalled her when he got an accident to clean his faeces and urine. There were other utterances, not otherwise defamatory, e.g. that the petitioner was 11 mbejaji mizigon whose position will otherwise be dealt with in my reasons for judgment. I am satisfied that the foregoing were defamatory of the petitioner and/or criminal in

character. I am also satisfied that there was wide publication of them spanning two polling districts of Kyamtwe. ra and Katereroo When the corrupt practices are added thereto, I satisfied and find that the election was neither free nor fair. This alone is sufficient to void the election. (20) Finally, there was tribalism. To the second respondent the petitioner was a member of a party of Chaggas, and the Chaggas had sent him to contest the election. Moreover, according to the second respondent, Chaggas were thieves and drug traffickers. Exploitation of tribal issues or differences automatically voids an election under Section 108(2)(a) of the Constitution. Accordingly, I allow the petition and declare the election void. The second respondent will bear the petitioner's costs. Certificates will issue to the Director of Elections notifying this decision and to the effect that the second respondent was found guilty of corrupt practices. Reasons for this judgment are reserved to a later date. I .

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