

Nabasirye & Anor v Electoral Commission & Anor (Miscellaneous Application No. 456 of 2015) [2015] UGHCEP 2 (1 December 2015)
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1. There is a pending suit 245/15 seeking injunctions and that it has high likelihood of success.
2. That the 2nd Respondent is due to illegally participate in the nominations to contest as the Woman Member for Kayunga District.
3. That the 2nd Respondent has no qualifications to contest as a Member of Parliament.
4. That unless restrained, the 1st Respondent intends to accept the nomination of the 2nd Respondent since they have done that before.
5. That the nomination of the 2nd Respondent infringes the rights of the Applicants and the Applicants shall continue to suffer great injury if the Application is not granted.
6. That it is in the interest of justice that the application be granted.

There is a supporting affidavit deposed by Nabisirye K. Margaret that in summary claims the 2nd Respondent did not attend and obtain the Uganda Advanced Certificate of Education, as her Certificates differ from her claims that she attended 'O' Level at Light College Katikamu and 'A' Level at Greenville Academy. The said Certificates indicate instead that she obtained the same from Mukono Town Academy (Paragraphs 16-18). Further that her names do not appear in the said Certificates and that if there were any changes in her names, this is not supported by a Deed Poll to that effect. (Paragraphs 16-18). That as a result of the above, the Applicant has not been properly represented in Parliament and hence the Applicant's rights and freedoms have been grossly abused with the help of the 1st Respondent (Paragraph 20).

The 2nd Respondent filed an affidavit in reply to the application. Therein she avers that the application is bad in law and is barred by law, the Applicants have no locus standi to bring such suit, and that the Applicants have adopted wrong legal procedure and that there is no cause of action disclosed (Paragraph 3).

She also depones that her nomination was done in compliance with the law and nobody challenged her academic credentials within the prescribed time (Paragraph 4).

In Paragraph 5, 6 and 7 she contends that it she duly qualified, having obtained her 'O' Level and 'A' Level qualifications from Light College Katikamu and Mukono Town Academy. Further that the issue of discrepancy in names was rectified on 3/9/2012 through a Statutory Declaration.

Finally in paragraph 8, she avers that the purported CV the Applicants are relying on is a forgery which was never published or uttered by her.

The affidavit in rejoinder by the 2nd Applicant claims the discrepancy in names is proof that the documents do not belong to the 2nd Respondent, that the Statutory Declaration attached to the affidavit in reply is not registered and does not distinguish the averments based on belief and information and cannot therefore be relied upon.

The head suit was brought under the provisions of Article 50 of the Constitution wherein the Plaintiffs claim their rights and freedoms have been infringed by the Defendants' actions. That they were denied their civic rights by not being represented by a person who is qualified to represent them in Parliament.

They therefore seek Judgment against the 2 defendants restraining them against further infringement of the said rights.

Ordinarily, a challenge to a person's candidature and participation in elections would be regulated by the Parliamentary Elections Act which is one of the enabling laws for the provisions of Chapter 6 of the Constitution. This court however has jurisdiction over all matters under the Judicature Act and if the plaintiff's civic rights are infringed upon through questionable representation in the legislature, then the matter can be competently handled by this court.

The 2nd Respondent's counsel in his submissions raised preliminary points of law which I will deal with first.

1. It was submitted that the suit is barred in law. That the suit should have been subject to the Election laws provided in Chapter 6 of the Constitution e.g. the Parliamentary Elections Act. That the said Act section 61 thereof provides for the manner of challenging the nomination/ election of a person to Parliament. The same must be supported by signatures of 500 voters (Section 60 (2)).
2. The complaint must be made within 30 days from Gazetting the results.
3. That section 15 of the Electoral Commission Act sets down the procedure for handling complaints during the electoral process at any stage. That it is only after one is dissatisfied with the outcome that one can appeal to the High Court. Ref: **Misc. Application No. 124/2010 Sabita H. K. Vrs. Maket Latif**.
4. That the person being sued is the wrong party. That the names used by the Plaintiffs/ Applicants do not belong to the 2nd Respondent. Ref: **Real Gaba Market property Owners Vrs. Kampala Capital City Council**.

Counsel for the Respondent submitted in reply to the preliminary objections that the head suit is a complaint about infringement of civic rights under the Constitution (Article 50).

Secondly that the matter cannot be handled by the Independent Electoral Commission which is not a party to the suit. Regarding the locus of the Applicants, it was submitted that the whole suit revolves around the identity of the 2nd Respondent/Defendant whose identity cannot be ascertained.

Considering the preliminary objections, it is my observation that the head suit as rightly pointed out by both counsel is about infringement of rights under Article 50 of the Constitution.

Under Article 50 (1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.

1. Any person.....may bring an action against the violation of another person's or group's human rights.

It is my finding in respect of the above provisions that the High Court is a competent court to handle the instant matter.

The Plaintiff's claim is against the Defendants for breach of fundamental freedoms and rights. Reference was made to the case of **Hon. Sabila Herbert Kale Vrs. Maket Latif**. In that case, the challenge to the candidature of Hon. Sabila was brought under Article 80 (2) of the Constitution and it was clearly labelled as an Election petition. Hon. Sabila had picked forms and intended to be nominated as a candidate for Member of Parliament. The Judge found that the matter was premature and could not be considered an Election Petition since the said election had not yet taken place.

The above matter is different and distinguishable in that it had been brought up as an Election petition under Article 80 (2) and the Parliamentary Elections Act.

The instant suit is not an Election petition and is filed outside the provisions of Article 80 and the Parliamentary Elections Act. The objection is on that ground overruled.

The last objection is that the Applicants/plaintiffs have sued the wrong party as the names used in the pleadings against her are different. The authorities of;

1. **Real Gaba Market property Owner Vrs. Kampala Capital City Authority;**
2. **V. G. Keshwala t/a V. G. Keshwala & Sons Vrs. MM Sheik Dawood** were cited.

I have read the said authorities. They are both distinguishable from the instant case. In both cases, the issue was about non-existent companies not registered as opposed to registered and incorporated companies.

Further, in **Real Gaba Market Property Owner Vrs. Kampala Capital City Authority**, the court found that the company referred to was non-existent, not being registered or incorporated within the Companies Act. The same was the position in the **Keshwala case (supra)**.

In the instant case, the suit is based on the premises that the 2nd defendant is not the person she purports to be, given her contradictory credentials and unexplained names.

On the above premises therefore the objection is not sustainable and is also overruled accordingly.

Temporary Injunction:

The courts will ordinarily grant temporary injunctions on the following conditions;

1. The head suit has likelihood of success.
2. The applicant will suffer irreparable damage incapable of being atoned for in damages.
3. If in doubt, the court will decide the matter on a balance of convenience.

In support of the above grounds, it was submitted by counsel for the applicants that the 2nd Respondent is not qualified to be nominated for lack of academic qualifications. That the first Respondent accepted her nomination when not qualified and is likely to do the same. The applicants cite the difference in the schools that appear on her CV and the ones indicated on her Certificates ('O' Level and 'A' Level). They also question the use of names and abbreviations e.g. **Nantaba Idah, Nantaba Idah E. and Nantaba Idah Erios** that because of these uncertainties, the only conclusion is that she is not qualified.

In response, the 2nd Respondent relies on a Statutory Declaration dated 3rd September 2012 in which she tries to explain away the discrepancies which according to the 2nd Respondent, she uses interchangeably. She also claims her Certificates 'O' and 'A' level bear the names of the schools where she sat the examinations as they are the ones that had examination Centre numbers.

The Statutory Declaration is contested by the Applicants in rejoinder as not being registered and that it is materially defective and cannot be relied upon.

Looking at the submissions, it is clear the enumerated differences and uncertainties raise triable issues that call for investigation and determination by court. I cannot say that there is a high likelihood of success, but the fact remains that the issues call for proper investigation to rule out the possibility that the 2nd Respondent is who she claims to be and is therefore qualified to represent her Constituency in Parliament.

It is submitted further that the irreparable injury the applicants are likely to suffer is the denial of representation of the Applicants and therefore denial of their rights to participation in civic activities through proper representation in Parliament.

Finally, regarding the balance of convenience, it is submitted that the whole District stands to lose by having no qualified representative in the Parliament.

For the Respondent, it is submitted that granting the injunction would have the effect of disposing of the main suit.

That the national exercise of nomination is carried out once and should it transpire that the 2nd Respondent is qualified, she would not be nominated again.

I have considered the submissions. Regarding irreparable injury, it is true having a Member of Parliament with doubtful qualifications is one that cannot easily be atoned for in terms of damages.

The Respondent has had all the time to correct the doubts, (that is if they are capable of being corrected).

There was no reply to the challenge that the Statutory Declaration is not registered. This leaves the said declaration hanging.

It would be better for the Respondent to deal with the question of her academic credentials, conclusively other than having doubts hanging over her, raising eyebrows and glances when if cleared she would not have to explain herself continuously. In that respect, the balance of convenience does not favour the 2nd Respondent.

In conclusion, I find that the Applicants have made out a case for grant of a Temporary Injunction.

The application is allowed and is granted in the terms laid out in the chamber Summons. Costs will be in the cause since the head suit is still pending.

Godfrey Namundi

Judge

1/12/2015

1/12/2015:

Asingwire Martin for Applicant

Asuman Nyonyintono for 2nd Respondent

Court: Ruling delivered in Court.

Godfrey Namundi

Judge

1/12/2015

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