

UGANDA / JUDGMENT

Wekoye v Attorney General & Anor (Constitutional Application No. 3 of 2014) [2014] UGCC 7 (21 March 2014)

[2014] UGCC 7

COURT

Constitutional Court of Uganda

CASE / FILE NUMBER

Constitutional Application No. 3 of 2014

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CONSTITUTIONAL APPLICATION NO 003 OF 2014

(ARISING FROM CONSTITUTIONAL PETITION NO. 4 OF 2014)

YOWERI WELE WEKOYE ::::::::::::::::::::::::::::::::::: APPLICANTS

VERSUS

1. THE ATTORNEY GENERAL :::::::::::::::::::::::::::::::::::RESPONDENTS

2. THE ELECTORAL COMMISSION

CORAM: HON JUSTICE MWANGUSYA, JA

HON. JUSTICE RICHRD BUTEERA, JA

HON. JUSTICE SOLOMY BALUNGI BOSSA, JA

RULING OF THE COURT

The applicant brought this application seeking a temporary injunction restraining the respondents, from purporting to debate, implement, and operationalize the report of the Committee of Legal, Rules and Discipline based on the impugned Rule 101 and 103 to the Rules of Procedure of the Parliament of the Republic of Uganda until the disposal of the Constitutional Petition No. 4 of 2014 between the same parties.

The application is brought under Rules 2(2), 43 and 44 of the Judicature (Court of Appeal Rules) Directions SI. 13-10, Section 64(e) of the Civil Procedure Act Cap 71, and Rule 10 and 23 of the Constitutional Court (Petitions and References) Rules, 2005.

The applicant is a voter of Bubulo West Constituency and campaign manager for Hon. Tony Kipoi Nsubuga during the 2011 Parliamentary Elections.

Hon. Tony Kipoi Nsubuga was an MP until his seat was declared vacant by Parliament pursuant to **Rule 101 and 103 of the Rules of Procedure of Parliament of Uganda (2012)**. The second respondent set in motion preparations to fill the vacancy under Article 61 of the Constitution.

The motion seeks for an order that “a temporary injunction restraining the respondents, from purporting to debate, implement, and operationalize the report of the Committee of Legal, Rules and Discipline based on the impugned Rule 101 and 103 to the Rules of Procedure of the Parliament of the Republic of Uganda until the disposal of the Constitutional Petition No. 4 of 2014 between the same parties”.

As a preliminary matter, we wish to make two observations. First, we note that all the actions that the applicant sought to restrain in respect of Parliament have been concluded. Parliament has already debated, implemented and operationalized the report of the concerned Committee. It has declared the seat of Honorable Kipoi vacant and communicated its decision to the Electoral Commission to organize a by-election.

We also note that the Electoral Commission was made a party to this application as a result of which we granted it audience in this application. We further observe that neither the Notice of Motion, nor the accompanying affidavit contain any mention of the Electoral Commission or prayers for specific orders against it. The import of these observations is reflected in our discussion below.

We proceed now to address the merits of the application. The principles applicable to a temporary injunction have been stated in the case of **Sulaiman Muwonge Lubega Vs Attorney General SCCA No. 07 of 2012** as follows:

1. ***That the applicant has a prima facie case with the probability of success.***
2. ***That the applicant might otherwise suffer irreparable damage which would not be adequately compensated for in damages.***
3. ***If the court is in doubt on the above two points, then the court will decide the application on a balance of convenience. In other words, whether the inconveniences which are likely to issue from withholding the injunction would be greater than those which are likely to arise from granting it.***

On whether a prima facie case has been established; Counsel Mbidde who represented the applicant submitted that **Rule 101** which grants jurisdiction to Parliament to declare through a Committee on Rules, Privileges and Discipline to a sit vacant was contrary to **Article 86 (1)(a)** of the **Constitution** which grants such powers to the High Court. Counsel contended that Parliament assumed unconstitutional powers to declare the seat of Hon. Kipoi vacant without lawful authority.

Counsel for the 1st respondent Daniel Gantungo opposed the application and stated that the status quo which the applicant seeks to maintain has already been changed as the seat was declared vacant by the speaker. He contended that the application has been overtaken by events. Counsel for the Respondent Mr Eric Sabiiti made submissions on similar lines and added that the Electoral Commission was fulfilling its Constitutional mandate.

We have considered the pleadings and submissions of all counsel and it is our considered view that a prima facie case for interpretation of the Constitution has been established. Thus the first consideration has been satisfied. The issue for interpretation is whether Rule 101 and 103 of the Rules of Parliament of Uganda contravene and are contrary to Article 86(1)(a) of the Constitution. The first principle has therefore been established.

On the second principle of irreparable damage which cannot be compensated for in damages, Counsel for Applicant argued that the applicant would suffer irreparable damage if his Member of Parliament, the Honorable Kipoi, was removed from his seat on the basis of the impugned Rules which contravene the Constitution. Counsel for the respondents submitted that there is no evidence given that the MP and/or Applicant would suffer irreparable damage if not granted the temporary injunction.

Rule 101 was made by Parliament under Article 94 of the Constitution which empowers Parliament to make its own Rules. The Rules have been challenged but until court declares them unconstitutional, they are valid. Therefore, the status quo is that acting on Rule 101, Parliament has declared Hon. Kipoi's seat vacant as a result of which the Clerk of Parliament has notified the Electoral Commission of the vacancy.

The Electoral Commission has set in process a by-election under Article 61 with a budget and programme part of which has been executed.

This court has to consider whether if elections continued, the appellant would suffer irreparable damage in the circumstances.

If the elections were to take place and, this Court subsequently declared the Rules under which Hon Kipoi's seat was declared vacant from Parliament unconstitutional in the pending Constitutional Petition, the by-election would be nullified and he would retain his seat and return to Parliament . He would continue to represent the applicant which we believe is the desire of the applicant.

In those circumstances, we do not find irreparable damage established as he would then retain his seat and whatever was lost would be compensated for in damages.

The third principle of balance of convenience is usually considered where there is doubt on the first two principles.

In the circumstances, we have no doubt after resolving the first and second principles that there is no reason to address the third principle.

With regard to the Electoral Commission we recall our earlier observation. In this regard we find no basis, on which to make an order for a temporary injunction as the applicant did not seek any. In the result the application is dismissed with costs to the Respondents.

Signed

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