

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)**

**MISCELLANEOUS APPLICATION NO 449 OF 2020
ARISING OUT MISCELLANEOUS APPLICATION NO. 448 OF 2020
(ARISING FROM MISCELLANEOUS CAUSE NO. 212 OF 2020)**

**MUHUMUZA BEN APPLICANT
VERSUS**

- 1. ATTORNEY GENERAL**
- 2. MINISTER OF LOCAL GOVERNMENT**
- 3. THE ELECTORAL COMMISSION.....RESPONDENTS**

BEFORE: HON JUSTICE MUSA SSEKAANA

RULING

This is an application for a interim injunctive order brought under section 98 of the Civil Procedure Act and Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules SI 71-1.

The applicant filed this application seeking orders that an Interim Injunctive Order against the 3rd respondent from nominating any candidates and or carrying out any activity concerned with Parliamentary Elections in the 89 counties/constituencies created after the commencement of the Local Government (Amendment) Act No. 5 of 2013 until the application for Temporary Injunction is heard and determined.

The application was supported by an affidavit sworn by the applicant Muhumuza Ben whereas the 3rd respondent filed an affidavit in reply sworn by Wettaka Patrick an advocate and a Senior Legal Officer of the 3rd respondent.

The applicant contends that 89 constituencies were created after the commencement of Local Government (Amendment) Act No. 5 of 2013 which abolished the county councils which would ordinarily have initiated the whole process of creation of counties/constituencies.

The 43 counties/constituencies approved by Parliament of Uganda in 2015 had Parliamentary Elections and the 3rd respondent intends to nominate candidates for the Parliamentary Elections in the said 43 constituencies/counties.

That Parliament has further approved 46 counties/constituencies in 2020 and the 3rd respondent will nominate and hold Parliamentary Elections in the said 46 counties/Constituencies.

The applicant's counsel submitted that if candidates are nominated in the 89 constituencies for the Parliamentary Elections, the main cause and application for temporary injunction will be rendered nugatory.

The respondent raised several preliminary objections which in his view would dispose of the matter i.e failure to exhaust alternative remedies available and that the matters in this application were already canvassed in another case of *Eddy Kwizera v Attorney General* and lastly, that the application is time bad since some of the constituencies under challenge were created in 2015.

The 3rd respondent submitted that the applicant has not demonstrated that he will suffer any damage and that the Constitution provides that Counties shall be the basis creation of Constituencies.

A court grants an interim injunction, if the following conditions are satisfied;

- (i) Making out a prima facie case;

- (ii) Showing that the balance of convenience is in the applicant's favour in that the refusal of the injunction would cause greater inconvenience;
- (iii) Whether on refusal of the injunction he would suffer irreparable loss.

The purpose of interim injunction is to maintain the status quo pending the hearing and disposal of the main suit. It is a well settled preposition of the law that an interim injunction can be granted only if the applicant will suffer injury or loss keeping in view the strength of the parties case and above all weighing the public interest.

It is for that reason that the courts will normally need to consider the balance of convenience and in doing so, the courts must take into account the wider public interest

The applicant in this case is trying to stop the electoral process which has already been set in motion and the roadmap has already commenced with some activities already underway amidst COVID 19 pandemic. The word election can be and has been appropriately used with reference to the entire process, which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process.

An election is like a following river which cannot be stopped otherwise it would be recipe for confusion and has dire financial consequences to the government and the parties involved in the electoral process. The wider public interest should be considered in this case before the court would consider issuance of any interim orders.

The Electoral Commission should not be prevented from exercising its constitutional mandate of organizing elections in the entire country unless the applicant can establish a prima facie case that they are acting unlawfully and contrary to the law. The Electoral Commission is the pivotal figure in matters of elections and has the power to act in accordance

with the Constitution and other enabling laws. It should not be restrained on flimsy grounds and without sound basis.

The term balance of convenience literally means that if the risk of doing an injustice is going to make the applicant suffer then probably the balance of convenience is favourable to him and the court would most likely be inclined to grant him the order for interim injunction.

In this case, the balance of convenience is not in favor of the applicant and has nothing to lose except for his personal interest allegedly on behalf of the entire public which interest or damage will be considered after the court has determined the main cause.

Secondly, the applicant will not suffer any damage or loss if the election is conducted in the alleged 'illegal' constituencies. These persons are representing the respective constituencies and they are serving a public good conducted in accordance with the law and representing the people in the Parliament of Uganda. It is further clear that more than half of the constituencies have already had members of Parliament in their constituencies and stopping them now would be a breach of their legitimate expectation and their right to vote or representation to Parliament.

The validity of any law on elections relating to the delimitation of constituencies or allotment of seats in the constituencies, made or purporting to be made under the Constitutional mandate cannot be called into question in the High Court but rather the Constitutional Court. It involves constitutional questions and legality of actions of Parliament in the creation of such constituencies.

A grant of an interim order is a matter of discretion with the court and in its exercise the court has to satisfy itself whether the applicant has a triable case. The facts as presented do not show a prima facie case unless and until thoroughly interrogated by the court. *Hon. Justice Rubby Aweri Opio in*

Tim Kabaza & 2 Ors v Chatha Investments Ltd (Miscellaneous Application No.745 of 2007) stated that in considering the above principles, the court should bear in mind the following guidelines:-

(a) *That temporary injunctions are discretionary orders and therefore all the facts of the case must be considered and balanced judicially.*

(b) *That the same being an exercise of judicial discretion, there are no fixed rules and the vetting may be kept flexible.*

(c) *The court should not attempt to resolve issues related to the main suit: See: Prof. Peter Anyang 'Nyong'O & others vs The Attorney General of Kenya & others; East African Court of Justice Case Ref. No 1 of 2006 (unreported).*

In the premises, I decline to grant the interim order and the application is dismissed with costs to the 1st and 3rd respondents.

I so Order

Ssekaana Musa

Judge

28th August 2020