

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISC CAUSE NO.226 OF 2020**

1. BASILE DIFASI
2. TWALA HASSAN
3. NKONGE MOSES KIBALAMA
4. SSIMBWA PAUL KAGOMBE:..... APPLICANTS

VERSUS

- 1) THE NATIONAL UNITY PLATFORM
- 2) KYAGULANYI SSENTAMU ROBERT
3. DAVID LEWIS RUBONGOYA
4. AISHA KABANDA
5. JOEL SSENKYONYI
6. FLAVIA KALULE NABAGABE
7. NYANZI FRED SSENTAMU
8. ELECTORAL COMMISSION
9. ATTORNEY GENERAL:.....RESPONDENTS

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an Application brought under Articles 8A together with the National objective II(v), 29(1)(e), 71(1)(c), and 139 of the Constitution; Section 98 of the Civil Procedure Rules; Sections 33 Judicature Act; Section 19, 21 and 4th Schedule to the Political Parties and Organisations Act as Amended; Order 52 rules 1 and 2 of the Civil Procedure Rules seeking the following Declarations and Orders;

- a) A Declaration that the Resolution dated 5/12/2017 nominating someone described as the Ghetto President H.E. Bobi Wine Kyadondo East MP Hon. Kyagulanyi Robert as the NURP Party's Presidential Flag Bearer in the 2021 general elections is illegal and in contravention of the Party Constitution.
- b) A Declaration that the change of the Party name by the 8th respondent (Electoral Commission) from National Unity, Reconciliation and Development Party (NURP) as per its certificate of registration dated

28/12/2004 to The National Unity Platform (NUP) as published under General Notice No. 838 of 2019 in Uganda Gazette dated 12/8/2019 and the Certificate of Registration issued on 28/8/2019 in the name of The National Unity Platform (NUP) are illegal , null and void as they are not supported by the requisite resolutions under the NURP Party Constitution.

- c) A Declaration that the change of NURP Party colours and symbols as gazetted under General Notice No. 379 of 2004 in the Uganda Gazette dated 13/12/2004 and maintained under General Notice No. 838 of 2019 in the Uganda Gazette dated 12/8/2019 by the 3rd to 9th Respondents is illegal, null and void as it is not supported by the requisite resolutions under the NURP Party Constitution and it infringes on sections 7(5), 8(a) and 11 of the Political Parties and Organisations Act 2005.
- d) A Declaration that the extra ordinary Delegates Conference allegedly held on 14/7/2020 to elect new political leaders of the NURP/NUP party was illegal and infringement of the Party Constitution, Articles 8A and National Objective II (v) and 29(1)(e) and 71(1)(c) of the National Constitution 1995 and Sections 19, 21 and the 4th Schedule of the Political Parties and Organisations Act 2005.
- e) A Declaration that the purported election of the 2nd respondent as Party President, 3rd Respondent as Secretary General, 4th Respondent as Deputy Secretary General, 5th Respondent as Secretary for Information/Spokesperson, 6th Respondent as Secretary for Women Affairs, 7th Respondent as Secretary for National Mobilization the said extra ordinary delegates conference was itself illegal, null and void.

- f) A Declaration that the alteration of the list of Founder Members/Subscribers in the NURP Party Constitution 2004 was fraudulent and illegal.
- g) A Declaration that by condoning the aforesaid illegalities, the 10th Respondent (Electoral Commission) is in breach of its statutory duty to ensure compliance with the provisions of the Political Parties and Organisations Act 2005.
- h) An Order that the 10th Respondent should de-gazette the change of the party name appearing under General Notice No. 838 of 2019, de-register the name of The National Unity Platform (NUP), and re-instate NURP as the legally recognized Party name and the gazette NURP Party Colours and symbols.
- i) A Permanent Injunction restraining the 2nd, 3rd, 4th, 5th, 6th, 7th Respondents, their servants, agents and any person deriving authority from them from holding themselves out as the elected political leaders of the NURP/NUP Party whereas not, from transacting any business in the name of or on behalf of or on behalf of the Party or exercising the functions, powers and duties attached to the party offices they illegally claim and occupy by virtue of the elections allegedly held on 14/7/2020.
- j) A Permanent Injunction restraining the 8th & 9th Respondents, their servants and agents from recognizing NUP as a registered political party or organization, receiving any returns in the name of and/ or on behalf of NUP, or nominating any candidates for election on the NUP ticket.
- k) An Order for general damages to the Applicants.

l) Costs of the Application.

The grounds of the application are specifically set out Notice of Motion and also in detail in the affidavits of Basile Difasi and Twala Hassan the Applicants herein, which shall be read and relied on at the hearing but briefly are that;

1. The subject of the application is the National Unity, Reconciliation and Development Party (NURP) which was gazette as a political party in the Uganda gazette of 13th/13/2004 and issued with a certificate of registration on 28th -12-2004. In 2019, without any colour of right and in breach of the Party's Constitution, the 2nd and 10th respondents illegally changed its party's name of the National Unity Platform and on 14/7/2020, the 2nd respondent illegally handed over its political leadership to the 3rd to 9th respondents.
2. The applicants are founder members of the said party and the 1st applicant doubles as a founding members of the party, its National Youth Secretary and member of the Party's National Executive Committee whose consent and participation is necessary to amend the Constitution, elect new office bearers, nominate flag bearers and general running of the party.
3. In 2019, the 10th respondent-Electoral Commission acting on application by the 2nd respondent changed the party name from NURP to National Unity Platform under General Notice No. 838 of 2019 published in the Uganda Gazette dated 12/8/2019 illegally as the relevant Party organs were not consulted and did not pass the requisite resolution to change the party name under the NURP Party Constitution 2004.

4. On the 14th/7/2020 the 2nd respondent handed over the political leadership of the Party to the 3rd,4th, 5th 6th, 7th & 8th in an alleged extra ordinary Party Delegates Conference attended by 51 members who allegedly elected the 3rd-9th respondent as the new party leaders unopposed during the COVID-19 such alleged extra-ordinary delegates conference if it ever occurred, was illegal, null and void for being in breach of the Party Constitution.
5. The 2nd to 7th respondents have taken over the party's leadership and arrogated unto themselves political powers illegally without consulting party members or the supporting resolutions of the relevant party organs.
6. The applicants wrote a complaint to the 10 respondent against the above named illegalities on 3/8/2020 but the Electoral Commission has failed or refused to take action thereby breaching its statutory duties.

The respondents filed several affidavits in reply sworn by the parties themselves and Electoral Commission's affidavit was deposed by Kiyangi Samuel-Principal Election Officer and Wanyama Kodoli from the Attorney General chambers opposing the application whose grounds are briefly that;

1. That on 22nd November, 2012, a request to change the party name to National Unity Party was made to the Electoral Commission but it was rejected due to failure by the party to adhere to the law. That on 4th February 2013, the party made another attempt at change of name to Independent's National Unity Party and the same was also rejected.
2. That on 11th March, 2019, a re-submission of the earlier request to change from National Unity Reconciliation and Development Party (NURP) to Independent National Unity Party was rejected by the 10th respondent. On

11th March, 2019, the party held its 3rd Extra-Ordinary meeting at which a resolution to change its name was passed.

3. That on 14th June, 2019 a Notification of Intention to change the name was published in the gazette by the 10th respondent. On 12th August 2019 a Notice of Approval of change of Party name to National Unity Party was published in the gazette by the 10th respondent.
4. That upon publication of the Notification of Intention to change the name and Notice of Approval thereof in the Gazette, the 10th Respondent on 28th August, 2019, issued a Certificate of Registration to the 1st respondent.
5. That on 18th January 2020, a Notice of Meeting for the central Executive Committee was issued by the 1st respondent. On 29th June, 2020, the 1st respondent notified the 10th respondent about holding an extra ordinary National Delegates Conference on 14th July, 2020.
6. That on 13th July 2020, the 1st respondent requested to change the party symbol, however it was rejected.
7. That on 21st July 2020, the 1st respondent presented a list of its elected party leaders together with the minutes of the Delegates Conference held on 14th July 2020.
8. That there is no record on file to demonstrate that the applicants are among the founder members.

ISSUES

1. Whether or not the Applicants have *locus standi* to bring the Application;

2. Whether or not the change of the Party name from NURP to NUP was in breach of the Party Constitution and or any other legal provisions regulating political parties;
3. Whether or not the election and assumption of party offices by the 3rd to 9th Respondents was in breach of the Party Constitution and or any other legal provisions regulating political parties;
4. Available Remedies.

Preliminary Considerations

The 2nd and 9th respondent had been joined as respondent in the matter and later during the proceedings they changed their affidavit evidence and indeed sought to agree with the original applicants. Secondly, they also appeared now to be aggrieved since they never received what had been promised to them as a consideration for surrendering the party. Since in the testimony/cross examination, they wanted the promised 5,000,000\$. This court in exercise of its inherent powers, has joined the said respondents to become part of the applicants.

The 2nd respondent and 9th respondent through their recanting affidavits were deemed to have crossed over to being applicants. Although, they tried to disguise but the information on court record shows that the applicants lawyer were their lawyers and indeed one of the purported lawyers of Kibalama Moses Nkonge and Ssimbwa Paul Kagombe wrote a letter to court disowning documents (affidavits) drawn in their law firm and have contended that it was drawn by applicants lawyers.

WHETHER THE APPLICATION IS COMPETENT AND PROPERLY BEFORE THIS HONOURABLE COURT?

The respondent's counsel submitted that the applicants brought this application under Article 8A together with National Objective Principles II (v), 29 (i) (e), 71 (1) (c) and Article 139 (1) of the Constitution, section 98 of the Civil Procedure Rules, section 33 of the Judicature Act; section 19, 21 and 4th Schedule to the Political Parties and Organizations Act, 2005 as amended; Order 52 rule 1 and 2 of the Civil Procedure Rules.

Clearly there is no set procedure governing the nature of this application. It is an amorphous document placed before court in exploration and hope of chancing on a remedy. It is not clear whether it is an application for constitutional interpretation or for enforcement of rights. But it can be deduced from the nature of remedies sought that this application seeks from this court judicial review remedies.

The application should have been an application for judicial review since the applicants seek for declarations, orders and injunctions on the activities of the Respondents.

They submitted that submit that the applicants have opted to run away from the strict rules of procedure after they realised that this application was well beyond the 3 months period prescribed for any application for judicial review.

The applicants counsel submitted that the Constitution, Political Parties and Organisations Act and Party Constitution out of which the matter arose do not by themselves provide a specific procedure, hence invoking section 98 of the Civil Procedure Act.

Determination

It can be deduced from the pleadings and provisions cited that the applicants' counsel are not aware that there is legal regime that governs the procedure of

challenging decisions of political parties. It is trite law, that inherent powers of court cannot be invoked where there is specific law governing a subject matter.

In the case of **Male Mabirizi v Attorney General (MISCELLANEOUS CAUSE NO. 237 OF 2019)** this court found that the applicants have opted to run away from the strict rules of procedure after he realised that his application was well beyond the 3 months period prescribed for any application for judicial review.

Rule 5 (1) of the Judicature (Judicial Review) Rules 2009 provides that;

(1) An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application FIRST arose, unless the court considers that there is good reason for extending the period within which the application shall be made. (Emphasis added)

This court will not allow such a litigant to devise alternative procedure in order to circumvent the set procedure. He is only trying to access court through the window instead of the door that has been prescribed by the Constitution.

Justice is to be rendered in accordance with the law and set principles and procedure. The Constitution is silent as to the procedure to be followed or how to access courts to seek redress outside constitutional interpretation and enforcement of human rights.

The necessary procedure must be followed from the existing legislation like the Judicature Act or Civil Procedure Act and not to invent any procedure the applicant finds convenient or comes to his imagination.

The nature of judicial review procedure is based on some clear policy consideration such that the state machinery or administrators are not bogged down with endless litigation over their actions. Judicial review thus is a fundamental mechanism for keeping public authorities within the due bounds and for upholding the rule of law. See ***Wade & Forsyth Administrative Law 10th Edition***

Excessive interference by the judiciary in the functions of the executive is not proper. The machinery of government would not work if it were not allowed some free play in its joints.

This therefore means that if the applicants wanted to invoke the jurisdiction of a court, they should have come to court at the earliest reasonably possible opportunity. Inordinate delay in making the application for judicial review will indeed be a ground for refusing to exercise such discretionary jurisdiction.

The underlying object of this principle is not to encourage agitation of stale claims and exhumed matters which have already been disposed of or settled or where rights of 3rd parties have accrued in the meantime.

There is no proper limit and there is a lower limit of 3 months when a person can come to court. The court is allowed to exercise discretion depending on the facts to determine whether to extend the time to file/apply for judicial review. It will depend on how the delay arose.

The applicant in this case ought to have applied for judicial review within 3 months after the change of name of the party from NURP to NUP i.e by 6th June 2019 but instead the applicants filed this application on 24th August 2020 after over one year. This application was made with a view of making some money during the election season and the applicants have no genuine grievance but rather want to be relevant and make some quick cash.

The court is empowered to refuse relief and deny access to the judicial review reliefs on ground of laches because of several considerations e.g it is not desirable to allow stale claims to be canvassed before the court; there should be finality to litigation.

It cannot be argued that the Constitution intended to disregard all procedural rules in relation to access to justice or grant of reliefs and allow applications filed after inordinate delay. Constitutional provisions are not intended to supersede the available modes of obtaining relief before a civil court or deny the defences legitimately open in such actions.

The applicants like all other litigants should not be encouraged to circumvent the provisions made by a Statute providing a mechanism and procedure to challenge administrative action. Every potential litigant would rush to the court in any manner they deem fit and thus rendering the statutory provisions meaningless and non existing.

Constitutional provisions are not intended to short circuit or circumvent established procedures and statutory provisions for accessing courts. See Article 126(2)(e) of the Constitution.

Every litigant who approaches the court, must come forward not only with clean hands but with clean mind, clean heart and with clean objective.

The court must come with a very heavy hand on a litigant who seeks to abuse the process of the court; as the Supreme Court of India has observed;

“No litigant has a right to unlimited drought on the court time and public money in order to get his affairs settled in the manner he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions”.

Budhi Kota Subbarao v K. Parasarab, AIR 1996 SC 2687;(1996) 5 SCC 530.

It is the responsibility of the High Court as custodian of justice and the Constitution and rule of law to maintain the social balance by interfering where necessary for the sake of justice and refusing to interfere where it is against the social interest and public good.

This court declines to entertain the application since it was not brought under any known procedure and secondly it was made to avoid the time limit of 3 months within which an application for judicial review should have been brought. The judicial review guidelines or rules equally provide for *locus standi* and this would have been the threshold before the applicants would seek to challenge actions of a party. It is an abuse of court process.

This application is dismissed with costs to the respondents

I so order

SSEKAANA MUSA
JUDGE
21st October 2020