

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
IN THE MATTER OF THE POLITICAL PARTIES AND ORGANISATIONS ACT 2005

AND

IN THE MATTER OF THE ELECTORAL COMMISSION ACT CAP 140

AND

**THE POLITICAL PARTIES AND ORGANISATIONS (APPEALS AND APPLICATIONS)
RULES, 2005**

ELECTORAL COMMISSION----- APPLICANT

VERSUS

- 1. FARMERS PARTY OF UGANDA**
- 2. NATIONAL YOUTH REVOLUTIONARY ORGANISATION**
- 3. POPULAR PEOPLE’S DEMOCRACY**
- 4. REPUBLICAN WOMEN AND YOUTH PARTY**
- 5. UGANDA PEOPLES PARTY**
- 6. ATTORNEY GENERAL-----RESPONDENTS**

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGEMENT

This is an application by way of Notice of Motion, in which the applicant as the regulator seeks to de-register the 1st -5th respondents as Political Parties and Organisations from the register of Political Parties and Organisations. The said application was supported by an affidavit of Kiyingi Samuel and also by an additional affidavit of Kyeyune George.

The main ground for the deregistration is that the 1st-5th respondents have failed to comply with the Political Parties and Organisations Act which require every political party or organisation to submit written declarations of Assets and liabilities.

Secondly, the applicant also contends that the 1st -5th respondents were reminded to avail copies of the written declarations of assets and liabilities with the requisite primary documents with no avail.

The 1st -4th respondents opposed the de-registration in their respective affidavits in reply but the 5th respondent did not file any affidavit in reply and he is deemed to have conceded to this application.

The 1st respondent in an affidavit in reply by the President-General (Bomboka-Nsiko Moddy Mohammed contended that they duly submitted copies of audited books of accounts and declarations of assets and liabilities since 2005 to 2014.

He also stated that the law does not require the applicant to undertake a fresh audit on receipt of their audited accounts and the documents they submitted complied with the law.

The 2nd respondent in an affidavit in reply by the Party Chairman-Moses Kakama contended that they have duly submitted copies of the audited books of accounts and declarations of assets and liabilities since 2007-2015.

He also stated that the law does not require the applicant to undertake a fresh audit on receipt of their audited accounts. And the documents submitted where in compliance with the law. He also stated further that their party offices were broken into and many documents were stolen, a fact which was brought to the attention of the Applicant.

The 3rd respondent in an affidavit in reply by President-Webster Lukwiya contended that they duly submitted to the applicant their audited books of accounts and declarations of assets and liabilities since 2005-2014.

He also stated that the law does not require the applicant to undertake a fresh audit on receipt of their audited accounts. And the documents submitted where in compliance with the law.

The 4th respondent in an affidavit in reply by the President/Chairperson-Nambuya Stella Birah contended that the allegation is not accurate since they have been filing the Assets and liabilities/audited accounts since 2004, and the applicant has received the latest of 2017, 2016, 2015 and 2014.

The applicant also denied receipt of the letter inviting them for them for a meeting and alternatively contended that they did not need the meeting since they had already filed the documents as required and the applicant received them.

They further stated that they have been an active party which notably participated in the latest national elections of 2016 even when it does not receive state funding.

The applicant was represented by Mr Sabiti Eric and Mr Mwasa Jude and Olwenyi Willy for the 4th respondent and 1st, 2nd, 3rd respondents were represented by George Musisi

There is only one issue for determination;

Whether the 1st-5th respondents should be de-registered by the applicant as Political Parties and Organisations?

The 4th respondent's counsel made some preliminary objections which I should consider first before delving into the main issue for consideration.

The objection is about the competency of the application before court and premised on the submission that the law under which it was brought Rule 17 of the Political Parties and Organisations Act was repealed.

I donot understand the gist of this preliminary objection by Counsel for the 4th respondent. The law applicable for this application is the Political Parties and Organisations Act 2005 and I do not know why the 4th respondent is alluding to

the Political Parties and Organisations Act of 2002 which was repealed and replaced by the 2005 Act.

He submits that rule 17 of the Political Parties and Organisations Act (Appeals and Applications) Rule, 2005 under which this application was brought to de-register the applicant was repealed.

Whereas it is true that the Political Parties and organisations Act of 2002 was repealed and replaced by the Political parties and Organisations Act of 2005 but the Statutory instrument made under the repealed Act was saved.

Section 12 of the Interpretation Act provides;

Where any Act or part or part of an Act is repealed and re-enacted, with or without modification, statutory instruments made under it shall, unless a contrary intention appears, remain in force, so far as they are not inconsistent with the repealing Act, until they have been revoked or repealed by statutory instruments made under the repealing Act, and until that revocation or repeal, shall be deemed to have been made under the repealing Act.

The statutory instruments made under the Political Parties and Organisations Act 2002 were therefore automatically saved by the Political Parties and Organisations Act 2005. Therefore this preliminary objection is devoid of any merit, misconceived and baseless.

The 4th respondent also raised another preliminary objection that the application was brought by the desk officer because they deponed affidavits. According to the 4th respondent's counsel, the commission is supposed to be have assigned the deponents of the affidavit in support of its application under section 14 of the Electoral Commission Act.

This application is brought in the name of the Electoral Commission and there is no evidence that the commission did not authorise the suit and the law allows the Commission may bring an action before any court in Uganda. See Section 17 of Electoral Commission.

This preliminary objection does not make any point of law since the application was brought in the names of the Commission and the same is brought under the provisions of sections 9(6) which provides that;

Where a political party or organisation fails to comply with this section within 21 days after notice from the Electoral Commission to so, the Electoral Commission may apply to the High Court for an order to de-register the political party or organisation.

It is quite clear that the commission is empowered to make such an application and the issue of whether the application is incompetent cannot arise and the same is devoid of merit.

Whether the 1st-5th respondents should be de-registered by the applicant as Political Parties and Organisations?

This issue can only be determined by establishing whether the respondents complied with the requirements of section 9 of the Political Parties and Organisations Act.

(1) Every political party and organisation shall, within sixty days after the expiry of the first year after the issue to it of a certificate of registration under section 7, or such longer period as the Electoral commission a written declaration in form 2 in the Third Schedule.

(2) The political party or organisation shall also, annually after the first year, within such time as the Electoral commission may direct, submit to the Electoral Commission a written declaration in Form 2 in the third schedule.

(3) A declaration submitted to the Electoral Commission under subsection (1) or (2) shall state the sources of funds and other assets of the political party or organisation.

(4) A declaration shall be authorised by the members of the executive committee

(5).....

(6) Where a political party or organisation fails to comply with this section within 21 days after notice from the Electoral Commission to so, the Electoral Commission may apply to the High Court for an order to de-register the political party or organisation.

(7) Without prejudice to any other penalty provided in this Act, where a political party or organisation makes a statement for the purpose of this section which is the false in a material particular, the political party or organisation commits an offence and is liable on conviction to a fine not exceeding seventy two currency points.

The applicant submitted that the 1st -5th respondents failed to submit their written declarations annually stating sources of funding and assets as the law prescribes.

The applicant contends that they sent several notices requiring them to submit their written declarations of sources of funding and assets and liabilities.

The 1st, 2nd, 3rd, and 4th respondents responded to the said notices and filed the written declaration of Assets and liabilities together with audited books of accounts. The applicant wrote to the different respondents acknowledging receipt of their declarations of assets and liabilities for the said period and they also informed them as follows;

“ as you are aware, the Political Parties and Organisations Act mandates Electoral Commission to establish the authenticity of the information submitted through causing independent inquiries.

Accordingly, auditors assigned that duty revealed that your accounts were prepared without being derived from primary source/date. This casts doubt on the accuracy of records submitted.

This is therefore, to inform you that your accounts cannot be accepted until primary source is availed.”

The 1st, 2nd & 3rd respondent did not deny being given such a letter demanding for the primary source and their defence to the said demand letter is that;

“I know that the law does not require the applicant to undertake a fresh audit on receipt of my audited statements”

The respondents ignored the above demand notice and none of them availed the primary source of the information or data.

The responded counsel has indeed repeated the said submission that they complied with the requirements of the law and the said law does not provide anywhere that the submitted documents to a fresh audit.

I understand the respondent’s counsel to mean that the Electoral Commission is merely supposed to receive the said written declarations stating the sources of funds and other assets and has no power to question whatever is submitted even if it rubbish. This reasoning or thinking is very pedestrian to say the least. What was the rationale of having such an annual obligation on the Political Parties and Organisations?

Section 23 of the *Interpretation Act* provides;

Where any Act confers a power on any person to do or enforce the doing of any act or thing, all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.

The Electoral Commission is therefore empowered to subject the written declarations and audited books of accounts showing assets and liabilities to an audit to establish the authenticity and genuineness of the submitted books of accounts and the said sources of funding.

Sections 9(7) & (8) of the Political Parties and Organisations Act create offences for making a statement which is false in a material particular for the Political party and Organisation and any member of the Executive committee who contributes in the commission of the offence under subsection 7.

The commission of these offences could never be established if the Electoral commission was not allowed to subject the submitted written declarations and audited books of account to fresh audit and scrutiny to establish their authenticity by a certified public accountant.

The 4th respondent has however denied ever receiving the said letter requiring them to submit the primary source. The applicant has equally not availed any proof of service of the said letter.

The 4th respondent's President/Chairperson contends that; *"I never received any such information and the applicant shall be put to strict proof of receipt of such invitation by the 4th respondent"*

The 4th respondent is given a benefit of doubt and should be accorded a hearing on this and the applicant should formally demand for the primary source and they must avail the primary source if at all they are to save their Political Party or Organisation from deregistration.

In the case of ***Electoral Commission vs Action Party and 10 Others High Court Miscellaneous Cause No. 296 of 2013*** Musota J (as he then was) in deciding a similar application noted that;

" the purpose of the written declarations is to provide information about the financial position and performance and changes in parties and organisations. It is also necessary because it facilitates the applicant which id the regulator of the respondent parties to make desired and important decisions that affect the continued operations of the parties and organisations. The said information is useful to all stakeholders and the electorate because it provides a basis for making funding decisions by stakeholders and government.

It is common knowledge that political parties influence the political process and sponsor their respective agenda. They usually sponsor candidates for election to political offices and participate in governance of Uganda at all levels. Therefore since parties and organisations influence political process they must be law abiding and have an agenda in order to mobilise support and funds in order to compete for political power. Competing for political power requires

the political party to respect the rule of law. Its leaders must be exemplary, disciplined and law abiding citizens.

It is impossible to achieve the above qualities if a party neglects the mandatory requirement of section 9(2) of the Act. A party which neglects the mandatory requirement of the law must be deregistered.”

This court is in total agreement with the finding of that court and for the reasons set out in this ruling, the applicant is allowed to deregister the following political parties and organisations;

1. Farmers Party of Uganda
2. National Youth Revolutionary Organisation
3. Popular Peoples Democracy
4. Uganda Peoples Party

Republican Women and Youth Party is allowed to respond to the demand or request of the applicant of availing the primary source.

The application against the Attorney General is dismissed with no order as to costs.

The application is allowed against 1st, 2nd, 3rd, and 5th respondent. The applicant should accord the 4th respondent a hearing and each party shall bear its costs of this application.

**SSEKAANA MUSA
JUDGE
22nd /08/2018**