

Counsel legal representation:

- [3] The Applicant was initially represented by **Mr. Byamukama** of **M/s Byamukama, Kaboneka & Co. Advocates, Kampala** who drafted the pleadings but at hearing, **Mr. Businge A. Victor** of **M/s Ngaruye Ruhindi, Spencer & Co. Advocates, Fort portal** filed a Notice of joint instructions to prosecute the application with **M/s Byamukama, Kaboneka Co. Advocates**. **Mr. Businge** appeared for the Applicant at the hearing of the application. The 1st Respondent on the other hand is jointly represented by **Mr. Usama Sebuwufu** and **Esau Isingoma** of **M/s K & K Advocates, Kampala**, **Ms. Faridah Bukirwa** of the Legal Department of the 2nd Respondent represented the 2nd Respondent, **Mr. Kugonza** represented the 3rd Respondent Electoral Commission while **Mr. Mugabe Robert** of **M/s Mugabe - Luleti & Co. Advocates, Fort portal** represented the 4th Respondent.

Determination of the Application:

- [4] The application was fixed for hearing yesterday the 15th of September, 2021 at 02:00pm. At the hearing of the application, Counsel for the Applicant **Mr. Businge Victor** addressed court that they been given instructions by the Applicant to withdraw the application and implored court to deem the application withdrawn with no orders as to costs for the sake of reconciliation/peace of the people of Bunyangabo County, the affected Constituency. Secondly, that the court makes an order that would have an effect of barring the Applicant and his associates from filing any other or further application(s) since court is not a playing ground for games.
- [5] This second prayer was intended to enable him have his client, the Applicant escape being condemned to costs. **Counsel Usama** for the 1st Respondent, **Counsel Kugonza** for the 3rd Respondent Electoral

Commission and **Counsel Mugabe** for the 4th Respondent, though they did not object/oppose the application to withdraw, they prayed that instead of an order barring the Applicant and his associates from filing further applications, implored this court to substitute it with an order that the application is frivolous as an abuse of court process since the time to challenge the decision of this court to terminate the decision by withdraw has since past (*Section 65(2) Parliamentary Election Act*). That such a declaration would be a decision in rem which would bar any other party bringing other applications arising from **Petition No. 006 of 2021**. With this kind of order, save for **Mr. Mugabe**, generally they had no objection as to each party bearing his costs. Counsel **Faridah Bukirwa** for the 2nd Respondent had no objection to the application by the Applicant to withdraw the application and each party bearing his own costs despite the fact that the application is frivolous and vexatious.

[6] **Counsel Businge** in rejoinder was not of the view that the application is frivolous or vexatious.

Issues for determination:

[7] From the submissions of all the Counsel in the matter, the issues for determination appeared to be the following:

1. Whether the application is frivolous and vexatious.
2. Whether the application should be withdrawn with or without costs to the Respondents.

[8] I ruled that the application is frivolous and vexatious but that it be withdrawn with no order as to costs. I reserved reasons for the above orders in this ruling.

Reasons for the orders:

1st Issue: Whether the application is frivolous and vexatious.

- [9] The head **Petition No. 006 of 2021** was filed on the 12th day of March, 2021 and the Respondents' answers to the Petition were filed around 26th March - 27th April, 2021 but due to **COVID 19 Pandemic**, scheduling and hearing of the Petition could not take place until when the country emerged from the COVID Lockdown that the Petition was fixed for hearing on the **17th day of August, 2021**. In the Petition, **Mr. Murungi Patrick Zeresire** who was the Petitioner and now the present 4th Respondent in the instant application filed an application to withdraw the Petition.
- [10] During scheduling of the Petition, the Petitioner's application to withdraw was considered and parties reached an agreement that the Petition be withdrawn with no orders as to costs and court accordingly withdrew the Petition with no order as to costs.
- [11] On 02nd September, 2021, the Applicant filed the present application under **Section 65(2) & (3) Parliamentary Election Act** and other enabling provisions of the law to be substituted as the Petitioner following the withdrawal of the Petition by **Mr. Murungi Patrick Zeresire**.
- [12] **Section 65(2) & (3) Parliamentary Election Act** provides thus:
- “65. Withdrawal of Election Petitions.***
- (2) On the hearing of the application for withdrawal, any person who might have been a Petitioner in respect of the election to which the Petition refers may apply to the court to be substituted as a petitioner for the petitioner who desires to withdraw.”*
- “(3) The court may substitute as a petitioner an applicant under Sub section (2) and ...”*

- [13] The foregoing provision permits a person, who might himself have been a Petitioner to apply for substitution as Petitioner in place of the party withdrawing. The Applicant herein who is seeking to be substituted in place of the Petitioner must have the same interest with the Petitioner. The Applicant has to demonstrate to court that he has the same interest by attaching to the application his intended Petition with an affidavit in support. In the instant application such an intended Petition with its supporting affidavit was not attached to the application.
- [14] Secondly, the Applicant herein is seeking to be substituted as the Petitioner in **Election Petition No. 006/2021** in place of Petitioner **Murungi Patrick Zeresire** who is applying to withdraw the Petition. The application has to be filed before the conclusion and determination of the Petitioner's withdrawal. It has to be "on the hearing of the application for withdrawal" (**Section 65(2) Parliamentary Elections Act**).
- [15] In the instant application, on the **17th day of August, 2021**, parties in **Election Petition No. 006/2021** in which the Applicant is seeking to be substituted as the Petitioner, reached a consent to have the Petition withdrawn and it was withdrawn by an order of court accordingly. The Applicant filed his application to be substituted as the Petitioner in the Petition on 02nd September, 2021, long after the Petition had been withdrawn. It is both logically and legally untenable for a party to seek to be substituted as a party in a nonexistent Petition. The Petition is no longer in existence because it was long withdrawn on 17th August, 2021.
- [16] Since in the present application the Applicant was seeking to be substituted as a Petitioner in a non existing Petition that was long

withdrawn, such an application is frivolous and vexatious by way of being an abuse of court process.

[17] Be that as it may, I still find that the Applicant would not obtain his desired goals by proceeding under ***Section 65(2) & (3) Parliamentary Election Act***. This is so because the consent order of withdrawal in ***Election Petition No. 006/2021*** in which the Applicant sought to be substituted as a Petitioner was not a ***withdrawal*** under ***Section 65(1) and (2) Parliamentary Election Act*** and therefore, under which “***any person who might have been a Petitioner in respect of the election to which the Petition refers may apply to the court to be substituted as a Petitioner for the petitioner who desires to withdraw,***”

[18] The consent order in question arose out of a ***consent agreement*** entered under ***Rule 27 A & B of the Parliamentary Election (Election Petitions) (Amendment) Rules, 2006 Part 11 A*** which provides thus:

“Schedule conference

27A: After the place and time for trial has been fixed under rule 10, but the trial commences, the court shall hold a schedule conference to sort out points of agreement and disagreement or the possibility of settlement of the case by alternative dispute resolution.”

“Agreement scheduling conference

*27B: Where the parties at the schedule conference reach an agreement as to the disposition of the case on all or any of the issues, the court shall record the agreement and enter a ***consent judgment*** based on the agreement.”*

[19] It follows from the foregoing that the consent order arising from the consent agreement during scheduling amounted to a final order that

disposed of the Petition. The Petition cannot therefore be resurrected in any way save by way of an application to set the consent order aside or by way of review under **Section 82 Civil Procedure Act, Section 17 Parliamentary Elections (Interim provisions) Rules and Order 46 rules 1, 2 & 8 Civil Procedure Rules** and if successfully done, then proceed with the application for being substituted as a Petitioner under **Section 65 Parliamentary Election Act**.

[20] Again, for the present application to file the present application without first having the consent order which disposed of the Petition set aside or reviewed renders the application frivolous and vexatious. It is an abuse of court process because, the Applicant actually has no audience before court.

[21] Lastly, as was observed in the Kenyan case of **HON. DICKSON DANIEL KARABA VS. HON. KIBIRU CHARLES REUBENSON & 5 ORS. ELECTION PETITION APPEAL NO. 3 OF 2018 (C.A)**, electoral disputes are serious matters and their resolutions should be determined within a reasonable time and within timelines set out in law. Uganda courts are enjoined to hear and determine Petitions expeditiously and declare their findings not later than thirty days from the date of the commencement of the hearing of the Petition unless the court for sufficient reason extends the time, **Rule 13 of the Parliamentary Election Act (Interim provision)(Election Petition) Rules**. See also **IBAALE VS. ABDU KATUNTU & E.C E.P APPEAL; NO. 41/2016 (C.A)** where court held that litigation is not supposed to go on endlessly and timelines are set for parties to follow when conducting their respective cases. This is especially so in Election Petitions.

[22] Scheduling of the Petition commenced on 17th August, 2021 and therefore it follows, assuming that the Petition was not withdrawn, it

ought to be determined by the 17th of September, 2021. To entertain an application for substitution of a Petitioner at this time defeats the essence of the timeline set by the law as its conclusion would definitely go beyond the time set by the rules. Again, I find that such an application when the would be time for hearing the Petition is running out in view of the timelines set by the law, amounts to an abuse of court process.

[23] The instant application having suffered the above setbacks, it was therefore right and proper for the Applicant to consider withdrawing it and he should be permitted to do so. A party cannot be barred from withdrawing as long as he complies with the procedure, requirements and standards set down under the law.

2nd Issue: Whether the application should be withdrawn with costs or not.

[24] ***Under Rule 27 of the Parliamentary Election Act (Interim provisions) Rules S.I 141-2*** costs follow the event unless court otherwise orders for good reasons; **FREDA NANZIRI VS. MARY BABIRYE & E.C E.P APPEAL NO. 38/2016 (C.A)** and the court is empowered to grant or deprive a party costs as the demands of justice may require.

[25] In the instant case, it is apparent that the Respondents generally were not in objection to the withdrawal of the application with each party bearing his costs as long as the Respondents were not to be subjected to such or any other frivolous and vexatious application of this nature. Besides, considering the fact that the parties are politicians hailing from the same Constituency, Counsel for Applicant was suggesting that each party bearing his costs would promote reconciliation of the parties and peace. I do agree.

[26] In the premises, I granted leave for withdrawal of the application with no orders as to costs.

Dated at **Fort portal** this **16th** day of **September, 2021**.

Byaruhanga Jesse Ruggyema

JUDGE

The Registrar of this court to deliver the ruling to the parties and their respective Counsel by email.

Byaruhanga Jesse Ruggyema

JUDGE