THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL OF UGANDA AT KAMPALA

 MISCELLANEOUS APPLICATION NO.24 OF 2015

 [ARISING OUT OF MISCELLANEOUS APPLICATION NO.23 OF 2015]

 [ITSELF ARISING OUT OF CONSTITUTIONAL PETITION NO.27 OF

2015]

BETWEEN

IBRAHIM DDAMULIRA APPLICANT

AND

ATTORNEY GENERAL RESPONDENT

[Under Article 50(1), Article 137(3) (a) of the Constitution of the Republic of Uganda 1995, Civil Procedure Act Cap71, Constitutional Court [Petitions and References] Rules, SI

91/2005 & Civil Procedure Rules SI 71-1]

CORAM: BEFORE A SINGLE JUSTICE

HON. MR. JUSTICE RICHARD BUTEERA

RULING:

This is an application for interim orders. It is brought by Notice of Motion under Article 50(1), Article 137(3) (a) of the Constitution and Civil Procedure Act Cap 71, Constitutional Court (Petitions and References) Rules, SI 91/2005 and Civil Procedure Rules SI 71- 1.

The petitioner is seeking for the following orders;

1. An interim order doth issue against the respondent staying the implementation of the National Council for Disability (Amendment) Bill, 2015 until disposal of the main application.

2. An interim order doth issue restraining the respondent from hurriedly gazetting the National Council for Disability (Amendment) Bill, 2015.

3. Costs of this application be provided for.

The ground to the application is out in the affidavit in support of the application as the following:-

1. That the applicant is an adult male Ugandan of sound mind, a contestant in the upcoming elections of Persons with Disabilities (PWDs).

1. That Parliament passed into law a bill entitled the National Council for Disability (Amendment) Bill, 2015 somelime in august 2015 whose Bill is to amend the National council for disability act, 2003 to provide for the mode of electing members of the national council and the councils for disability at the village, parish or ward, sub county or town, division, municipality or district. That consequently the Bill seeks to amend the 2i National Council for disability act 2003 in accordance with article 68 (6)

of the Constitution, to exempt the elections at village, parish or ward, sub county, division or town disability committee from the requirements of Article 68(1), that the election should be held by secret ballot.

1. That the said law would in effect mean that the elections for persons

with Disabilities would be conducted by means of the voters and/or

General electorate queuing behind their preferred candidate on polling day.

1. That the haphazard, arbitrary, rushed and/or hurried implementation of the said legislation and rushed legislative process by the relevant government agencies threatens your petitioner’s rights and the rights of

 all other persons with disabilities under the constitution, especially the

right to a free and fair election enshrined under article 1 (4) of the Constitution.

1. That the purported change of mode of voting is inconsistent with or in

 contravention of article 1 (4) of the Constitution.

1. That if the said law were to be implemented this election year, the electorate would not have been granted enough time for ample sensitization and education on the new voting mode. That further as a

result this eventuality would result in disenfranchising most of **the**

electorate.

1. The applicant has filed a petition in this honorable Court which has a high probability of success.
2. There is imminent danger that the implementation of the said law would lead to irreparable harm and injury to the applicant.
3. That it is only just that that this honourable Court awards an injunction against the possible threat of infringing the applicant and other citizens’

rights enshrined under the Constitution until the final disposal of the

Petition.

At the hearing of this application the applicant was represented by learned counsel, Mr. Edger Tabaro, assisted by learned counsel, Mr. Andrew Mauso' and Mr. Edwin Tabaro.

The Respondent was represented by, Ms Maureen Ijang a State Attorney.

For the applicant, counsel sought interim orders staying the implementation of the National Council for Disability and Amendment Bill 2015 until the disposal of the main application. Counsel prayed this court to issue orders that restrain the respondent from hurriedly gazetting the National Council for Disability Amendment Bill 2015. It v/as alleged that the fundamental rights and freedoms of the applicant are threaten by actions of the respondent.

Counsel for the applicant in his submissions alleged that the implementation of the **15** National Council for Disability Amendment Bill 2015 will threaten and will infringe the right of the applicant to a fair and free election as enshrined in Article 1(4) of the Constitution. According to counsel therefore the implementation of the Bill should be stayed until the disposal of the main application.

The main application has been filled in this court and is pending fixing for hearing. The applicant is also seeking orders restraining the applicant from hurriedly gazetting the 2015 Bill.

According to counsel this Court has the jurisdiction to grant the orders sought.

 The main application that has been filed raises triable issues and is not frivolous or vexations. According to counsel failure to grant the application would render the

disputed matter nugatory and the matter cannot be redressed by an award of damages.

The applicant, according to counsel has the right to come to this Court under 5 Article 50 of the Constitution and together with Article 137(3) (a) of the Constitution.

According to counsel, if the Bill is gazetted it will become law and will be implemented by agencies of Government that organize elections and the elections 3 will infringe the rights of his client.

The application was opposed by counsel for the respondent who submitted that the applicant had not demonstrated that there is a prima facie case with a likelihood of success. According to counsel the Bill is not yet a law and therefore there is no is possibility of it being implemented. There is therefore no likelihood of the bill being implemented since it is not a law.

Counsel for the respondent submitted that since the Bill cannot be implemented the application was **premature.** Court cannot grant the application since it is 20 speculative.

According to counsel the issue of irreparable damages does not arise since the applicant’s rights are not threatened by the implantation of a Bill.

Both counsel relied on the decision of this Court in **Miscellaneous Application** No.18 of 2007**. Hon. Jim Muhwezi versus The Attorney General and Another**

in support of this submissions where this Court held:-

 “The main considerations for granting interim orders are the same as those for granting or rejecting the main application, namely:-

‘(a) that the Court has jurisdiction to grant or not grant the order sought for,

1. that the suit from which the application arises discloses triable issues and is not frivolous and/or vexatious,
2. that the failure to grant the application would render the disputed matter nugatory in a manner that cannot be redressed through an award of damages.”

This Court in **Constitutional Application No.07 of 2014 Horizon coaches** **Limited versus Mbarara Municipal Council** held:-

“It is now trite law that a party seeking an Interim Order of injunction as this has to satisfy court that the main application and the petition is not frivolous or vexations and that prima facie they have a likelihood of success. That a party stands to suffer irreparable loss should the application not be granted and in case of doubt the matter can be resolved on a balance of convenience.”

The first issue to be resolved in the instant application is whether the petition and the substantive application for the stay from which matter is arising disclose triable issues with a likelihood of success.

In order to determine this I will have to consider whether the application to stay the implementation of a Bill has a high likelihood of success.

Whether this Court can stop the actions of the State in respect of a pending Bill was considered by this Court in Constitutional Petition No.02 of 2005 Hon.

Miria Matembe and 2 Others vs The Attorney General. The petitioner’s had brought a petition challenging the constitutionality of a bill, The Constitutional (Amendment) Bill No.2 of 2005 which was tabled before Parliament by the Attorney General/Minister of Justice and Constitutional Affairs.

This Court held:-

“It is clear to us that in the first limb of Article 137 (3) (a), the Constitution provides for the challenging by any person who satisfies the relevant parts of the rest of Article 137, the constitutionality of an Act of Parliament and not a mere draft proposal for an Act of Parliament. If the framers of the Constitution intended that the constitutionality of a bill for an Act of Parliament can be challenged, they would have clearly stated so.

In the case of **The Independent Jamaica Council for Human Rights**

 **1998) Limited and others vs. Hon. Syringa Marshall-Burnett and the**

**Attorney General of Jamaica, Privy Council Appeal No.41 of 2004** (hereinafter called, the Jamaican ease), which is similar to the present petition in this respect, their Lordships had this to say:-

 ‘The challenge to the constitutionality of the Legislative procedure adopted came before the full Court of the Supreme Court (Wolfe C.J., Marsh and McIntosh JJ) when the bills were still going through Parliament, that Court did not review the legal merits of the appellants argument but struck out the proceedings as premature. In reasons given on the 17th May 2004, following a hearing in April, the Court held that any challenge should be made after and not before enactment of the legislation. The Court of Appeal (Forte P. Harrison and Smith JJA) did hear argument on the merits of the appellants challenge but rejected it for reasons given in judgments delivered on 12 July 2004. The appellants repeat their challenge before the Board. But because the bills have now received the assent of the Governor-General, the argument on prematurity has been overtaken by events and so is not pursued.

Although the above case is from foreign jurisdiction, it is from the Commonwealth and therefore of persuasive value. It makes it abundantly clear that before a bill is enacted into an Act of Parliament, it would be premature to resort to court to challenge its constitutionality.

This Court in **Constitutional Application No.l of 2005** dismissed the applicants application on the ground that it was premature which decision still holds. At that time, the Bill was still in the Committee and pending a report to Parliament. It has not yet been enacted into law. Similarly at the time we completed the hearing of this petition, nothing had changed. It is therefore still premature.”

The Court further held as follows:-

“Thc Court must be on its guard to avoid premature adjudications and entanglement in abstract or speculative disputes between potential petitioners. In gauging the fitness of any issue before it for judicial adjudication, this Court should not get involved in uncertain or contingent future events which may or may never occur at all. It will only intervene to correct excess or abuse. It is also vital for the judicial process of this country that this Court must see that petitioners have exhausted all the constitutionally available remedies before seeking protection and adjudication from it. See Supreme Court Constitutional Appeal No.l of 1997 Attorney General vs. Major General David Tinyefuza.”

In the instant application the bill has been passed by Parliament and has been sent to the President for his consent. It may thereafter be gazetted and it becomes law.

The process of legislation is still in progress. The President has the discretion to consent to the bill or not to consent to the bill. In case he consents then the legislative process may be concluded. He may not consent to the bill and then it may never become law.

Would this Court proceed to stop the implementation of the Bill even when it’s not clear that it will ever become a law. Clearly not.

I do not find that the applicant has established that his rights would be infringed since the petition is against a bill and not a law. There is no

possibility that the Electoral Commission can implement a Bill. There is no prema facie established therefore, and there is no likelihood of the petition succeeding.

The application is therefore hereby dismissed for being premature and speculative.

Since this was an effort in furtherance of constitutionalism I do order that each party bears its costs.

Dated at Kampala this 18th day of September 2015.

Hon.Justice Richard Buteera

JUSTICE OF APPEAL