

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 95 OF 2012

1. **ATTORNEY GENERAL**
5 2. **KIRUHURA DISTRICT LOCAL**
GOVERNMENT COUNCIL :::::::::::::::::::::::::::::::::::::: APPELLANTS

VERSUS

10 **MURIISA NICHOLAS :::::::::::::::::::::::::::::::::::::: RESPONDENT**

CORAM: HON. MR. JUSTICE RICHARD BUTEERA, JA
HON. MR. JUSTICE KENNETH KAKURU, JA
HON. MR. JUSTICE BARISHAKI CHEBORION, JA

15 **JUDGMENT OF THE COURT**

This is an appeal from the decision of the High Court of Uganda at Mbarara by the Hon. Mr. Justice Bashaija K. Andrew dated the 26th day of June 2012 in the High Court Miscellaneous Cause No. 035 of 2012.

Brief facts;

20 The facts giving rise to this appeal are briefly that the Hon. Mr. Justice Andrew K. Bashaija delivered a ruling on the 26th June 2012 at the High Court of Uganda at Mbarara in respect of Miscellaneous Cause No. 035 of 2012, an application for judicial review instituted by the Respondent (then the applicant) against both Appellants, the Electoral Commission and one George
25 Ruyondo.

The ruling was in regard to a preliminary objection raised by counsel for the respondent prior to the hearing of that application requiring the respondent to purge themselves of contempt of Court before the application could be heard.



Counsel for the respondent contended that, the appellants were in contempt of court because as state agencies and/or organs they had refused to give effect to court orders in High Court (Mbarara) Election Petition No. 10 of 2011 and Court of Appeal Election Application No. 39 of 2011.

- 5 Counsel for the appellants in response asserted that, the appellants could not be held in contempt of court because they were not parties to either Election Petition No. 10 of 2011 or Court of Appeal Election Application No. 39 of 2011 and that the court had not directed them to implement or execute any orders or perform any acts.
- 10 The learned trial Judge upheld the preliminary objection and held that the Appellants were in contempt of court because court orders are issued *in rem* and that organs and agencies of the state or persons who are constitutionally mandated to implement them are deemed to have taken cognizance from the time they were issued.
- 15 He further held that the 2nd Appellant had been made aware of the court orders by the Respondent but took no steps to implement them, when it contemptuously continued paying Mr. Ruyondo his salary and allowing him to physically remain in office.

The court ordered the appellants to ensure that Mr. Ruyondo vacates office and to pay costs of the application.

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Being dissatisfied with the orders of the Court, the appellants filed this appeal on the following grounds:-

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1. *That the learned Judge of the High Court erred in law when he gave leave to the respondent to raise a preliminary objection to the effect that the appellants were in contempt of court whereas the preliminary objection was founded upon matters of fact and evidence.*
 2. *That the learned Judge of the High Court erred in law when he ruled that court orders are issued in rem.*
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3. *That the Judge of the High Court erred in law and fact when he ruled that the applicants were in contempt of the court orders in High Court Election Petition No. 10 of 2011 and Court of Appeal Election Application No. 39 of 2011.*

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4. *That the learned Judge of the High Court erred in law and fact when he ruled that the Chief Administrative Officer of the 2nd Appellant was an employee of the Central Government and his inaction or action imparts directly on the Appellant whether the 1st Appellant is a party or not (to court proceedings).*

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5. *That the learned Judge of the High Court erred in law and fact when he ruled that where an application is brought by way of Judicial Review the remedies for civil contempt extend to those which the court is empowered to grant under section 33 of the Judicature Act Cap 13.*

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6. *That the learned Judge of the High Court erred in law when he granted the Applicant in Miscellaneous Cause No. 035 of 2012 remedies that exceeded the scope of the sentence/penalties that can be meted out or imposed for contempt of court.*

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7. *That the learned Judge of the High Court erred in law and fact when he ordered the Appellants to ensure that the 4th Respondent in Miscellaneous Cause No. 035 of 2012 vacates the office as ordered.*

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Appearances

When this appeal came up for hearing, Mr. Mwebaze Ndibarema learned Principal State Attorney appeared for the appellants while learned counsel Dr. James Akampumuza appeared for the respondent.

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Appellant's case

For the appellant, it was submitted that the finding that the Appellants were in contempt of court was based on matters of fact and therefore it should not have been determined by way of a preliminary objection, which should relate
5 only to matter of law.

The learned trial Judge erred in law when he held that the appellants were in contempt of court because court orders are issued *in rem* and that organs and agencies or persons who are constitutionally mandated to implement them are deemed to take cognizance of them whether they are requested for
10 assistance or not. Counsel submitted that in the normal and ordinary circumstances, court orders are served upon or issued to specific persons or entities and they are not issued or implemented *in rem*.

Further, that the learned Judge erred when he held the appellants in contempt of court because they were not parties to either High Court Election Petition
15 No. 10 of 2011 or Court of Appeal Election Application No. 39 of 2011 and in none of the stated matters were the appellants requested by the respective courts to implement or execute any orders or perform any acts.

Counsel also asserted that it is not within the power or mandate of the appellants to implement or execute any of the decrees or orders in the stated
20 matters in the High Court and Court of Appeal respectively.

Counsel also argued that the learned Judge erred in law and fact when he held that the Chief Administrative Officer of the 2nd Appellant was an employees of the Central Government and that his inaction or action imparted directly on the 1st Appellant.

25 Further that the remedies granted to the respondent ought not to have been granted.

He asked Court to dismiss the appeal.

Respondent's case

Counsel for the respondent submitted that:-



The High Court of Uganda at Mbarara delivered a ruling in High Court Miscellaneous Cause No. 035 of 2012 on 26/7/2012, in which it found both Appellants and others in contempt of both the Court of Appeal and the High Court Election Petition No. 10 of 2011. The court ordered them to comply with orders issued by the two courts and purge themselves of the contempt within 14 days of the Ruling.

The Appellants did not purge themselves of the contempt. The 14 days lapsed and to date they have never complied with the orders. The appellants did not obtain any order staying the said orders. Therefore, they could not be heard in the application before the Court before purging themselves of the contempt.

The Appellants, both state organs, are enjoined under the Constitution to implement court orders or give life to court orders by implementing them to ensure the rule of law and effectiveness of court. They arrogantly choose not to abide by the lawful Court orders. The Appellants were in contempt of the Court of Appeal and High Court of Uganda, and as such the learned Judge was justified when he held that they could not be heard in any other proceedings, appeal or cause relating to the same matter until they have purged themselves of the contempt.

It is just and equitable that the Appellant's Appeal be dismissed with costs.

Resolution of issues:

The matters raised herein emanate from High Court Election Petition No. 11 of 2011 at Mbarara. That Election petition related to conduct of the election for the position of chairperson Local Council 111 for Buremba sub-county, Kiruhura District in the 2011 General Elections. The election period 2011 to 2016 has since long passed. Fresh national elections were conducted in February/March 2016. Because of the passage of time, this matter has been overtaken by events and has become moot. For all intents and purposes, this matter has abated and we hold so.

There is nothing left for this Court to adjudicate upon. Doing so would be engaging in an academic exercise. We find no reason to do so. See: - *National*

Resistance Movement, Joel Mugisha, and Rosemary Nyakikongoro Vs Naome Kibaaaju Court of Appeal Civil Appeal No. 40 of 2012 (unreported).

This appeal is therefore dismissed under Rule 2(2) of the Rules of this Court, the same having abated.

5 ***Per Incurium***

Before we take leave of the matter, we would like to observe as follows:-

Had this appeal not abated, we would have found for the appellants. We say so because it is the respondent who filed an application for Judicial Review at the High Court against the appellants seeking orders for *mandamus* and
10 injunctions. Having done so, he could not again seek to exclude them from the same trial by way of a preliminary objection. In so doing, he rendered his own application redundant and untenable as there was no one left to respond to his claim and/or implement the orders he was seeking.

Again by upholding the preliminary objection, the court permitted the
15 respondent herein who was the applicant in the application for Judicial Review to obtain the remedies he was seeking in that application without its merits being adjudicated upon.

Dated this 10th day of Oct 2017.

Signed by;

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Honorable Justice Richard Buteera, JA



Honorable Justice Kenneth Kakuru, JA

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Honorable Justice Cheborion Barishaki, JA

16/10/2017
for Order in Respondents
Appellants absence
Ct. Judgment read on Court

