



General; Prohibition: to prohibit the 4<sup>th</sup> respondent from registering any changes to the position of Democratic Party Secretary General post; mandamus: compelling the Democratic Party National Council, National Executive Committee, Party President and Party Chairman to implement and follow the Democratic Party Constitution in election of the Secretary General.

The grounds in support of the application are set out in the affidavit of the applicants 1, 2 and 3 but briefly they are that:

1. The 1<sup>st</sup> respondent chaired the Democratic Party meeting of National Council meeting held on 01-08-2008, and the National Executive Committee (NEC) held on 31-07-2008 in violation of Articles 25 and 26 of Democratic Party Constitution.
2. That the National Council meeting held on 1-08-2008 was attended by persons not being members of the Council and not authorized by the Democratic Party Constitution to attend contrary to Article 14 of the Constitution.
3. That the 1<sup>st</sup> respondent has gone ahead and ignored the Party Chairman on the unconstitutionality of 01-08-2008 National Council meeting and further ignoring directions requiring that fresh elections be held and stating that the Post of Secretary General of the Democratic Party is still vacant.

4. The order is necessary to compel the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>d</sup> respondents to implement the direction and guidance of the party chairman canceling the purported election of Hon. Nsubuga Mathias as Secretary General of Democratic Party and pave way for fresh elections for the post of Secretary General and other vacant posts in the Democratic Party which is their constitutional obligation for ends of justice to meet.
5. That the applicants were granted leave to file an application for judicial review vide Misc. Applic. No. 195 of 2008.

At the conferencing the following issues were framed for determination:

- i. Whether the respondents are proper parties to the application.
- ii. Whether the meetings held on 31-07-2008 and 01-08-2008 were legally held and convened.
- iii. Whether the elections of Nsubuga Mathias as Secretary General of the Party was in violation of the Party's Constitution.
- iv. Remedies, if any.

**Counsel:**

Mr. Duncan Ondimu for the applicants

Mr. Kwemara Kafuuzi for the respondents

**Issue No. 1: Whether the respondents are proper parties to the application.**

This issue is based on a preliminary objection raised by the respondents. It is contended on their behalf that:

1. Respondents 1 to 3 have no legal capacity to be sued or to sue as they are not registered independent entities but mere organs created by the constitution of the Democratic Party. Under the Parties and Organizations Act, 2005 Political Parties are recognized and given legal capacity to sue and be sued in their names. The Democratic Party is a registered Political Party not its organs. The proper party, if at all, should have been the Democratic Party and not its organs.
2. Political Parties are in their nature private organizations and not public bodies. Their activities are therefore not amenable to judicial review. Judicial review evolved as a means by which superior courts were clothed with power to control powers of inferior courts. But overtime the operation of judicial review was extended to control the proceedings of

public bodies which can exercise their powers in excess of their authority. Thus the court has power to call for a record of impugned proceedings of a public body such as Kampala City Council which has responsibility to act judicially or quasi – judicially because it is exercising public functions traceable through a statutory set up. But a Political Party being private, Court has no powers by means of judicial review to call for its record as this is private communication for members only of that organisation.

Learned counsel for the applicants does not agree. According to him, the membership of the Party is open to any Ugandan Citizen who accepts the aims, policies and discipline at the Party as per Article 4 of the Constitution of the Party. All Ugandan Citizens are eligible to be members of the Party and the applicants are members of the Party and this has not been challenged by the respondents.

In his view, the Democratic Party is a public body exercising public functions and therefore amenable to judicial review.

I have very carefully addressed my mind to the able arguments of both counsel.

It is a principle, fairly notorious in my view, that the prerogative order of certiorari is designed to prevent the abuse of, or the outright

abuse of, power or jurisdiction by public authorities. The legal authorities show that the primary object of prerogative orders of certiorari and prohibition is to make the machinery of government operate properly and in public interest.

Judicial review is concerned not with the decision *per se* but the decision making process. Essentially, it involves an assessment of the manner in which a decision is made. It is not an appeal and the jurisdiction is exercised in a supervisory manner, not to vindicate rights as such, but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality.

The power extends to the acts and orders of a competent statutory public authority, which has power to impose a liability or give a decision, which determines the rights or property of the affected parties. Much of judicial review's utility exists because it is highly flexible, and when a statute does not provide for a review or appeal, judicial review's inherent flexibility provides the citizen with a remedy where one might otherwise not exist. However, judicial review will not normally be permitted if there is alternative appellate provision.

**See: R Vs Brighton Justices, Ex parte Robinson [1973] 1 WLR 69.**

In as far as the first objection is concerned, that is, that the 1<sup>st</sup> to 3<sup>rd</sup> respondents have no legal capacity to sue or be sued as they are not registered independent entities but mere organs created by the constitution of the Democratic party, my take on this point, as did the court in **John Jet Tumwebaze Vs Makerere University Council & others HCMA No. 353 of 2005** and **Proline Soccer Academy Ltd Vs Lawrence Mulindwa & Others HCT -00-CV-MA-0459-2009 (both unreported)** is that there is no requirement under Sections 33,36,37 and 38 of the Judicature Act that prerogative orders shall only issue to public bodies and offices that have corporate status. In my view persons, whether natural or artificial, bound to explain and defend in any forum the decisions they take in the performance of their duties are amenable to judicial review, as long as it is established that they acted without or in excess of jurisdiction (as when a statutory authority exceeds its jurisdiction); or where there is an error of law on the face of the record; or failure to comply with rules of natural justice. If it were otherwise, the law maker would have stated so.

Article 69 of the Constitution of Uganda governs Political Systems. It provides:

- i **The people of Uganda shall have the right to choose and adopt a political system of their choice through free and fair elections or referenda.**
- ii **The political systems referred in clause (1) of this article shall include:-**
  - (a) **the movement political system;**

- (b) the multiparty political system; and
- (c) any other democratic and representative political system”.

Article 71 talks about Multiparty Political System. It provides:

**“(1) A Political Party in a Multiparty Political System shall conform to the following principles:-**

- (a) every political party shall have a national character;
- (b) membership of a political party shall not be based on sex, ethnicity, religion or other sectional division;
- (c) the internal organization of a political party shall conform to democratic principles enshrined in this constitution;
- (d) members of the national agency of a political party shall be regularly elected from citizens of Uganda in conformity with the provisions of paragraphs (a) and (b) of this article and with due consideration of gender;
- (e) political parties shall be required by law to account for the sources and use of their funds and assets;
- (f) no person shall be compelled to join a particular party by virtue of belonging to an organization or interest group.

**(2) Parliament shall by law prescribe a code of conduct for political organizations and political parties and provide for the establishment of a National Consultative forum for political parties and organizations with such functions as Parliament may prescribe”**

It is common knowledge that the country adopted a Political System of choice through a referendum in 2005, to wit, Multiparty Political System. Following that choice of a Political System, Parliament passed The Political Parties and Organisations Act, 2005 (Act 18 of 2005).



Section 10 thereof (Act 18/2005) covers

“Internal organization of political parties or organisation’. It provides:

- “1. A political party or organization shall in its internal organisation comply with the provisions of the Constitution, in particular articles 71 and 72 of the Constitution.**
- a) Every Political Party or organization shall elect such persons as may be determined by the organization as members of the executive committee of the political party or organization with due consideration of gender equity.**
- b) The elections of the members of the Executive Committee of every Political Party or organization shall be conducted at regular intervals not exceeding five years”.**

The first respondent is the President General of the Democratic Party. The second one is the National Executive Committee and the third is the National Council, both of the Democratic Party. The three respondents constitute the core of the Party. They subscribed to the Constitution of the Republic of Uganda and the Political Organisations Act, 2005.

The fourth respondent is the Electoral Commission of Uganda. The application seeks to restrain it from registering any changes to the position of the Democratic Party Secretary General, pending determination of this case. True Section 11 of the Political Parties and Organisations Act lays down the procedure for effecting any changes and/or alterations in any Political Party and true also that the fourth respondent has not registered any changes in the Party.