

However, as learned counsel for the 4th respondent has correctly submitted, prohibition looks to the future rather than the past. The prohibition order will normally be made against a person directly affected by the proceedings of the inferior tribunal whether the defect is patent or not. In the instant case, the applicants did not want to take the chance of allowing the impugned changes to be registered with the Electoral Commission and then they complain after the event. The mere fact that the 4th respondent has no knowledge of any changes and has not received any communication to that effect does not mean that no such changes have taken place at the Democratic Party level and that no arrangements may have been underway to communicate the changes to them.

Given that prohibition looks to the future rather than the past, I have seen nothing wrong with the applicants' decision to include the 4th respondent in the case.

The 1st, 2nd and 3rd respondents are bound by the Constitution of the Republic of Uganda and the Political Parties and Organisations Act, 2005. Their activities are regulated under the two legislations. They are private bodies with a public outlook bound to explain and defend in any forum the decisions they take, including accounting for the sources of funds and their use. In all these circumstances, I am unable to accept learned counsel's argument that they are private bodies and therefore not amenable to judicial review. They are in my

view amenable to it. I therefore find that all the four respondents are proper parties to the application, the fourth one being sued as a legal formality, and strictly as a pre-emptive measure.

I would answer the first issue in the affirmative and I do so.

Issue No. 2: Whether the meetings held on 31-07-2008 and 01-08-2008 were legally held and convened.

Locus standi, or place of standing, is an important issue in a case of this nature. The rule is that there must exist a sufficient interest in the matter to which the application relates. This essentially means that the matter must directly affect the applicant in some way, however, small.

From the pleadings, the applicants are all members of Democratic Party. They are also members of the National Executive Committee (NEC). Democratic Party held NEC meetings on 31-07-2008 and 01-08-2008 without formally communicating to the members about the same and a motion to fill the vacant post of Secretary General.

Chapter 9 of the Democratic Party's Constitution lays down meeting procedures in Article 72 thereof. It reads:

" 72. The Secretary General or the Sub-branch as the case may be, shall convene any meeting by circulating a notice in writing specifying the agenda, date and venue for the meeting at least one month in the case of a Delegates Conference and at least 14 days in any other case, prior to the date of such meeting PROVIDED that non-receipt of the notice by any person entitled to receive the same shall not invalidate such meeting and PROVIDED that in case of urgency shorter notice may be given".

The applicants have averred that there was no formal communication to them about the meeting and there was no advertisement to the entire membership of Democratic Party inviting the Party members to contest for the vacant post of the Secretary General. This averment, like the earlier one, has not been challenged by the respondents.

Under Article 9 of the Constitution, a Party member has the right to take part in party activities. He/she is entitled to attend meetings and freely express his/her views on all matters under discussions, and to vote according to his conviction. Members are also entitled to elect, and if qualified, to be elected to the organs of the party. Failure to inform the applicants about the two meetings denied them the right to participate in the proceedings.

From the pleadings also, the NEC meeting was chaired by the Party President and not the Party Chairman or his Deputy. Article 25 of Democratic Party constitution provides:

"25. The National Chairman shall preside over all meetings of the National Delegates Conference, the National Council, the National Executive Committee and the National Finance Committee, and shall have no original vote".

The Party President chairing the NEC meetings was in clear contravention of Article 25 of the constitution. Articles 25 and 26 do not allow the Party President to chair such meetings. His duties are provided for under Article 27 of the Constitution. They don't include chairing such meetings.

From the unchallenged pleadings also, the National Council meeting of 1-8-2008 was attended by persons unauthorized by Article 14 of the Party's Constitution.

They were allowed to participate in the purported voting of the Secretary General. The applicants attached a copy of the attendance list to that effect.

Court has seen copies of letters to the National Chairman and from him expressing dissatisfaction and displeasure in how the NEC meeting was convened and conducted. These letters were ignored. Court is of the view that a Party Constitution binds the Party and the party members. All subscribers to it are bound to observe all the provisions in it, the same way the Memorandum and Articles of Association bind the Company and its members. The effect of this is to create a statutory contract between the members themselves and between the members and the Party. The contractual relationship

must be enjoyed in accordance with the terms of that contract or else it will be **ultra vires** (beyond the power). An act in excess of the authority conferred by law is **ultra vires** and therefore invalid.

In my view a Political Party comes into existence for the objects stated in its constitution. To the extent that the acts of the respondents were not in accordance with the Party's Constitution, they were null and void. I am mindful of the decision in **Nanjibhai Prabhudas & Co. Ltd Vs Standard Bank Ltd [1968] E.A 670** that the court should not treat only incorrect act as nullity with the consequence that everything founded thereon is self nullity unless the incorrect act is of a most fundamental nature and that matters of procedure are not normally of a fundamental nature. However, what the respondents did in this case were not merely matters of procedure. They were matters of a fundamental nature, going to the very root of the contract between the members of the Democratic Party and the Party itself. Those who were not members of NEC took part in the deliberations illegally. They went against the spirit of both the National Constitution and the Party Constitution. I have already stated that under Article 71 © of the Republic Constitution, the internal organisation of a Political Party must conform to the democratic principles enshrined in the same Constitution. The acts of the respondents were non-conformatory to the democratic principles enshrined in the Constitution.

The effect of a nullity could not have been better stated than Lord Denning did in **Macfoy Vs United Africa Co. Ltd [1961] 3 ALL E.R.1169** at 1172 when he said:

"If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court to declare it to be so. So every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse".

I agree.

Applying the same principle to the facts herein, it is very clear to me that the President General's Act of chairing the NEC meeting contravened the Party Constitution rendering all decisions null and void. Worse still there was no formal communication and agenda circulated to members prior to the meeting alerting National Council members and all stakeholders on a motion to fill the vacancy of the office of Secretary General of Democratic Party.

The non-advertisement to the entire membership of Democratic Party of the said vacancy prior to election violated Article 9 (b) and (c) of the Party Constitution. In my view the two meetings were not legally held and convened. Consequently, the election of Nsubuga Mathias as Secretary General of the Party was in violation of the Party's Constitution.

I so find and hold in respect of issues (2) and (3).

The applicants have prayed for a number of reliefs in the matter. I set them out in the very opening paragraph to this judgment. The applicants have shown that they have interest in the running of their party. They have adduced facts that prove violation of the party constitution. Considering all the facts and circumstances of this application, it is my considered opinion that the application meets the requirements stipulated in the law for judicial review. The orders of Certiorari, Prohibition and Mandamus shall be granted to them as prayed in the Notice of Motion. It is so ordered.

As regards costs, since the applicants chose to proceed against 1st to 3rd respondents who are not registered independent bodies, instead of the Democratic Party, which has legal capacity to sue or be sued, I would order that each party bears its own costs. The same order shall apply to the 4th respondent.

Orders accordingly.



Yorokamu Bamwine

JUDGE

26/10/2009

Order: In my absence, this ruling shall be delivered to the parties by the Deputy Registrar of this Division.



Yorokamu Bamwine

JUDGE

26/10/2009