



**IN THE EAST AFRICAN COURT OF JUSTICE AT ARUSHA  
FIRST INSTANCE DIVISION**

*(Coram: Isaac Lenaola, DPJ; Faustin Ntezilyayo, J; & Fakihi A. Jundu, J)*

**APPLICATION NO. 18 OF 2014**

**(Arising from Reference No.13 of 2014)**

**BETWEEN**

- 1. Bonaventure Gasutwa.....
  - 2. Tatien Sibomana.....
  - 3. Jean-Baptiste Manwangari.....
- } **Applicants**

**VERSUS**

**Attorney-General of the Republic of Burundi..... Respondent**

**DATE: 28<sup>th</sup> November, 2014**

## **RULING OF THE COURT**

### **A. Introduction**

1. This Application, pursuant to a Notice of Motion filed by the Applicants on 5<sup>th</sup> September, 2014 under Article 39 of the Treaty for the Establishment of the East African Community ("*the Treaty*") and Rule 73(1) and (2) of the East African Court of Justice Rules of Procedure 2013 ("*the Rules*") had sought to obtain interim ex-parte orders or directions, that:-

1. Pending the hearing and determination of the Reference, this Honourable Court be pleased to grant an interim *Ex-Parte* order to stay the decision of the Minister for Home Affairs dated on 11<sup>th</sup> July, 2014, forbidding the Central Committee of UPRONA to hold its meeting.
2. An order that pending the hearing and determination of the matter *Inter-Partes*, this Honourable Court be pleased to grant an interim *Ex-Parte* order that the UPRONA Party is legally authorized to hold the meeting of its Central Committee elected in 2009.
3. An order that pending the hearing and determination of this matter *Inter-Partes*, this Honourable Court be pleased to grant an Interim *Ex-Parte* order that from now up to the final judgment all the decisions and resolutions adopted by the State General of UPRONA are nullified.

4. The costs of this application be met by the Respondent.
  5. This Honourable Court be pleased to order such further or other orders as it deems fit.
2. On 19<sup>th</sup> September, 2014, Mr. Horace Ncutiyumuheto, learned Counsel for the Applicants appeared before us in pursuance of the Notice of Motion. He sought to be heard *ex-parte* and be granted the *interim ex-parte* orders listed or being sought in the Notice of Motion. He had argued that there was an urgency to obtain the said orders because of the need to convene a meeting of the UPRONA Central Committee in order to make preparations for the forthcoming General Elections to be held in May, 2015. He contended that his clients, the Applicants, had tried in vain to convene the said meeting because the Minister for Home Affairs had forbidden the same to be held. However, this Court, after due consideration declined to proceed to hear the Application *ex-parte*. **First**, the Court was not well convinced on the alleged urgency of the matter as advanced by the Applicants' learned Counsel. **Secondly**, the said learned Counsel did not sufficiently prove or demonstrate that the Applicants will, suffer "**irreparable injustice**" as envisaged under Rule 21(2) of the Rules. **Thirdly**, in terms of Rule 73(2) of the Rules, the Court was not satisfied to exercise its discretion to grant the sought orders *ex-parte*. **Fourthly**, the Court found out that some of the orders sought by the Applicants, if granted will render the Reference

redundant or disposed of. Therefore, the Court ordered the Applicants to serve upon the Respondent the Notice of Motion so as to afford him an opportunity to respond and that the same be heard *inter-partes* in November, 2014. Having been served, the Respondent on 23<sup>rd</sup> October, 2014 filed an affidavit in reply to the Notice of Motion opposing the same.

3. We hasten to point out that having declined to hear the application *ex-parte*, in our considered view, the only remaining prayer listed in the Notice of Motion that was worth to be heard *inter-partes* was Prayer No.2 which stated as follows:-

***“An order that pending the hearing and determination of the matter inter-partes, this Honourable Court be pleased to grant an Interim Ex-Parte order that the UPRONA PARTY IS LEGALLY AUTHORISED TO HOLD THE MEETING OF ITS CENTRAL COMMITTEE ELECTED IN 2009”.***

On 13<sup>th</sup> November, 2014, when the application was before us for *Inter-parte* hearing, we guided the parties that the said prayer was the one that the Court will concentrate upon.

## **B. The Applicants’ Affidavits**

4. The Applicants have deponed Affidavits in support of the Application. Each one has deponed that he is a citizen and resident of the Republic of Burundi and an elected member of the Central Committee of UPRONA as per its Congress held in 2009. In the said Congress, Mr. Bonaventure Niyoyankana and Ms. Concilie Nibigira had been appointed as the President and the Vice President of UPRONA respectively. Mr. Niyoyankana

came into political conflict with some of the members of the Central Committee and had suspended them. The latter, challenged the suspension before the Supreme Court of Burundi and in its decision delivered in 2012, it nullified the same.

5. Each Applicant has deponed further that in its decision, the Supreme Court recognized the leadership of UPRONA and the Central Committee elected by its Congress in 2009 and that it was free to conduct its meetings. Thereafter, Mr. Niyoyankana resigned on 6<sup>th</sup> January, 2014 as per his letter to the Minister for Home Affairs. The latter, on 11<sup>th</sup> February, 2014 wrote to Ms. Nibigira recognizing her as the Legal Representative of UPRONA in place of Mr. Niyoyankana. From that time, the Applicants as elected members of the UPRONA Central Committee have tried in vain to convene and hold their meeting as Ms. Nibigira is not convening the said meeting and the Minister for Home Affairs has forbidden it.
6. Each Applicant has deponed that on 9<sup>th</sup> June, 2014, they wrote to Ms. Nibigira to convene the required meeting, she refused to do so. Thereafter, as per Article 11 of the UPRONA Rules, a third of the Central Committee Members resolved to convene the said meeting themselves. On 11<sup>th</sup> July, 2014, the Minister for Home Affairs wrote to the Minister for Security to take all necessary measures to prevent the said meeting from taking place. On 13<sup>th</sup> July, 2014, at about 4:00a.m, a huge number of armed policemen were deployed around and inside the venue of the convened meeting at the Headquarters of UPRONA hence the said meeting could not take place.

### **C. The Respondent's Affidavit in Reply**

7. The Respondent in opposing the Application has vide one Sylvestre Nyanddwi, the Principal Secretary of the Ministry of Justice in the Republic of Burundi deponed an affidavit in reply to the Notice of Motion. In

- paragraphs 6 – 9 of the said affidavit, the Respondent acknowledges the existence of the UPRONA Party and that the same is headed by Ms. Concilie Nibigira as the President and Legal Representative following the resignation of Mr. Bonaventure Niyoyankana and that no meeting of the Central Committee can take place without consulting Ms. Nibigira according to Article 13 of the UPRONA Internal Regulations.
8. The Respondent has deponed further that the UPRONA Party under Ms. Nibigira is fully preparing itself to take part in the General Elections to take place in 2015 with or without the Applicants and that it has already nominated members to contest for various positions.
  9. In Para 18 of the Affidavit, the Respondent has deponed that Prayer No.2 being sought by the Applicants ***“is even more ridiculous because the Applicants indicate that an order be given that pending the hearing and determination of the Reference, the UPRONA Party be legally authorized to hold the meeting of its Central Committee selected in 2009 as if the Central Committee is not holding its meeting...”*** However, in Para. 16 of his affidavit, the Respondent has deponed that ***“once the Applicants and their followers wanted to organize a legal meeting the Minister of Home Affairs who is in charge of Political Parties in the Republic of Burundi has no choice but to request that such an illegal meeting be dealt with accordingly...”***
  10. The Respondent has deponed in Paras. 11 – 13 that the interim orders sought in the Application are the same as those sought in the Reference and that if granted the Applicants will see no rationale of having the main Reference heard hence the Application should be dismissed.

#### **D. The Applicants' arguments**

11. On 13<sup>th</sup> November, 2014, when this Application was heard by this Court, Mr. Ncutiyumuheto, learned Counsel for the Applicants prayed for the

Applicants to be granted the interim order being sought because they urgently needed to convene the meeting of the UPRONA Central Committee in order to make preparations for the forthcoming General Elections scheduled to take place in May, 2015. He emphasized that the Applicants need to start preparations for the said General Elections immediately.

12. He insisted on the aforesaid position even when the Court impressed upon him the effect of granting the interim order sought as against the main Reference and granting a final order at the interlocutory stage. As an alternative, he argued that he would agree to fast tracking the Reference as impressed by the Court.
13. Mr. Ncutiyumuheto further argued that Articles 11 and 13 of the UPRONA Party Internal Rules provided that the Central Committee can meet chaired by the President or the Vice President and that the Constitution of the Republic of Burundi also provided for freedom of association, including the holding of its meetings. In addition, he also argued that the Supreme Court of the Republic of Burundi in 2012 had recognized the members of the Central Committee of UPRONA elected in 2009 and that they could hold their meetings as they wished. However, he submitted that the Minister for Home Affairs had sent policemen to stop the said members from holding their meeting and that Ms. Nibigira has refused to convene the said meeting.

## **E. The Arguments of the Respondent**

14. Mr. Nestor Kayobera, learned State Attorney in opposing the Application called upon this Court to focus on the main Reference rather than on the Application. He argued that UPRONA Party is on the ground and in fact is meeting.

15. He contended that once the interim order sought is granted, there will be no reason to hear the Reference and the Respondent will be denied an opportunity to defend himself against complaints raised by the Applicants.
16. He submitted that the UPRONA Party has many factions but the one on the ground is headed by Ms. Concilie Nibigira, the Chairperson and Legal Representative who took over after Mr. Niyoyankana had resigned. He argued that the other factions of the UPRONA, including the Applicants may not be on the ground, it may be because they are not recognized by law. However, he admitted that the UPRONA Central Committee elected in 2009 is lawful.
17. Though he admitted that UPRONA Central Committee is lawful, he opposed the grant of Prayer No.2 in the Application by consent. He contended that many developments have taken place since 2012 when the Supreme Court of the Republic of Burundi recognized that Committee and he advocated for the matter to go to the main Reference to allow the Respondent to defend himself.
18. When pressed by the Court as to what prejudice the Respondent will suffer if Prayer No.2 is granted taking into account his own assertion that UPRONA is on the ground and is meeting and that its Central Committee elected in 2009 is lawful, he replied "**We are not saying that they cannot meet, they can meet in accordance to the law.**" In actual fact, he responded positively when the Court suggested that Prayer No.2 in the Application and Prayer (d) in the Reference could be granted together if parties consented or agreed.
19. When he was referred to Paragraph 24 of the Respondent's affidavit which contemptuously indicated that this Court is "**the source of crises and insecurity in Burundi**", Mr Kayobera apologized saying that it was not so

intended. The Court seriously warned that it should not be dragged into internal disputes when drafting pleadings.

## F. The Applicants' Rejoinder arguments

20. Mr. Ncutiyumuheto, learned Counsel for the Applicants emphasized that the Respondent did not show which law the Minister for Home Affairs used to forbid or stop the meeting of the UPRONA Central Committee while there is a decision of the Supreme Court of the Republic of Burundi allowing the said Committee to convene its meeting.

## G. Determination

21. We have carefully considered what the Applicants have stated in the Notice of Motion and in their deposed affidavits in support of the Application plus arguments made by their learned Counsel Mr. Horace Ncutiyumuheto before this Court. Equally, we have carefully considered what the Respondent has deposed in his affidavit in reply to the Notice of Motion plus the arguments advanced by his learned State Attorney Mr. Nestor Kayobera, opposing the Application.
22. Prayer No.2, in the Notice of Motion, which is being sought by the Applicants initially read "**Interim Ex-Parte Order.**" However, on 19<sup>th</sup> September, 2014, we declined to hear the Application "**Ex-Parte**", and ordered that the same be served on the Respondent, which has been done and has now been heard "**Inter-Partes**" in as far as the said Prayer is concerned.
23. Prayer No.2, in the Notice of Motion or this Application by the Applicants seeks for an interim order that "**the UPRONA Party is legally authorized to hold its meeting of its Central Committee elected in 2009**" pending the hearing and determination of the Reference. Can this Court grant this

- Prayer? In other words, the issue, is can this Court authorize or order the said meeting of the UPRONA Central Committee to be convened as prayed for by the Applicants?
24. **First**, in our considered view, the existence of UPRONA as a political party in Burundi asserted by the Applicants in their affidavits and their arguments before this Court has been admitted by the Respondent in his affidavit and arguments before this Court.
  25. **Secondly**, the Applicants have deposed in their affidavits and argued before this Court that the UPRONA Central Committee in which they allege to be members elected in 2009 was legally recognized by the Supreme Court of the Republic of Burundi in its decision delivered in 2012. The Respondent vide his learned State Attorney, Mr. Kayobera has admitted before this Court that the said UPRONA Committee elected in 2009 and recognized by the Supreme Court of the Republic of Burundi in its decision in 2012 is lawful.
  26. **Thirdly**, we have also considered and taken into account the assertion made by the Applicants in their affidavits and in their arguments before this Court that in its decision in 2012, the Supreme Court of Burundi had mandated the said UPRONA Central Committee to hold or convene its meeting. Indeed, Mr. Kayobera, appearing for the Respondent in his response to the aforesaid assertion contended that UPRONA Party is on the ground and is meeting.
  27. **Fourthly**, we have also considered and taken into account the Applicants' assertion before this Court that apart from the decision of the Supreme Court in 2012 which allowed the Central Committee of UPRONA to convene its meeting, the latter can also be convened in accordance with the Constitution of the Republic of Burundi and Articles 11 and 13 of the

UPRONA Internal Rules as submitted by Mr. Ncutiyumuheto. Indeed, Mr. Kayobera for the Respondent in his arguments before this Court stated in admission that:-

***“We are not saying that they cannot meet; they can meet in accordance to the law.”***

We construe the assertion of Mr. Kayobera and the aforesaid arguments of the Applicants, that the laws in Burundi allow or permit the UPRONA Party to convene the required meeting.

28. **Fifthly**, though the Respondent vide Mr. Kayobera had resisted Prayer No.2 that once granted it disposes the main Reference such that it will not give the Respondent an opportunity to defend himself against the complaints raised by the Applicants, our considered view is that apart from Prayer (d) in the main Reference, there are still other Prayers namely (a), (b), (c), (e) and (f) in the said Reference being sought by the Applicants. Further, the Respondent vide Mr. Kayobera could not show what prejudice the Respondent will suffer if Prayer No.2 in the Application is granted taking into account his own assertion before this Court that UPRONA Party is on the ground and is meeting.

## **H. Conclusion**

29. In our considered view, taking into account all the aforesaid matters, we have no hesitation in terms of Article 39 of the Treaty and Rule 73(1) of the Rules in issuing an interim order pending hearing and determination of the Reference as we hereby do and that the UPRONA Central Committee elected in 2009 convenes its meeting in accordance with the laws of the Republic of Burundi and as resolved by the Supreme Court of Burundi in 2012. In other words, Prayer No.2 is hereby granted as aforesaid and the

Application is accordingly disposed of in favour of the Applicants. No order as to costs.

It is so ordered.

Dated, Delivered and Signed at Arusha on this **28<sup>th</sup> day of November, 2014.**

.....  
ISAAC LENAOLA  
**DEPUTY PRINCIPAL JUDGE**

.....  
FAUSTIN NTEZILYAYO  
**JUDGE**

.....  
FAKIHI A. JUNDU  
**JUDGE**