

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: KISANGA, J.A., MNZAVAS, J.A., And MFALILA, J.A.)

CIVIL APPLICATION NO. 52 OF 1995  
In the Matter of an Intended Appeal

BETWEEN

1. REV. CHRISTOPHER MTIKILA }  
2. DEMOCRATIC PARTY } ..... APPLICANTS

AND

1. THE ATTORNEY-GENERAL }  
2. THE REGISTRAR OF POLITICAL PARTIES } RESPONDENTS

(Application for an Order limiting the time within which the Registrar of Political Parties must issue the Certificate of full registration of the Second Appellant from the Judgement of the Court of Appeal of Tanzania at Dar es Salaam)

(Kisanga, J.A., Mnzavas, J.A. And Mfalila, J.A.)

dated the 20th day of October, 1995

in

Civil Appeal No. 28 of 1995

RULING OF THE COURT

MFALILA, J.A.:

Under a Certificate of Urgency the Applicants filed a notice of motion moving this Court for the following orders:

- (a) An order limiting the time within which the Second Respondent the Registrar of Political Parties must issue the certificate of full registration to the Second Appellant.
- (b) Interpretation of Tanzania Court of Appeal order number 3 of its ruling in Civil Appeal No. 28 of 1997, due to the controversy it caused at the

hearing of the High Court execution case, Misc.  
Civil Application No. 69 of 1995.

- (c) An order granting the Appellants the right to participate in the political affairs of their country while they wait for the Registrar of Political Parties to issue the full registration certificate as required by the law and in accordance with the principles of fairness and justice.
- (d) An order granting compensation and damages to the appellants to be paid by the respondents.

On the ground that the judgement of the Court did not give a specific period within which the full registration certificate for the applicants ought to be issued by the second respondent.

And for an order that the costs of and incidental to this application abide the result of this application.

The 1st Applicant filed an affidavit in support of the notice of motion, the affidavit contained 18 paragraphs but only three are relevant to the terms of this application namely paragraphs 16, 17 and 18. In paragraph 16 the 1st Applicant states:

That after the ruling by the Honourable Court of Appeal the applicants went to the second respondent for the only thing that remains for him to do, which is the issuance of the full registration certificate to the applicants. But even after demanding the certificate in writing on 24th October 1995

Ref. No. DP/ADM/REP/95-1 the Registrar of Political Parties refused to comply, thereby denying them participation in the general elections and depriving the second applicant the locus standi in Misc. Civil Cause No. 54 of 1995 in the High Court of Tanzania main registry, Dar es Salaam.

In paragraph 17 it is also stated:

That after the applicants/Decree holders' appeal being allowed by the Court of Appeal Misc. Application No. 69 was filed in the High Court by the decree holders for execution, but the High Court Judge denied them the rights granted by the Court of Appeal for his claim that he and the judgement debtor understood the Appeal Court's Orders differently.

And lastly in paragraph 18 the 1st Applicant states:

That execution will only be possible after interpretation of Order 3 by the Honourable Court of Appeal, which would best be done after calling the High Court Misc. Civil Application No. 69/1995 file.

Order number 3 whose meaning is being sought in this application is contained in the order issued by the Registrar following the judgement of this Court in Civil Appeal No. 28 of 1995. Item 3 of the order is in the following terms:

3. The Registrar of Political Parties is ordered to deal with the Appellants' application in accordance with the principles of fairness and justice.

Under Rule 39 (2)(a) of the Rules of this Court, "the party who has been successful shall, as soon as practicable, prepare a draft of the order and submit it for the approval of the other parties" - and when such draft order has been approved by the other parties, the registry or sub-registry in the place where the appeal or application was heard will issue the order embodying the decision in the application or appeal. We are therefore surprised that the 1st applicant should have problems with the meaning of the order which he himself drew up.

We intend to deal first and together with the application for orders (a) and (c). As already shown, the applicants are seeking (a) for an order limiting the time within which the second respondent must issue to the 1st applicant the certificate of full registration and (c) an order granting the applicants the right to participate in the political affairs of the country while waiting for the second respondent to issue full registration certificate as required by the law and as ordered by this Court in accordance with the principles of fairness and justice.

The applicants did not cite any law empowering this Court or for that matter any court to make the kind of order sought in (a). Under Section 20 (1) of the Political Parties Act, the decision of the Registrar on the registration or cancellation of the registration of any party shall be final and shall not be the subject of appeal in any court. The only thing that is allowed under the Act, Sub-section (2), is Judicial review of the Registrar's decision. Section 20 provides as follows:

"20-(1) The decision of the Registrar on the  
registration or the cancellation of

the registration of any party shall be final and shall not be the subject of appeal in any Court.

- (2) Nothing in Sub-section (1) shall be construed so as to preclude judicial review of the decision of the Registrar<sup>1</sup>.

It is clear then from these provisions that the Registrar of Political Parties under the Act is the sole and final authority on whether or not full registration should or should not be granted to any intended Political Party. The only area in which such decision can be questioned through orders of certiorari and mandamus is whether or not the Registrar acted properly. Whether or not these provisions are constitutional is not relevant in these proceedings, but until they are challenged and found to be otherwise, they remain the law and must be given effect. Accordingly, under the Political Parties Act, this Court and indeed any other Court has no power to order the Registrar to issue the certificate of full registration to any intended Political Party and consequently cannot order the time frame within which the Registrar must issue such a certificate.

With regard to the order sought in (c), we must revert to the Order made by the High Court (Samatta, J.K.) in Misc. Civil Application No. 42/93. In that application, the 1st applicant had applied for extension of the second applicant's provisional registration until its application for full registration was determined by the Registrar of Political Parties. The High Court

granted that application and made the following order:

"The provisional registration of the Democratic Party and the certificate of that registration are, in law, still in force and will lapse and expire respectively on the date the Party's application for full registration will be granted or refused and that the Party's leaders, servants and agents are, pending the determination by the Registrar of Political Parties of the Party's application for full registration, entitled in law to conduct political affairs in the country in terms of the Party's provisional registration".

In our judgement in Civil Appeal No. 28 of 1995 we allowed the appeal of the present applicants challenging the refusal by the second respondent to grant full registration to the second applicant, accordingly we quashed the order of the Registrar of Political Parties refusing to grant full registration to the second applicant and ordered the Registrar to deal with the applicants' application in accordance with the principles of fairness and justice. The effect of this judgement was to return the parties to the position obtaining at the time the High Court made the order in Misc. Civil Application No. 42 of 1993, i.e. before the Registrar made his decision refusing the applicant's application for full registration. In other words our judgement in Civil Appeal No. 28 of 1995 restored the High Court order which would remain in force until the Registrar of Political

Parties considered the applicant's application afresh and reached a decision along the principles laid down in that judgement.

We now turn to the central issue in this application namely the interpretation of the judgement of this Court in Civil Appeal No. 28 of 1995. Apparently each side has given its own interpretation of that judgement. As Kisanga, J.A. stated in Civil Application No. 52 of 1995 when this matter came before him as a single judge, the applicant's view is that that/judgement automatically and without further ado entitles the second applicant to a certificate of full registration. The respondents however think that the judgement requires the Registrar of Political Parties <sup>to</sup> accord the applicants a hearing before deciding whether or not to grant the certificate of full registration. In his affidavit in support of the notice of motion, the 1st applicant confirms his view of the meaning of the judgement in Civil Appeal No. 28 of 1995 when he states in paragraph 16 that after the ruling by the Honourable Court of Appeal, the appellants went to the second respondent for the only thing that remains for him to do, which is the issuance of the full registration certificate to the appellants. As we have already stated, we are surprised at this meaning put on the judgement of this Court in that appeal, for even in the order drawn up by the applicants themselves as successful appellants, it is not shown anywhere that this Court ordered the Registrar of Political Parties to issue a certificate of full registration to the applicants. The text of the order drawn up by the applicants

under Rule 39 (2)(a) is as follows after the usual introductory remarks:

IT IS ORDERED THAT

1. The appeal is allowed.
2. The order of the Registrar of Political Parties refusing to grant full registration to the second appellant is quashed.
3. The Registrar of Political Parties is ordered to deal with the appellants' application in accordance with the principles of fairness and justice.
4. AND IT IS FURTHER ORDERED that appellants shall have their costs paid by the respondents,

It is item (3) of this Order which according to the applicants is controversial in its import and requires interpretation by this Court. The underlined words of this item of the order, ordered the Registrar of Political Parties to deal with the applicants' application in accordance with the principles of fairness and justice. The word deal in this context means simply to process i.e. the Court ordered the Registrar to process and reach a decision on the applicants' application in accordance with the principles of fairness and justice, because his earlier decision refusing to grant full registration was contrary to law as it was made without hearing the applicants.



Any reasonable reading of the underlined words in item (3) of the Order cannot possibly mean an order to the Registrar to issue a certificate of full registration to the applicants even if this court had the power to do so. But as it is and as we have already shown, this Court does not even have the power to make such an order. It is therefore clear that the interpretation which the applicants sought to put on this item of the order is wrong and that the interpretation put in by the respondents is the correct one.

Lastly an order was sought in (d) granting compensation and damages to the applicants to be paid by the respondents.

Neither in the affidavit in support of the notice of motion nor at the hearing of this application were any reasons given why an order for compensation and damages should be made in favour of the applicants in this application. The prayer for this order has therefore no merit.

For all these reasons we make the following orders:

- (a) The application for an order limiting the time within which the Registrar of Political Parties must issue the certificate of full registration to the second applicant is dismissed.
- (b) The import of the judgement of this Court in Civil Appeal No. 28 of 1995 embodied in item (3) of the Order is that it simply ordered the Registrar of Political Parties to start processing

afresh the applicants' application for full registration and that this should be done in accordance with the principles laid down in that judgement. For avoidance of doubt, it was not an order to the Registrar to issue the certificate of full registration to the second respondent. However, we are satisfied that this matter should not be allowed to drag on longer than necessary considering that in certain instances the Registrar processed the applications within hours. We therefore order that this process should be completed within four weeks of the date of this ruling. Both sides should go into this exercise with the spirit to enable it reach the final stage within the time frame set by this ruling.

(c) Since we have restored the Order of the High Court in Misc. Civil Application No. 42 of 1993, the applicants have the right to participate in the political affairs of the country pending the decision of the Registrar of Political Parties on the issue of the certificate of full registration to the second applicant.

(d) The application for an order for compensation and damages is dismissed.

Since the application has been partly successful, each side will bear their own costs.


DATED AT DAR ES SALAAM THIS 14TH DAY OF JUNE, 1996.

R. H. KISANGA  
JUSTICE OF APPEAL

N. S. MNZAVAS  
JUSTICE OF APPEAL

L. M. MFALILA  
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

  
(L. E. KALEGEYA)  
REGISTRAR