

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CIVIL CASE NO. 2 OF 2005

AUGUSTINE LYATONGA MREMA.....APPLICANT

VERSUS

**THE NATIONAL
ELECTORAL COMMISSION1ST RESPONDENT**

**THE ATTORNEY
GENERAL.....2ND RESPONDENT**

RULING

MANENTO, JK:

Mr. Augustino Lyatonga Mrema, was one of the Presidential candidates in the General Election which took place on 14/12/2005. The National Electoral Commission is to announce the result of the Presidential Candidates to day at 10 am. However, Mr. Mrema, now the applicant is of the opinion that there had been some rigging in the recording of the votes he got from the voters in this country, that is to say, the United Republic of Tanzania. He wants this court to restrain the National Electoral Commission from announcing the winning candidate in the presidential election. In order that this court could do justice to the applicant, it has been moved by a chamber summons made Under Order XXVII rules 1 and 2, section 68(e) and 95 of the Civil Procedure code, 1966.

The Chamber summons which is supported by the affidavit of the applicant is divided into two parts, that of an *ex parte* interim Order and *Inter partes* order. This ruling is in regard to the interim order *ex parte*.

Mr. Magesa, learned counsel is appearing for the applicant and the applicant himself is not in court. The learned counsel submitted that after the votes had been casted and the results of the votes forwarded to the Chairman of the National Electoral Commission, both the applicant and his voters were shocked with the dismal number of the votes he was getting even from the constituencies where he had a good number of supporters. Equally, his polling agents were shocked with the said results and they forwarded to his results from Uru East Ward Polling stations which showed that the results announced by the 1st respondent on his part were rigged. He gave an example as per Form 21A showing the result of the votes he got as follows:

(1)	Afya B	5 votes
(2)	Afya A	3 votes
(3)	Kishumbundu Sec:	2 votes
(4)	S/Msingi Wondo B	1 vote
(5)	KNCU Murwia B	3 votes
(6)	S/Msingi Kyaseni B	2 votes
(7)	Kishumbundu Sec. B	3 votes
(8)	S/Msingi Mwasi A	2 votes

photocopies of Form 21A were filed as annexures 'A' collectively, The total votes in that ward were 21 casted for applicant. However, in Form 23A where the total results were to be recorded by the ward Executive, which

were in turn to be forwarded to the District Returning officer, showed that he got 'O' votes in those eight wards. That was a rigging of the votes casted for the applicant, and if those were in one ward, if investigation had been conducted, much could have been revealed, boosting up the total number of 80,000 votes to a bigger number, raising the applicant's political stand as apposed to that small number of votes it is alleged to have worn.

It is further submitted that the applicant after knowing of the rigging, on 17/12/2005 he wrote a letter of complaint to the 1st respondent complaining about the rigging and requested for the stoppage of the announcement of the election petition results so that investigation could be carried out. He did not get a reply, yet the announcement of the results continued. The fact that the 1st respondent is to declare the results of the Presidential Elections this morning, before an investigation is conducted or even caring of the complaint, the applicant has been ignored. The fact that no investigation is allowed to be conducted after the declaration of the winning Presidential candidate, the applicant could not get any remedy if the 1st respondent is not restrained from announcing the results today. That would be an irreparable loss to the applicant. The irreparable loss is that of loosing the votes which might have been casted for him. However, it is conceded by the learned counsel for the applicant that the applicant could not have been the winner in the Presidential election, but the numbers of voters who voted for him would not have been as low as 80,000. The small example in one ward has shown that he had 21 votes casted for him, but they are not reflected in his total votes casted for him. There being a total of 2,550 wards in the country perhaps he would have come up to the number two or three winner in the election with so much votes casted for him. That would have boosted up his political carrier as opposed to the present position

he is. It was further alleged that perhaps the rigged numbers of his votes might have been added to Mr. Kikwete's votes, who is now prouder of having 80.2% of the total votes.

Mr. Magesa learned counsel gave an example of Liberia where he said that an investigation was conducted on a complaint of one of the presidential candidates, before the announcement of the results were made, so the same could be done in this country. He so submitted.

Mr. Magesa, learned counsel's submissions in regard to Liberia as an example was based on what he had been reading in the news paper, and on the same basis, I would say that in Liberia, the Presidential candidate was alleging to have won the elections, so he needed the investigation as to the number of votes for the two contesting candidates to be recounted. That is distinguished from this application where Mr. Mrema is not alleging to have won in the general election, but he is of the opinion that due to the alleged rigging, he is recorded to have very few votes casted for him. Infact, he is shocked by that small number. However, that could be the reality without him knowing so.

Unfortunately, during his submission, the learned counsel wanted this court to rely on a photocopy of Forms 21A, which itself is a secondary document. He never submitted the original form 21A for the inspection of the court. It might also be rigged.

On the basis of section 68(e) of the Civil Procedure Code, 1966, I don't see any reason at all, to make any interlocutory orders which is just and convenient under the

circumstances other than dismissing the application exparte as having no legs to stand with.

If the Charman of the National Electoral Commission has not yet announced the results, he should proceed to do the needful.

The chamber summons exparte is accordingly dismissed.


A.R. Manento

JAJI KIONGOZI

20/12/2005