

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**(APPELLATE JURISDICTION)**

**MISC. CIVIL CAUSE NO. 1 OF 2021**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR THE  
PREROGATIVE ORDERS OF CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF LAW REFORM (FATAL ACCIDENTS AND  
MISCELLANEOUS PROVISIONS) ACT, [CAP. 310 R.E. 2019] AND THE LAW  
REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS)  
JUDICIAL REVIEW PROCEDURE AND FEES)**

**RULES, 2014**

**AND**

**IN THE MATTER OF AN APPLICATION TO CHALLENGE THE DECISION OF  
THE NATIONAL ELECTION COMMISSION (NEC), THE MINISTER OF  
REGIONAL ADMINISTRATION AND LOCAL GOVERNMENT, THE  
PERMANENT SECRETARY MINISTRY OF REGIONAL ADMINISTRATION  
AND LOCAL GOVERNMENT, AND THE DISTRICT EXECUTIVE DIRECTOR  
(DED) FOR KASULU DISTRICT TO DECLARE THE COUNCILOR SEAT FOR  
KAGERA NKANDA WARD IN KASULU DISTRICT VACANT AND CALL FOR A  
BY-ELECTION**

**BETWEEN**

**EZEKIEL S/O KABONGE MSHINGO.....APPLICANT**

**VERSUS**

**THE NATIONAL ELECTION COMMISSION (NEC) .....1<sup>st</sup> RESPONDENT  
THE MINISTER FOR REGIONAL**

**ADMINISTRATION AND LOCAL GOVERNMENT .....2<sup>nd</sup> RESPONDENT**  
**THE PERMANENT SECRETARY MINISTRY OF REGIONAL**  
**ADMINISTRATION AND LOCALGOVERNMENT.....3<sup>rd</sup> RESPONDENT**  
**THE DISTRICT EXECUTIVE DIRECTOR FOR**  
**KASULU DISTRICT .....4<sup>th</sup> RESPONDENT**  
**THE ATTORNEY GENERAL .....5<sup>th</sup> RESPONDENT**

### **RULING**

27<sup>th</sup> & 28<sup>th</sup> April, 2021

**A. MATUMA, J.**

The Applicant was a Councilor elect for Kagera Nkanda Ward within Kasulu District in Kigoma Region during the 2020 general election. He was thus issued a certificate to that effect by the National Election Commission (NEC), the 1<sup>st</sup> Respondent herein.

On 14<sup>th</sup> April, 2021, the 4<sup>th</sup> respondent wrote a letter to the Applicant informing him that the 3<sup>rd</sup> respondent has declared the Councilor Seat of Kagera Nkanda vacant by reason that the Applicant was a none-citizen of Tanzania. As a result, the 1<sup>st</sup> respondent has started the process to fill in the vacant seat by calling the general Public into an election for that purpose.

The applicant is aggrieved with the whole process, protesting for his citizenship and Councillorship of the Ward. He thus intends to apply before this court for Prerogative Writs; Certiorari and Prohibition against

the decisions of each respondent and their respective actions towards filling the alleged vacant seat.

As the Law requires leave to be obtained first, before prerogative writs are sought, the applicant is now before me for such leave under the Provisions of Rules 5(1), (2), (3), (4), (5), (6), 6 and 7 (1), (2), (3), (4) and (5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014.

This application was made ex-parte but bearing in mind the provisions of section 18 of the main Act, Cap. 310 R.E. 2019 which requires the Attorney General to be heard in an application for leave where the write sought is against the Government, I issued summons for the Attorney General to appear.

At the hearing of this application, the Applicant was present in person under the service of Mr. Ignatius Kagashe and Mr. Hamis Kimilomilo learned Advocates.


The Hon. Attorney General was represented by Mr. Anord Simeo learned legal Officer who held brief of Mr. Allan Shija learned State Attorney.

The learned Advocates submitted at length mainly reiterating what the applicant has deposed in his affidavit and finally prayed that this

application be granted and an interim order be issued against the Respondents from continuing with the process of the **By-election** pending the Application interparties on the main intended Application for the writs.

Mr. Anord Simeo learned brother on his party, contested this application and argued for its dismissal. He submitted that this application fall short of several important matters. **First**, that the attached letters to the affidavit of the Applicant allegedly written by some of the respondents are all photocopies hence inadmissible under the rule against secondary evidence. **Second**, that this being an application for leave, I should refrain ordering the stay of the By-election process because the main application on the writs itself has yet been filed. **Third**, that the Applicant did not issue a ninety days notice to the Respondents, regard being that this is a suit against the Government. He thus called for the dismissal of the application.

My finding is as follows; It is undisputed fact that the Applicant was a Councilor elect for Councillorship at Kagera Nkanda Ward and was issued the certificate by the 1<sup>st</sup> respondent to that effect. His Councillorship is at stake on the allegation that he is not a none citizen. On the other hand, the applicant maintain that he is a citizen of Tanzania by birth and holder



of both certificate of birth No. 1677849 and National Identification No. 19731216473150000226.

Under the circumstances, I find that there are triable issues between the applicant and the Respondents sufficiently to warrant the grant of leave as sought. I consequently allow this application and grant leave to the applicant to lodge the requisite application for the prerogative writs so that, the parties are heard on merit and a just decision be reached. The issue of ninety days notice if considered important should be raised in the main Application.

By considering that, the Applicant is still in possession of the Certificate of Councillorship of the stated Ward for a tenure of five years which is to expire on the year 2025, it would be unfair for the respondents to continue with their process for the re-election of another Councilor in the same Ward unless both parties are heard on merit and the court is satisfied that the said Councilor seat is indeed vacant. In the circumstances, I agree with the learned advocates Mr. Kagashe and Mr. Kimilomilo that an interim injunction order is called for. I reject the arguments of Mr. Simeo that I can't grant such relief at this juncture because there is no main Application before me but a mere application for leave. This is because the law Rule

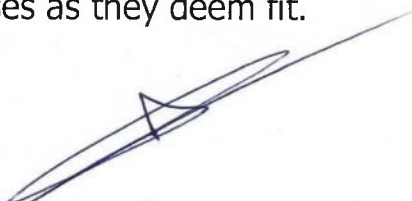


7 (5) of the Rules supra is very clear that in the course of hearing an application for leave the Judge may grant interim reliefs as appears just.

Now, if the respondents are not restrained from continuing with the election process and ultimately a new Councilor is elected, the applicant is likely to fall into trouble with a third party (the new Councilor) in case his application for certiorari and prohibition is granted. Likewise the respondents would find themselves into trouble with the such prospective new Councilor as he might drag them in court for having thrown him into troubles, costs and time. Thus, the better way for both parties is to stay the whole process of the intended election.

I therefore in the exercise of my powers under the provisions of rule 7 (5) of the Rules supra, order that all the processes by the respondents and or their agents towards the intended re-election (By-election) is hereby suspended from the date of this order until the intended application for prerogative writs is filed within fourteen days from the date of this order as per rule 8 (1) (b) of the Rules supra, and conclusively determined. In case no Application upon which leave is granted is filed within the statutory period of fourteen days, the Respondents shall be at liberty to continue with their processes as they deem fit.

No orders as to costs.

A handwritten signature in blue ink, consisting of a stylized 'A' or 'K' shape with a long horizontal stroke extending to the right.

It is so ordered.



**A. Matuma**

**Judge**

**28/04/2021**

**Court:** Ruling delivered in the presence of the Applicant and his advocates Mr. Ignatius R. Kagashe and Hamis Kimilomilo and in the presence of Mr. Anord Simeo Legal Officer holding brief of Mr. Allan Shija State Attorney for Respondents.

**Sgd: A. Matuma**

**Judge**

**28/04/2021**