RETURNING OFFICER OF BUSANDA CONSTITUENCY AND THE ATTORNEY GENERAL

v.

FRENCH MUSIBHA MANONI

HIGH COURT OF TANZANIA
AT MWANZA
(Lugakingira, J.)

CIVIL REVISION No. 27 OF 1995

(From the decision of the Resident Magistrate's Court of Mwanza at Mwanza (S.N. Mafuru, RM), in Miscellaneous Civil Case No. 54 of 1995)

Elections – Election petitions – Meaning of election petition – Elections Act 1985

Elections – Election petitions – Jurisdiction to hear election petitions under the Elections Act 1985 – Whether resident magistrate's court has jurisdiction

The respondent wanted to contest for the Busanda seat in parliamentary elections but he was refused nomination papers by the 1st applicant. The respondent then filed a petition in the resident magistrate's court praying for an order to compel the 1st applicant to give him nomination papers. The petition was heard *ex-parte* and he got the order. The applicants applied to the High Court for revision.

Held:

(i) In matters of election petitions, jurisdiction is solely vested in the High Court as per s.110 of the Elections Act 1985;

(ii) The Elections Act 1985 does not define an "election petition" but it is a petition that seeks to avoid an election; as the petition in this case does not seek to avoid an election, it is not an election petition;

(iii) The resident magistrate's court is a creature of statute and has no inherent jurisdiction; it has no jurisdiction to hear election petitions under the Elections Act 1984;

(iv) *Obiter*: The order sought in this case was one in the nature of the prerogative order of mandamus which only the High Court has jurisdiction to grant.

Proceedings and orders of the resident magistrate's court quashed

Mr. Lyimo, Principal State Attorney, for the Applicants
Mr. Nasimire, for the Respondent

ORDER

(Dated 17 October 1995)

Lugakingira, J.: This matter, which arose out of the implementation of the provisions of the Elections Act, No. 1 of 1985, was admitted to revision to determine the competence of the Resident Magistrate's Court to entertain the same.

The respondent was desirous of contesting a parliamentary seat on a *Chama cha Demokrasia na Maendeleo* (CHADEMA) ticket for the Busanda Constituency, Geita District, in the general elections due next week. To that end he presented himself to the Returning Officer, the first applicant herein, to be supplied with nomination papers, but the first applicant declined to supply any. The respondent then wrote to the Chairman of the National Electoral Commission complaining about the conduct of the first applicant and appealing for the Commission's intervention, but there was no reply from the Commission. He therefore turned to the Courts and filed a petition in the Resident Magistrate's Court, Mwanza, praying for, among other things, an order to compel the first applicant to issue him with the nomination papers. He joined both applicants. The applicants were well aware of the proceeding but virtually ignored it, thus allowing it to proceed exparte, but they came

to life and got enthusiastic when a judgment was delivered in the respondent's favour. They accordingly applied to this Court for revision of the proceeding on the ground that the Resident Magistrate's Court had no jurisdiction in the matter. I invited arguments from both sides in order to be assisted in reaching a just decision.

Mr. Lyimo, Principal State Attorney, appeared for the applicants and argued that under Act No. 1 of 1985 as amended by Act No. 6 of 1992, election petitions are triable by the High Court only. As to what the respondent should have done in the circumstances he found himself, Mr. Lyimo said that he should have complained to the Electoral Commission and, if he was aggrieved by the Commission's decision, he could then present a petition to the High Court after the election results. In reply, learned counsel for the respondent, Mr. Nasimire, observed that this was a peculiar case; it was not an election petition in the strict sense and it did not appear to be catered for under Act No. 1 of 1985. In his view there was a lacuna in the law. In rejoinder Mr. Lyimo submitted that there was no lacuna, but all jurisdiction under the Act was vested in the High Court, and if there was any then the proceeding should even for that reason have been presented in the High Court.

It seems to me from the foregoing that the area of disagreement is narrow. I think I am correct in saying that, in a way, Mr. Nasimire concedes that the jurisdiction of the Resident Magistrate's Court is not easily perceived under the Act. I will, indeed, say at once that in matters of election petitions jurisdiction is solely vested in the High Court as per s. 110 thereof. Unfortunately, the Act does not define what is meant by "election petition" but, in my view, it is a petition the intendment of which is to avoid an election. The petition which constitutes the subject of this proceeding was not intended to avoid an election, for no election has been held as yet, but to compel the first applicant to supply nomination papers. I would therefore agree with Mr. Nasimire that this proceeding was not an election petition as such.

Does it mean that this proceeding could be filed in the Resident

Magistrate's Court because it was not an election petition? I do not think so. The Resident Magistrate's Court is a creature of statute and its jurisdiction derives from statute only. It has no inherent jurisdiction. As such, it cannot sit in judgment over matters that are not expressly vested in it by law. It is noted that previously, under the erstwhile s. 118 of Act No. 1 of 1985 the Chief Justice could invest any resident magistrate with jurisdiction to try any election petition, offence or application under the Act, but the provision was swept away in a spate of far reaching amendments vide Act No. 13 of 1990 and, if my investigations serve me right, it has never been revived.

Moreover, the very nature of the main prayer puts one at one's inquiry as to the competence of the Resident Magistrate's Court. To the extent that the respondent prayed for an order to compel the first applicant to supply him with nomination papers, he was praying for the prerogative order of mandamus. Such orders are grantable only by the High Court and, in contemplating this, I cannot, with respect, accept the submission that there is a lacuna in the law. It is not for me to say what steps the respondent should have taken in the predicament he found himself but that should await a more opportune moment.

I find in the final analysis that the Resident Magistrate's Court had no jurisdiction to entertain the proceeding and I quash the same along with all the orders resulting therefrom.