

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
AT KAMPALA

(Coram: Kasule, Egonda-Ntende & Obura, JJA)

Election Petition Appeal No. 110 of 2016

(On Appeal from the ruling of the High Court of Uganda at Jinja (Elubu, J.,
delivered on the 29th September 2016)

BETWEEN

Bandikubi Boniface Musisi=====Appellant No.1
Muwanga Thomas Serundi Mulondo=====Appellant No.2
Ndugga Moses=====Appellant No.3
Sazir Nsubuga Mayanja=====Appellant No.4

AND

Sserwangwa William Tom=====Respondent No.1
Electoral Commission=====Respondent No.2

JUDGMENT OF EGONDA-NTENDE, JA

Introduction

1. The appellants and the first respondent were candidates for the office of Chairman, Kayunga District Local Government in the elections that were held on the 24th February 2016. The 2nd Respondent, the Electoral Commission, declared the 1st respondent as the validly elected Chairperson of Kayunga District and gazetted the result in the Uganda Gazette of 25 April 2016. The appellants challenged this election by filing an election petition in the High Court at Jinja on 9 May 2016. The High Court, (Elubu, J.) dismissed the petition on the ground that the appellants had not paid the requisite fees for filing of the petition. Dissatisfied with that decision the appellants have appealed to this court.

2. The last day for filing the petition was 9 May 2016 but fees were found to have been paid on the 16 May 2016 in the sum of Shs.100,000.00 which was determined by the trial court as insufficient fees contrary to the Parliamentary Elections (Election Petitions) Rules S I No. 141-2 which provided for payment of Shs.150,000.00.
3. SI No. 141-2 was applied in this case, in spite of the fact that this was not in relation to Parliamentary Elections on account of Section 172 of the Local Governments Act and the decision of the High Court (Musota, J.,) in Otim Nape George William v Ebil Fred and Anor, Lira Election Petition No. 17 of 2011 (unreported) was followed.
4. The appellants' grounds are two with one in the alternative to the other. I shall set them out.

'1. The learned trial judge erred in law and fact when he ruled that the petitioners did not pay sufficient fees for the local Government Election Petition.

2. In the alternative and without prejudice to the above ground, the learned trial judge erred in law and fact when he failed to judiciously exercise discretion to allow the appellants prayer to pay the deficient fees thereby striking out the petition with costs.'

5. The respondents oppose the appeal.

Submissions of Counsel

6. Ms Immaculate Tumwebaze appeared for the appellants while Mr Sam Sserwanga and Mr Ssepiriya Wasanyi appeared for the first respondent. Mr Tom Magezi appeared for the second respondent.
7. Ms Immaculate Tumwebaze submitted that the Local Governments Act which provides the right to the appellants to petition court did not expressly provide for the amount of fees to be paid by the petitioners. In light of that it is the Judicature (Courts Fees) Rules that ought to apply and not the

Parliamentary Elections (Election Petitions) Rules which the trial judge applied. Determining the petition on application of Section 172 of the Local Governments Act was wrong. The said rules do not apply to petitions filed under the Local Governments Act.

8. Section 172 of the Local Governments Act only authorises the Electoral Commission to apply the Parliamentary Elections Act and Presidential Elections Act in the conduct of elections for local governments and it does not extend beyond the electoral commission. It does not relate to petitions for annulment of elections held under the Local Governments Act. She referred to the case of Peter Odok W'Oceng v Markly Vincent Okidi and 4 others, Court of Appeal Election Petition Application No. 29 of 2011(unreported) in support of her contention.
9. Mr Sserwanga submitted that the appellants are not in court with clean hands and cannot claim that the Parliamentary Elections (Election Petitions) Rules do not apply when they purported to pay Shs.150,000.00 in accordance with those rules on the day the preliminary objection was raised while earlier on they had paid Shs.100,000.00. He submitted that the trial judge rightly struck out the petition for non-payment of fees. The Parliamentary Elections (Election Petitions) Rules do apply in the instant case. It is the law that regulates election petitions.
10. Mr Sserwanga submitted that the Peter Odok W'oceng case (supra) is distinguishable as it did not relate to payment of fees but only to stay of execution. The Judicature (Court Fees) Rules which the appellants rely upon apply only to civil suits and not election petitions.

Analysis

11. The essential question to be decided on this appeal is the reach of Section 172 of the Local Governments Act. We shall set it out in full.

*172. Application of laws relating to presidential and parliamentary elections.

For any issue not provided for under this part of the Act, the Presidential Elections Act and the Parliamentary Elections Act in force shall apply to the elections of local councils with such modifications as may be deemed necessary by the Electoral Commission.'

12. This part of the Act referred to in section 172 of the Local Governments Act is part X whose sub heading is Local Government Councils Elections and commences from section 101 to section 172. It relates to many matters ranging from Electoral Commission, returning officers and other election officers to the holding of elections, announcement of results and election petitions. On the ordinary reading of the provisions of section 172 it is clear that they are only empowering the Electoral Commission and not any other body to use the Presidential Elections Act and the Parliamentary Elections Act in force to fill in any lacunae in the election of local councils with such modifications as the Electoral Commission may deem necessary. Clearly these provisions assist only the Electoral Commission as it is managing elections for local councils and cannot be applied by the courts as authority for imposing fees imposed by the Parliamentary Elections (Election Petitions) Rules. There is simply no nexus between the fees for petitions under the Local Governments Act and the Parliamentary Elections Act. Fees payable under the Parliamentary Elections Act or the Presidential Elections Act cannot just be applied to the Local Governments Act Petitions without any enabling provision.

13. This Court had occasion to consider the reach of section 172 of the Local Governments Act in the case of Peter Odok W'oceng v Markly Vincent Okidi and 4 Others, Election Petition Application No. 29 of 2011 (unreported). In that case the court was considering whether section 95(3) of the Parliamentary Elections Act applied to the local council election appeals by virtue of Section 172 of the Local Government Act. The court stated,

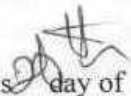
'The issue is therefore whether section 95(3) of the Parliamentary Elections Act applied to Local Council election appeals by virtue of S.172 of the Local Government Act. It is a cardinal rule of statutory interpretation that where the words of the statute are precise and unambiguous, then no more


can be necessary than to expand those words in their ordinary and natural sense. The words alone do in such a case declare the intention of the law giver. In Opoya v Uganda [1967] E A 754, it was held that the duty of the court in interpreting a statute is to put upon the language of the legislature honestly and faithfully and in its plain and rational meaning according to its express or manifest intention. Upon application of the above principles to the instant case, we find the words of S.172 of the Local Governments Act plain and unambiguous. The section refers to the Electoral Commission and no other body. It is common knowledge that the function of the Electoral Commission under the Electoral Commission Act (140) is to conduct elections not hear appeals. To interpret the section to cover appeals under the Local Government Acts would in our view be stretching the meaning outside the clear intention of the legislature. For that reason, we think that section 95(3) does not apply to local government officials.'

14. I do not agree with Mr Sserwanga that the above case is distinguishable from the facts of this case. The point it decides is the reach of section 172 of the Local Governments Act. It confines it to the Electoral Commission in its conduct of local government council elections, not extending to any other body. It follows therefore that neither the Parliamentary Elections Act nor the Presidential Elections Act apply to the filing, hearing and determination of election petitions under the Local Governments Act. The fees set out in the Parliamentary Elections (Election Petitions) Rules do not apply in the instant case. Neither do the rules apply to Local Government election petitions.
15. Both sides are agreed that the Local Governments Act is silent on the fees for the filing of petitions for local council government election disputes. In such a situation resort must be made to the Judicature (Court Fees) Rules S.I. No. 13- 1 which sets out the fees to be paid in all manner of civil proceedings. Section 2 of the Civil Procedure Act defines a suit as all civil proceedings commenced in any manner prescribed. The present proceedings are such proceedings. The fact that they relate to local council elections

under the Local Governments Act does not stop them from being civil proceedings.

16. It would follow that the requisite fees in this matter were paid though out of time. As the question of fees is not a pre-condition in law for the maintenance of an election dispute under the Local Governments Act, the trial court need not have struck out these proceedings, given the fact that at the time the objections were made there was payment on record of Shs.100,000.00 sufficient to defray the court fees payable under The Judicature (Court Fees) Rules.
17. Secondly in light of the proviso to rule 6 of the Court (Fees, Fines and Deposit) Rules, a defaulting party with regard to the payment of fees may be ordered to pay the requisite fees to the court. This would be in the interests of justice not to shut out a litigant from having his or her dispute heard and would be in conformity with the constitutional requirement of Article 126 (2) (e) of the Constitution that the courts ensure that substantive justice is done to the parties without undue regard to technicalities. See Lawrence Muwanga v Stephen Kyeyune, S C Civil Appeal No.12 of 2001, (unreported).
18. In the result I would allow the appeal with costs, set aside the decision of the High Court and order that the trial of the Petition proceeds before another Judge. It will be up to that trial judge to decide whether or not there is any need of the petitioners to pay any further fees under the Judicature (Court Fees) Rules.

Signed, dated and delivered in Kampala this  day of FEB 2018


Fredrick Egonda-Ntende
Justice of Appeal

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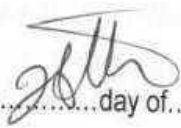

Bandikubi Boniface Musisi.....: **Appellant No. 1**
Muwanga Thomas Serundi Mulondo.....: **Appellant No. 2**
Ndugga Moses.....: **Appellant No. 3**
Sazir Nsubuga Mayanja.....: **Appellant No. 4**

VERSUS

Sserwanga William Tom.....: **Respondent No. 1**
Electoral Commission.....: **Respondent No. 2**

JUDGMENT OF HELLEN OBURA, JA

I have had the benefit of reading in draft the judgment prepared by my brother Egonda-Ntende, JA. I concur with his conclusion that this appeal be allowed and the decision of the High Court be set aside. I also agree with the order that the trial of the petition proceeds before another judge.

Dated at Kampala this  day of  2018.



Hellen Obura
JUSTICE OF APPEAL

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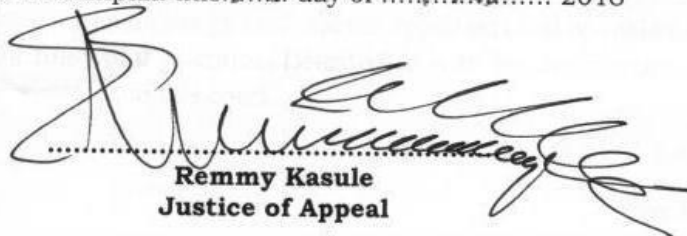
AND

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JUDGMENT OF REMMY KASULE, JA

I have had the benefit of reading in draft the lead Judgment of my brother Egonda-Ntende, JA. I entirely agree with the same. As Hon. Lady Justice Hellen Obura, JA also agrees with the same this appeal stands allowed in the terms and orders set out in the said lead judgment.

Dated and signed at Kampala this 28 day of FEB 2018


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Remmy Kasule
Justice of Appeal