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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT HOLDEN AT MBALE
ELECTION PETITION NO. 0009 OF 2016**

**IN THE MATTER OF THE PARLIAMENTARY ELECTIONS ACT 2005
(AS AMENDED)**

10

AND

**IN THE MATTER OF THE PARLIAMENTARY ELECTION (PETITIONS)
RULES, 1999**

**IN THE MATTER OF PARLIAMENTARY ELECTIONS HELD ON THE
18TH DAY OF FEBRUARY 2016**

15

**HON. SSASAGA ISAIAS JONNY::: PETITIONER
VERSUS**

1. WOBOYA VICENT

2. THE ELECTORAL COMMISSION ::::::::::::::::::::::::::::::::::: RESPONDENT

20

BEFORE: HON. MR JUSTICE BASHAIJA K. ANDREW

J U D G M E N T:

The Petitioner herein, Hon. Ssasaga Jonny Isaias, was one of the candidates that contested in the general elections as Member of Parliament (MP) for Budadiri County East Constituency on 18th February, 2016. The other candidates were the 1st Respondent, Hon. Woboya Vincent, Mafabi Laban, Wadada Rogers, and Waniaala David. Hon. Woboya Vincent was declared the winner and gazetted as such by the 2nd Respondent, the Independent Electoral Commission (IEC). He has since been sworn in and taken his seat

30 as MP representing Budadiri County East Constituency in
Parliament. The Petitioner filed this petition challenging the
outcome of the elections. He seeks a declaration that the 1st
Respondent was not validly elected, and that the election of the 1st
Respondent be set aside and fresh elections be conducted for MP for
35 Budadiri County East Constituency. Further, that the Respondents
pay costs of this petition.

The grounds upon which the petition is premised are, in a good
measure, set forth in detail both in the petition and in the affidavit
in support of the petition pursuant to sub-rule (8) of Rule 4 of the
40 Parliamentary Elections (Interim Provisions) Rules, S.I 142-2.

There are broadly three main grounds as follows:

- (i) That there was throughout the campaign period and during
the elections non-compliance with the principles under the
electoral laws for free and fair elections and that the non-
45 compliance affected the result of the elections in a substantial
manner.
- (ii) That during the campaign and election period, there were
numerous illegal practices and offences committed in relation
to the elections by the 1st Respondent, either personally or by

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other persons, either with his knowledge, consent and or approval.

(iii) That the 1st Respondent was not validly nominated for elections.

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Counsel for the parties agreed upon and framed five issues for court's determination at a joint scheduling conference as follows:-

(1) Whether or not the 1st Respondent was duly nominated for elections as Member of Parliament for Budadiri County East Constituency.

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(2) Whether or not the 1st Respondent personally or through his agents with his knowledge, consent or approval committed illegal practices or electoral offences.

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(3) Whether the elections in Budadiri County East Constituency were conducted in compliance with the electoral laws.

(4) If not, whether the non-compliance affected the result in a substantial manner.

(5) What are the remedies available to the parties?

Counsel on both sides correctly restated, in their respective
70 submissions, the position of the law on the burden and standard of
proof required in election petition. In **Col. (Rtd) Dr. Besigye Kiiza
vs. Museveni Yoweri Kaguta & Another, Election Petition No.01
of 2001** the Supreme Court held that with regard to the burden of
proof, it is the petitioner who has to prove to the satisfaction of
75 court, the grounds on which the election should be nullified. It is a
statutory requirement under **Section 61(1) of the Parliamentary
Elections Act, No.17 of 2005 (PEA)** that the Petitioner must prove
the substance of his or her allegations to the satisfaction of court. It
is also now settled under **Section 61(3) PEA** that the standard of
80 proof in election petitions is on balance of probabilities. The same
provision has received interpretation and application in the cases of
**Mbowe vs. Elu Foo [1967] EA 240; Margaret Zziwa vs. Nava
Nabagesera, Civil Appeal No. 39 of 1997.** With these principles
in mind, I proceed to evaluate and resolve the issues in the order
85 they were framed.

**Issue No.1: Whether the 1st Respondent was duly nominated
for elections as member of Parliament for Budadiri County
East Constituency.**

Mr. Komakech Geoffrey, learned Counsel for the Petitioner,
90 submitted that the 1st Respondent was not validly nominated for
elections as MP for Budadiri County East Constituency because he
did not resign from the Public Service as required by law. That
under **Article 80(4) of the Constitution**, and **Section 4(4) PEA** it
is mandatory for a person employed as a public officer who seeks to
95 be nominated for elections as MP to first resign from the Public
Service. That in this case the 1st Respondent continued to be in
Public Service in the office of Prime Minister until December, 2015
even though he purported to have resigned effectively from 10th
May, 2015.

100 To fortify his argument, Mr. Komakech relied on “Annexure A” to
the Petitioner’s affidavit in rejoinder, a document titled “View
Account Statement” of the 1st Respondent. Mr. Komakech
submitted that the Account Statement clearly shows that the 1st
Respondent continued to draw a salary and to receive other
105 financial facilitation from the office of the Prime Minister on his
account for the performance of the official activities of that office
after the purported effective date of his resignation.

Mr. Komakech argued that if indeed the 1st Respondent had resigned with effect from 10th May, 2015 as he claims, he would
110 have stopped earning a salary, which he continued to earn even as of June, 2015. Further, that he would have also ceased receiving financial facilitation for carrying out duties of office of the Prime Minister which, according to "Annexure A"(supra) he continued to receive even as of December, 2015.

115 To further prove that the 1st Respondent was still in Public Service earning salary after 10th May 2015, Mr. Komakech specifically pointed out the entries in "Annexure A" (supra) showing excise duty. He argued that this was a tax on salary earned by the 1st Respondent or on money received for activities related to his office
120 in the office of the Prime Minister. Counsel argued that the trend of excise duty went on even after the 2nd December, 2015 when the 1st Respondent was nominated, and that it proves that at the time of his nomination, the 1st Respondent had not resigned as required by law, but was still in active service in the Public Service.

125 Further citing **Article 252(2) of the Constitution**, Mr. Komakech and argued that it is a mandatory requirement thereunder that one who has retired from a public office ceases to perform duties of that

office. Counsel also cited the *Halbury's Laws of England, Vol. 15 paragraph 737 at page 560* where it is stated that if the law
130 requires one to resign, he or she must resign. That in this case the
1st Respondent did not resign at the time he was nominated by the
2nd Respondent and hence did not qualify for nomination to be
elected as MP.

Mr. Komakech further submitted that at the time he presented his
135 nomination to the IEC, the 1st Respondent had not attained the
statutory forty – five years required for early retirement from the
Public Service. Counsel submitted that the 1st Respondent
categorically stated in his evidence under cross – examination that
he was born on 24th June, 1969. That yet according to “Annexure
140 B” to his affidavit in support of the answer to the petition, which is
a letter from Public Service accepting the 1st Respondent’s early
retirement, it would mean that for him to be forty - five years, the
1st Respondent would have been born on 24th July, 1970. Counsel
argued that this contradicted the evidence of the 1st Respondent
145 under cross – examination which, by calculation, would mean that
he was two months short of the period required for early retirement

under the ***Uganda Government Public Service Standing Orders, 2010, Section L-a (3)(a).***

Mr. Komakech pointed out that under the retirement procedure; the
150 law requires that a person must submit his request within six
months to the date of retirement. That in this case the 1st
Respondent submitted his application on 4th May, 2015, and just
two days after on 7th May, 2015, there was an acceptance, which is
contrary to the law. Counsel concluded that the retirement of the 1st
155 Respondent was null and void and as such he was not validly
nominated and his election as MP should be nullified.

In reply, Mr. Kimuli Moses and Mr. Isaac Nabende joint Counsel for
the 1st Respondent submitted that the 1st Respondent was lawfully
nominated by the 2nd Respondent. Counsel referred to “Annexure
160 B” (which was by error marked as “C”) to the affidavit of the 1st
Respondent in support of answer to the petition as proof that the 1st
Respondent had effectively retired from the Public Service by the
time he was nominated for elections as MP. “Annexure B” is the
letter earlier referred to which was addressed to the 1st Respondent
165 signed by the Permanent Secretary, Ministry of Public Service. It
shows that the 1st Respondent’s request to retire from the Public

Service was accepted with effect from 10th May, 2015. Premised on this letter, Counsel for the 1st Respondent argued that the retirement of the 1st Respondent was lawfully done and the 1st Respondent was duly nominated for elections as MP.

Further referring to the testimony of the 1st Respondent under cross – examination, Mr. Kimuli pointed out that the 1st Respondent commenced work in Public Service in 1997 and retired on 20th May, 2015, which is a continuous service of more than ten years required for one to qualify for early retirement. Also, that the 1st Respondent clearly testified that he was born on 14th July, 1969, and retired on 20th May, 2015, which also satisfies the legal requirement of forty-five years for one to qualify for early retirement from the Public Service.

Regarding the salary received by the 1st Respondent on 19th June, 2015, after he had retired, Mr. Kimuli argued that this was the last salary and that there was no evidence of any other salary received after that date. Further, that under paragraph 3 of letter “Annexure B” (supra) it was stated that Permanent Secretary office of the Prime Minister should initiate the process of terminal benefits of the 1st Respondent. Counsel argued that terminal benefits would

come subsequently, and that this could explain why salary was paid later in June, 2015.

On the issue of excise duty which appeared on the 1st Respondent's account statement long after he had retired, Mr. Kimuli argued that it reflected the Uganda Revenue Authority tax on transactions made by the 1st Respondent which had nothing to do with getting a salary after he had retired. Mr. Kimuli further took issue with "Annexure A" (supra). He argued that although the Petitioner's Counsel placed on it much reliance show that the 1st Respondent received salary and financial facilitation to do official work after he had had retired, the document is not a bank statement. That it is not named for what it is, and that its source is not mentioned. That it is also not certified and hence cannot be relied upon.

Mr. Kimuli vehemently argued that "Annexure A" (supra) did not serve the purpose for which Counsel for the Petitioner submitted on. That the document indicates the name of the 1st Respondent as "supplier", and that an employee of Government cannot be its supplier. That it could only mean that the 1st Respondent engaged in the supply to the office of Prime Minister after he had retired. Mr. Kimuli maintained that the 1st Respondent was duly nominated for

elections as MP, and that the Petitioner failed to discharge the burden of proving the contrary.

In rejoinder to the concerns raised about "Annexure A" (supra) Mr. Komakech submitted that the 1st Respondent never denied its contents which clearly portray that he was still performing official duties even after he had purportedly retired. Further, that the document clearly states that it is an overview of the 1st Respondent's account statement. Further, that its source is the bank and that it was obtained on 31st December, 2015, and that the Respondent admitted it in his evidence under cross - examination as a statement of transactions in respect of his account. Furthermore, that the 1st Respondent admitted receiving salary on his account in June, 2015 after he had purportedly retired. Mr. Komakech insisted that the dates of the activities shown in account statement prove that the 1st Respondent was still in active service even after he claimed to have retired.

On the argument of Mr. Kimuli concerning terminal benefits mentioned in letter "Annexure B" (supra) Mr. Komakech rejoined that a salary is not a terminal benefit, and hence it was not the subject of the said letter. That if it is true that by 10th May, 2015,

salary had not been paid, it could only mean that it was for the official work done for the month of June, 2015.

Mr. Komakech maintained that since letter "Annexure B" (supra) was dated 7th May, 2015, and accepted the 1st Respondent's retirement with effect from 10th May, 2015, the 1st Respondent could not have retired after giving six months' notice required by law. Further, that he had not attained the age to qualify for early retirement, and hence did not meet the requirement under Article **80 (4)(supra) and Section 4(4) PEA** to qualify for the nomination for elections as MP.

Opinion:

In order to determine the validity and or lawfulness of the 1st Respondent's nomination for elections as MP, regard will be had to provision of **Section 61(1) PEA (supra)** which states in part that;

"The election of a candidate as a member of Parliament shall only be set aside on any of the following ground if proved to the satisfaction of the court:

(a)

(b)

(c)

(d) that the candidate was at the time of his or her election not qualified or was disqualified for election as a member of Parliament. (underlined for emphasis).

250 The Court of Appeal in ***Ngoma Ngime vs. Electoral Commission & Hon. Winnie Byanyima, Election Petition appeal No.11 of 2002***, held that the operative words in the above cited section are; “election of a candidate as a member of Parliament”. In other words, for a person to qualify for election as MP, he or she must first be
255 duly nominated as such in accordance with the law. In this regard I am further fortified by provisions of ***Section 13 PEA (supra)*** which specifically provide for nomination as follows;

***“A person shall not be regarded as duly nominated for a constituency and the nomination paper of any person shall
260 be regarded as void if -***

(a).....

(b).....

(c) the person seeking for nomination was not qualified for election under section 4

(d).....

265

(e) the person seeking nomination has not complied with the provisions of section 4. (Underlined for emphasis).

Therefore, being duly nominated for elections is an essential statutory prerequisite for a person to qualify for election as MP.

270 ***Section 4 PEA (supra)*** to which Section ***13(supra)*** makes reference with which a person seeking nomination must comply; specifically provides for “qualifications and disqualifications of a member of Parliament”. The relevant part under ***sub - section (4)*** thereof states as follows;

275 ***“Under the multiparty system a public officer or person employed in any government department or agency of government or an employee of a local government or any body in which the government has controlling interest, who wishes to stand in a general election as a member of parliament shall -***

280

(a) in the case of general elections, resign his or her office at least ninety days before nomination day...”

Important to note is that ***Section 4(4)(supra)*** more or less reproduces provisions of ***Article 80(4)(supra)***, which stipulate that;

“Under the multiparty political system, a public officer or person employed in any government department or agency of government or an employee of a local government or any body in which the government has controlling interest, who wishes to stand in a general election as a member of parliament shall resign his or her office at least ninety days before nomination day.”

It is in no doubt, therefore, that both the constitutional and statutory provisions above provide specifically for “resignation” from the Public Service of a person who wishes to participate in the general elections as MP. More importantly, the timelines for the resignation are clearly set out therein.

It is called for to clarify on the key concepts of “resignation” and “retirement”. This is because confusion was created by Counsel on both sides in their submissions using the terms interchangeably. ***Black’s Law Dictionary, 8th Edn, at p.1342*** defines the term “retirement” as follows;

“Voluntary termination of one’s own employment or career, esp. upon reaching a certain age.” (Emphasis added)

305 At page 1336(supra) the term “resignation” is defined to mean;

**“The act or an instance of surrendering or relinquishing
an office, right, or claim....A formal notification of
relinquishing an office or position...”**

“Resignation” is therefore quite different from “retirement” both in
310 form and substance. Even though at some point the two could have
the same effect of one leaving the Public Service, they have
completely different legal and practical implications.

A clear distinction between the two concepts for purposes of the
instant petition is under **Article 80(4) and Section 4(4) PEA**
315 **(supra)** which specifically provide for “resignation” of a person from
the Public Service in order to participate in elections as MP.
“Retirement”, on the other hand, is provided for under different
provisions of the Constitution and governed by the **Public Service**
Act (Cap. 288) and the **Uganda Government Public Service**
320 **Standing Orders, 2010**, made under **Section 13** of the parent
Act. Retirement by a public officer is not necessarily for purposes of
participating in elections. Retirement and elections are coincidental
because with or without elections, a public officer at some point in
time has to retire. Therefore, the constitutional and statutory

325 provisions governing resignation of a person from the Public Service
were not intended not cover persons who retire from the Public
Service for whatever reasons.

“Annexure B” (supra) is a letter in reference to the subject matter
of; “*EARLY RETIREMENT FROM PUBLIC SERVICE*”. It is dated 7th
330 May, 2015, and it was in response to the 1st Respondent’s letter of
4th May, 2015, in which he requested for early retirement from the
Public Service. For ease of reference, I reproduce the letter verbatim
below.

“
335 **MINISTRY OF PUBLIC SERVICE**
P.O. BOX 7003
KAMPALA.

7th May, 2015

Mr. Woboya Vincent

Principal Disaster Management Officer

340 **Thru: Permanent Secretary**

Officer of the Prime Minister

KAMPALA.

Dear Sir,

EARLY RETIREMENT FROM PUBLIC SERVICE

345 *I refer to your letter dated 4th May, 2015 on the above subject.*

This is to inform you that on the basis of your length of service, it has been decided that you be granted early retirement with effect from 10th May, 2015 in accordance with the provisions of the Uganda Government Standing Orders, section L-a 3(b).

The Permanent Secretary Office, of the Prime Minister, is requested to initiate the processing of your terminal benefits on the integrated personal and payroll system (IPPS) and thereafter, submit a hard copy of your pension file to this Ministry for further action.

On behalf of government, I take this opportunity to thank you for dedicated service you have rendered and wish you success in your future endeavors.

Yours faithfully,

360 *Jane K. Mwesiga*

For: PERMANENT SECRETARY

C.C. Office of the Auditor General

KAMPALA.”

By expressly making specific reference to the **Uganda Government**
365 **Public Service Standing Orders, section L-a 3(b)**, the above letter
meant that the leaving of the Public Service by 1st Respondent did
not fall within the ambit of resignation for purposes of participating
in elections envisaged under **Article 80(4) (supra) and Section**
4(4) PEA (supra). In fact, the letter does not state that the allowing
370 of the 1st Respondent's retirement was premised on his intention to
participate in the elections but on the length of his service in the
Public Service. He simply retired from the Public Service under the
provisions of the **Public Service Act (supra)** and the **Uganda**
Government Public Service Standing Orders (supra) and this
375 had nothing to do with resignation. For as long as he qualified for
retirement under the law, regardless of the elections he would be
entitled to retire from the Public Service.

Therefore, the issue of whether the 1st Respondent was duly
nominated for elections as MP depends solely on whether he
380 properly retired from the Public Service.

The **Public Service Standing Orders (supra); Section L-a 3(b)** to
which "Annexure B" made specific reference; which is relevant to
the "Retirement of Pensionable Officers", states as follows;

385

“A pensionable public officer may retire from the Public Service in accordance with the provisions of the Pensions

Act when he has;

(a) attained his or her forty fifths (45th) birthday and served for a continuous pensionable period of at least ten (10) years,”

390 **Section (L-c)** which sets out the “Retirement Procedure” provides as follows;

“(1) A Pensionable Public Officer cannot retire voluntarily until he or she has applied, and a request to retire is not effectual until it is accepted by the Responsible Permanent Secretary.

395

(2) Request to retire should be submitted not less than six (6) months before the expected day on which a public officer will cease his or her duties and must be addressed to the Pension Authority. The officer through whom the application has been routed must signify whether he or she supports the application for retirement and if not; indicate the reasons.

400

405 **(3) Six months to the mandatory retirement age, a public officer shall submit his application to retire to the Pensions Authority accompanied by relevant Pension form fully completed by the Responsible Officer.” (Emphasis added).**

I must emphasise that the provisions relevant to early retirement have to be read together and not in isolation because each gives
410 effect to the other.

It is in no doubt that leaving the Public Service by way of retirement has to be in accordance with the **Public Service Act (supra) and the Uganda Government Public Service Standing Orders (supra)** made there under. It does not matter whether the persons
415 who retires intends to participate in elections or not. Upon reaching the statutory required age, he or she has to leave the Public Service because he qualifies for retirement; be it voluntary, early, or mandatory.

Worthy of note is that retirement, whether early or mandatory,
420 attracts pension as stipulated under **Article 254** that;

“(1) A public officer shall, on retirement, receive such pension as is commensurate with his or her rank, salary and length of service.”

In addition a person who has retired from the Public Service under provisions of the **Public Service Act (supra)** does not qualify for re-
425 -appointment to the same or different office in the Public Service on the same terms, because he or she has attained pensionable age and therefore does not qualify to be appointed under the same terms of service.

430 On the other hand, under resignation a person simply relinquishes office in the Public Service at any time after giving formal notice. Under **Section 4(4) PEA**, resignation is purposely to enable the person to participate in the elections as MP. The implications of resigning, whether to participate in elections or not, are clear from
435 the **Public Service Standing Orders (supra) Section A-n** which states as follows;

“1. A public officer may leave the Public Service or cease to be in the Public Service in one of the following ways,

on: -

440 **(a)**

(b)

(c)

(d)

(e)

445 (f)

(g)

(h) *resignation;*”

Under **Section A- n 11**, it is provided that;

450 ***“11. A public officer who wishes to resign from a public office shall apply to the Government by giving a notice of thirty (30) days. The officer shall not leave office until his or her application to resign has been approved in writing indicating the date the officer may leave.***

12.....

455 ***13.***

14. A pensionable officer who resigns his or her office relinquishes all rights and privileges attached to the post...”

460 The above latter are general provisions on resignation for any person who wishes to relinquish office in the Public Service through

that option, and he or she must give thirty days notice of his or her resignation. However, the under **Article 80(4) (supra) and Section 4(4) PEA (supra)** resignation is specific for those who wish to participate in election, and they must give notice of ninety days
465 before the nomination date. In either cases of resignation, there is no prescribed age limit or specified length of period of service provided one gives the required notice which must first be accepted. Also to note is that resignation does not attract pension because the person "*relinquishes all rights and privileges attached to the*
470 *post...*" However, a person who resigns under provisions of **Article 80(4) (supra) and Section 4(4) PEA (supra)** can be re-appointed to the Public Service under the same or different terms of service and office if he or she qualifies. This is the import of **Article 253** which stipulates that;

475 ***"(1) Where any person has vacated an office established by this Constitution, that person may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution."***

By providing for resignation under the Constitution and statute, the
480 intention of the legislature was primarily aimed to cure the mischief

of public officers taking advantage of the their public offices to campaign in elective partisan politics, possibly using the public facilities. Under retirement, however, using the public office facilities would not arise because the officer would have
485 permanently left the Public Service on attainment of a mandatory pensionable age or early retirement.

From the law and evidence articulated and evaluated above, it is clear enough that the 1st Respondent did not resign from the Public Service. He cannot be said to have resigned from the Public Service
490 simply because that is not the path he took. He took the path of early retirement. Therefore, **Article 80(4)(supra)** and **Section 4(4) PEA (supra)** which provide for resignation of a public officer to participate in elections do not apply to him.

Even under the early retirement which he opted for, and which
495 would apply in this case, the 1st Respondent needed to properly retire from the Public Service for him to qualify for nomination for election as MP. By “properly retiring” is meant retiring in accordance with provisions of the governing law under the **Public Service Act (supra)** and the **Uganda Government Public Service
500 Standing Orders (supra)**.

From the evidence on court record and the law articulated above,
the 1st Respondent did not properly retire from the Public Service.
In fact it cannot be said that he retired at all at the time he sought
for nomination for election as MP. Yes; he could have attained forty
505 five years of age and served a pensionable period of ten years.
However, he did not give the required statutory six months' notice
prior to his early retirement from the Public Service. "Annexure B"
(supra) a letter in which his early retirement was purportedly
accepted is glaring evidence that the 1st Respondent only made his
510 request on 4th May, 2015, and just two days after it was accepted
with effect from 10th May, 2015. This was contrary to the law cited
above. The purported acceptance done even before the stipulated
statutory period could elapse was illegal and the early retirement
based on it void *ab initio*.

515 In addition, there is no evidence showing that the 1st Respondent
ever addressed his request to retire to the Pension Authority routed
through the officer as required under **Section L-c (2)** cited above.
"Annexure B" (supra) signed for the Permanent Secretary, Ministry
of Service Public was simply responding to the 1st Respondent's
520 request for early retirement dated 4th May 2015 which was not

addressed to the Pension Authority six months to the retirement date as required by the law.

Apart from the above latter, there is more proof under “Annexure A” (supra) the Accounts Statement of the 1st Respondent, which in
525 no uncertain terms shows that he did not cease performing his official duties even after the effective date of his purported retirement on 10th May, 2015. For instance on 21st May, 2015 the 1st Respondent received on his Account No.121006330401 the first installment of Ug.Shs.12 million as “Facilitation for dissemination
530 of Disaster Policy in Sironko and Kween Districts”. On the same date, he received the second installment of Ug.Shs.14.5 million for the same activities in the same district. On the same date, he yet again received a third installment of Ug.Shs.10.035 million for same activities on same account.

535 On 10th June, 2015, the 1st Respondent again received on the same account Ug.Shs.1.8 million as “Facilitation for the Preparations for Construction and Physical Planning for Resettlement of Landless People in Bugishu sub region”. On 2nd December, 2015, he was paid Ug.Shs. 9,187 as “Facilitation for the baggage allowance on early
540 retirement from Kampala to Sironko.” All payments were made to

the 1st Respondent's account under the "Operating Unit" of the office of the Prime Minister. There is no doubt that he was receiving money for activities of the office of the Prime Minister where he was Principal Disaster Preparedness Officer. Most importantly, the
545 evidence demonstrates that the 1st Respondent was still in active service in the Public Service after he purportedly retired.

Furthermore, "Annexure A" (supra) shows that the 1st Respondent continued to earn a salary after he had supposedly effectively retired on 10th May, 2015. In this particular regard, I am not
550 persuaded by the argument advanced by Mr. Kimuli that the 1st Respondent received salary in June, 2015 because under "Annexure B" (supra) the PS, Ministry of Public Service requested the PS office of the Prime Minister to initiate the process for terminal benefits of the 1st Respondent, which would be paid later.

555 Salary and terminal benefits are quite different. A salary is paid in lieu of the work done. Terminal benefits are entitlements due to a person upon retirement from service. Therefore, a salary paid in June, 2015, could only be for the work done after the purported retirement. A person cannot be said to have retired from a public
560 office for which he continues to earn a salary and receive financial

payments for activities of that office as clearly demonstrated by the
"Annexure A".

In that regard, I find the objections to "Annexure A" by Counsel for
the 1st Respondent misconceived. The 1st Respondent under cross-
565 examination admitted the document as a true reflection of his
Accounts Statement. He also admitted having received the money
thereon. The document is clearly his Account Statement from 01st
June, 2015 after the purported retirement date to 31st December,
2015.

570 Secondly, Counsel for the 1st Respondent based on the very
document to demonstrate, and rightly so, that the excise duty on it
reflected transactions of the 1st Respondent other than his salary.
Therefore, he cannot be permitted to approbate and reprobate the
document.

575 I also find as incorrect the argument that the 1st Respondent
became a "supplier" to the Office of the Prime Minister after
retirement hence the various payments for activities of that office in
his name as a "supplier". Court takes Judicial Notice of the shift in
Government Policy from cheque payment system for the supply to it
580 of goods and services to Electronic Fund Transfers (EFT) where all

Public Service employees are paid their salaries, entitlements, and other benefits on their accounts as “suppliers” of services to Government. Therefore, the use of the term “supplier” on “Annexure A” (supra) in reference to the 1st Respondent had
585 nothing to do with him supplying to Government after retirement, but actually had everything to do with him receiving payments for the performance of official duties as a Principal Disaster Management Officer in the Prime Minister’s Office even after he had purportedly retired.

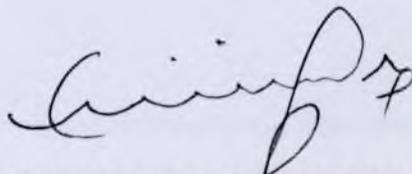
590 The net effect is that the 1st Respondent did not comply with the legal requirements for early retirement from the Public Service. His retirement was unlawfully done and cannot be sanctioned or overlooked by a court of law. In the case of ***Makula International vs. His Eminence Cardinal Emmanuel Nsubuga & Anor [1982]***
595 ***HCB12***, it was held that a court cannot sanction what is illegal, and an illegality once brought to the attention of court supersedes all matters of pleadings including admission.

It follows that the 1st Respondent’s nomination for elections as MP was based on an illegality and it cannot be left to stand. It was null
600 and void *ab initio*. The Petitioner has satisfied this court to the

required standard that the 1st Respondent was not validly
nominated and hence was at the time of his election not qualified as
member of Parliament within the meaning of **Section 61(1) (d) PEA**
(supra). On that ground alone the election of the 1st Respondent as
605 MP for Budadiri County East Constituency is nullified.

Having found as above, it would not be necessary to try and resolve
the other issues which are automatically rendered purely academic
in light of court's findings under Issue No.1. It is accordingly
declared and ordered as follows;

- 610 **1. The 1st Respondent was not validly nominated for
elections as MP for Budadiri County East Constituency.**
- 2. The election of the 1st Respondent as MP for Budadiri
County East Constituency is hereby nullified.**
- 3. It is ordered that fresh elections be conducted for MP for
615 Budadiri County East Constituency.**
- 4. The Petitioner is awarded costs of this petition.**



BASHAIJA K. ANDREW
JUDGE
15/06/2016

Mr. Komakech Geoffrey Counsel for the Petitioner present.

Mr. Isaac Nabende Counsel for the 1st Respondent present.

Mr. Jude Mwasa holding brief for Mr. Mwenyi Joseph Counsel for
625 the 2nd Respondent present.

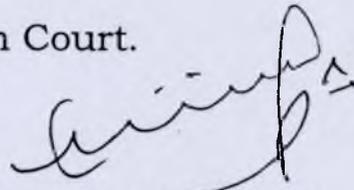
Petitioner present.

1st Respondent absent

No representative from the 2nd Respondent.

Ms. Grace Kanagwa Court Clerk present.

630 Court: Judgment read in open Court.



BASHAJJA K. ANDREW
JUDGE
15/06/2016

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