

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[CIVIL DIVISION]

IN THE MATTER OF THE LOCAL GOVERNMENTS ACT, CAP 243 (AS
AMENDED) 5

AND

IN THE MATTER OF THE PARLIAMENTARY ELECTIONS (ELECTION
PETITIONS) RULES, STATUTORY INSTRUMENT NO.141-2

AND

IN THE MATTER OF THE LOCAL GOVERNMENTS ELECTIONS FOR LC 10
V CHAIRPERSON FOR BUTAMBALA DISTRICT HELD ON THE 24TH DAY
OF FEBRUARY, 2016

ELECTION PETITION NO.32 OF 2016

NAMBOOWA RASHIDA ===== PETITIONER

VERSUS 15

1. BAVEKUNO MAFUMU GODFREY KYESWA]
2. THE ELECTORAL COMMISSION]=====RESPONDENTS

JUDGMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA

1. Introduction

1.1 The Petitioner, Namboowa Rashida, is being represented by Mr. Katumba
Chrisestom and Ms. Faridah Nabakiibi from Lukwago & Co. Advocates,
Kampala. 20

1.2 The 1st Respondent, Bavekuno Mafumu Godfrey Kyeswa, is being
represented by Mr. Birungi Wycliffe from Birungi & Co. Advocates,
Kampala, jointly with Mr. Paul Rutisya from Kasirye, Byaruhanga & Co.
Advocates, Kampala. 25



1.3 And whereas, the 2nd Respondent, The Independent Electoral Commission, is being represented by Mr. Ellison Karuhanga from M/s Karuhanga, Kasajja & Co. Advocates, Kampala.

2. **Facts of the Petition**

The Local Council 5 District Chairperson for Butambala District election was held on 24th February, 2016. 5

The Petitioner, the 1st Respondent, (Bavekuno Mafumu Godfrey Kyeswa), Mawanda Haruna, Mukiibi Ahmed, Mulindwa Sulaiman Al Hajji, Mutyaba Ibrahim Star were candidates in the same election.

The 2nd Respondent, The Electoral Commission, returned, declared and published the 1st Respondent as the validly elected Local Council 5 District Chairperson of Butambala District. 10

- The Petitioner complains against the 1st Respondent that during the campaign period, the latter committed illegal practices and offences, personally and by others with his knowledge, consent and/or approval with a view of procuring others to vote for the 1st Respondent and refrain from voting for other candidates. 15

The Petitioner complains against the 2nd Respondent that there was non-compliance with the electoral laws by the officials of the 2nd Respondent.

That the aforesaid non-compliance affected the said election in a substantial manner that which aided to facilitate the false victory of the 1st Respondent thereby denying the Petitioner victory. 20

The Petitioner felt aggrieved by all the above-stated. Hence this petition against the 1st and 2nd Respondents. She filed 89 affidavits in support of the petition. 25

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The 1st and 2nd Respondents filed in Court their respective answers to the petition with supportive affidavits in opposition and challenge of the petition.

3. **Scheduling conference of the petition/case**

Before scheduling, the parties were encouraged to explore ways and means to settle the matter out of Court under mediation process. On 12th July, 2016, the parties informed Court that mediation failed. 5

Thereafter, Counsel for the 1st and 2nd Respondents raised Preliminary Objections against the 83 Petitioner's affidavit in support of the petition. The said lawyers intimated to Court that the intended Preliminary Objections shall dispose of the entire petition. 10

4. **The Respondents' Preliminary Objections**

4.1 **The 1st Respondent's Preliminary Objection**

1. That the annexures attached to the affidavit in support of the petition served on them by the Petitioner on 5th May, 2016 marked A -- L are uncertified and that they do not conform to the mandatory provisions of Commissioner for Commissioner for Oath (Advocates) Act, Cap.5 Laws of Uganda. 15

4.2 **The 2nd Respondent's Preliminary Objection**

All the Petitioner's affidavits in support of the petition, except affidavits number P2, P10, P51, P52, P88 and P89 (six (6) in number) in the Petitioner's trial bundle violate the provisions of the Oaths Act Cap.19 and the Illiterates Protection Act, Cap.78 Laws of Uganda. 20

5. **Resolution of the Preliminary Objections by Court**

5.1 Counsel for the 1st Respondent, Mr. Wycliffe Birungi, submitted that all the annexures attached to the Petitioner's affidavit in support of the 25

petition (A - L) are uncertified and that they do not conform to the mandatory provisions of the Oaths Act. He evaluated in his submissions each annexure to show to Court that the said impugned documents do not comply with the law above cited. He further submitted that the defects indicated on the annexures would render the said annexures attached to the affidavit in support of the petition to be struck out as they are inadmissible in evidence. 5

5.2 Counsel for the 2nd Respondent, Mr. Ellison Karuhanga, submitted that all the 83 affidavits in support of the petition violate the provisions of the Oaths Act Cap.19 and the Illiterates Protection Act, Cap.78 and that they should be struck out and the petition dismissed with costs. He cited authorities in support of his arguments on the Preliminary Objection he raised. 10

5.3.1 In reply, Counsel for the Petitioner in their submissions do not agree with the submissions by Counsel for the 1st and 2nd Respondents. Mr. Katumba Chrisestom handled the 1st Preliminary Objection raised by Mr. Wycliffe Birungi, Counsel for the 1st Respondent. Whereas, Ms. Faridah Nabakiibi in her submissions handled the 2nd Respondent's Preliminary Objection raised by Mr. Ellison Karuhanga. 15

5.3.2 On the 1st Preliminary Objection, Mr. Katumba Chrisestom, Counsel for the Petitioner submitted that the affidavit of the Petitioner in support of the petition on all the copies of the petition on Court record and those served on to Counsel for the respective Respondents were commissioned by one Shamim Namale, Commissioner For Oaths. He again submitted that all the annexures "A" to the first document "H" inclusive to the affidavit of the Petitioner in support of the petition in, Exh. R1, (1st Respondent's copy of the petition served on him by the Petitioner) bear the Seal of the Commissioner for Oaths. That though the Seal on each impugned documents is not signed and not dated. That the undating and 20

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unsigning on the stamp on the annexures was the duty of the Commissioner For Oaths.

He observed that the copy of the petition with unsealed annexures was duly served on Counsel for the 1st Respondent, that who in turn filed the necessary answer to the petition and the affidavits accompanying the answer to the petition. That the non-sealing and the undating of the impugned annexures were a mere technicality that cannot be used to defeat substantive justice. **He cited and referred to Article 126(2)(e) of the Constitution of the Republic of Uganda; the case of Saggu – vs – Road Masters Cycles (U) Ltd, [2002] EA 258 and the Kigongo Noelina – vs – Electoral Commissioner and Yusufu Zalaika, Election Appeal No.75 of 2011,** in support of his submissions that a defective Jurat is an irregularity in form and cannot be used to vitiate an affidavit.

Counsel for the Petitioner distinguished all the authorities cited and relied on in support of the Preliminary Objections by Counsel for the 1st Respondent. He submitted that the said authorities are not relevant to the instant case. He finally prayed that the 1st Preliminary Objection be dismissed with costs.

On the 2nd Preliminary Objection, Counsel for the Petitioner, Ms. Faridah Nabakiibi, submitted that the 83 affidavits in support of the petition do not offend the Oaths Act Cap.19. She submitted that the said 83 affidavits were clearly translated by a translator who is a 3rd party.

That it is clear that the said 83 affidavits were read, interpreted, and translated the contents to each deponent to the affidavit and that each deponent fully appeared to have understood the contents therein before affixing his/her mark or signature on the said affidavit(s). That each affidavit and the certification therein all conform to the Jurat as provided under Sections 2 and 3 of the Illiterates Protection Act and Sections 1 and

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6 of the Oaths Act. She further submitted that the slight difference in the format of the Jurat and the certification appearing in each of the said affidavits does not render the entire affidavit fatal.

Counsel for the Petitioner distinguished all the cases cited and relied on by Counsel for the 2nd Respondent. That the said cases are not relevant to the Preliminary Objection raised by the 2nd Respondent. 5

In her submissions, Counsel for the Petitioner relied on the following authorities in support of her submissions in opposition to the said Preliminary Objection: **Article 126(2)(e) of the Constitution of the Republic of Uganda; Banco Arabe Espanal – vs – Bank of Uganda, Civil Appeal No.8 of 1998; and Section 43 of the Interpretation Act,** among others. 10

She finally submitted that this Court finds that a Jurat in the 83 affidavits in support of the petition do comply and conform with the provisions of the Oaths Act and the Illiterates Protection Act. And further prayed that the 2nd Respondent's Preliminary Objection be overruled. That Court orders the petition to be heard on its merits. 15

5.4 In rejoinder, Counsel for the 1st and 2nd Respondents endeavoured to rebut the submissions by Counsel for the Petitioner on the said Preliminary Objections. They endeavoured further to distinguish the authorities relied on by Counsel for the Petitioner. They submitted that the cases cited by Counsel for the Petitioner are not relevant to the Preliminary Objections raised by themselves. They reiterated their earlier submissions and prayers on the subject matter. 20

5.5 The Court 25

5.5.1 I had the benefit of listening to the submissions by all Counsel for the parties on the two Preliminary Objections raised by Counsel for the Respondents. I evaluated and analysed the said submissions. I perused

all the authorities cited by Counsel for the parties in relation to the said Preliminary Objections.

5.5.2

On the 1st Preliminary Objection

I wish to note that Exh.R1 was allowed on the Court record as an exhibit by consent of Mr. Katumba Chrisestom, Counsel for the Petitioner. Exh. R1 is the copy of the petition and its accompanying affidavit that was sworn by the Petitioner, which is the document that was served upon the 1st Respondent. That fact, therefore, is not in dispute. 5

I also acknowledge that the 1st Preliminary Objection relates to the annexures A – H₁ attached to the affidavit of the Petitioner accompanying the petition. 10

Counsel for the 1st Respondent submitted that Exhibit R1 which was served on the 1st Respondent was not a proper petition on ground that the annexures A – H₁ attached to the affidavit of the Petitioner in support of the petition are not certified as required by law. The impugned annexures are:- 15

1. **“A” – Voter Location Slip;**
2. **“B” – Chairperson Results;**
3. **“C” – The Uganda Gazette;**
4. **“D” – Chairperson’s DR Form;**
5. **“E” – Chairperson Results Tally Sheet;**
6. **“F” – Chairperson Declaration of Results Form;**
7. **“E1” – Chairperson DR Form;**
8. **“E2” – Chairperson DR Form;**
9. **“E3” – Chairperson DR Form;**

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10. "E4" – Chairperson's DR Form;
11. "E5" – Chairperson's DR Form;
12. "E6" – Chairperson's DR Form;
13. "E7" – Chairperson's DR Form;
14. "E8" – Chairperson's DR Form;
15. "E9" – Chairperson's DR Form;
16. "E10" – Chairperson's DR Form;
17. "E11" – Chairperson's DR Form;
18. "E12" – Chairperson's DR Form;
19. "E13" – Chairperson's DR Form;
20. "E14" – Chairperson's DR Form;
21. "E15" – Chairperson's DR Form;
22. "E16" – Chairperson's DR Form;
23. "E17" – Chairperson's DR Form;
24. "E18" – Chairperson's DR Form;
25. "E19" – Chairperson's DR Form;
26. "E20" – Chairperson's DR Form;
27. "E21" – Chairperson's DR Form;
28. "E22" – Chairperson's DR Form;
29. "E23" – Chairperson's DR Form;
30. "E24" – Chairperson's DR Form;

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31. "E25" – Chairperson's DR Form;
32. "G1" – Chairperson's DR Form;
33. "G2" – Chairperson's DR Form;
34. "G3" – Chairperson's DR Form;
35. "G4" – Chairperson's DR Form;
36. "H" – Chairperson's DR Form in a bundle;

all DR Forms for various Polling Stations in Butambala District.

I looked at the said annexures and noted that they are not certified by the issuing body, the Electoral Commission, 2nd Respondent. Nor are they sealed and dated by Commissioner for Oaths as required under the Commissioner for Oaths (Advocate) Act, Cap.5, Laws of Uganda.

Under Rules 8 and 9 of the Commissioner for Oaths Rules, First Schedule do provide that all the exhibits attached to affidavits shall be securely sealed by the Commissioner For Oaths and shall be marked with serial letters for identification. Rule 9 thereof provides forms of the Jurat and identification of exhibits shall be those set out in the Third Schedule in the said Rules.

Unfortunately the documents attached to the affidavit of the Petitioner in support of the petition, Exh. R1, a copy that was served on the 1st Respondent do not comply with the said Rules and Schedule. **The question to answer now is whether such documents are admissible in evidence?** In the case of **CHELBE FRED & SALIMO DAVID –VS- MASAI LABU** Miscellaneous Application No.140 of 2010 (Arising from Civil Appeal No.7 of 2003) at page 130 of the 1st Respondent's trial bundle of authorities, lines 6 – 10 at page 7 of the Ruling of Hon. Mr. Justice Kenneth Kakuru, JA, held that:-

"All the annexures to the affidavit are not certified by the Commissioner for Oaths before whom the affidavit was sworn. This offends the provisions of the Commissioner for Oaths (Advocates) Act, Cap.5. See Third Schedule, Rule 9 of the Commissioner for Oaths Rules.

Those annexures, therefore, cannot be relied upon as evidence by the Court"

I wish to emphasise that the above stated authority is relevant to this matter and I am bound to follow it.

Also in the case of **Sudhir Ruparrelia -Vs- G. Magezi & Another, Miscellaneous Application No.347 of 1999 (Arising from Civil Suit No.1076 of 1996)**, Richard O. Okumu Wengi at page 4, from the 3rd, 4th, 5th and last paragraph, while dealing with Rule 8 in the First Schedule to the Commissioner For Oaths (Advocates) Act, Cap.5, which reads:-

"All exhibits to affidavits shall be securely sealed thereto under the seal of the Commissioner and shall be marked with the serial letters of identification" (emphasis added)

Held that:-

"It is the view of this Court that the rule seems to imply that exhibits to affidavits shall be securely sealed thereto (namely to the affidavit), under the seal of the Commissioner".

I therefore, make a finding that sealing a document to an affidavit means annexing it securely. This means, therefore, that where a deponent seeks by exhibits annexed to an affidavit to prove a fact such exhibit must be securely sealed to the affidavit under the seal of the Commissioner and shall be marked with the serial letters of identification. Failure to do this would diminish the potency of the annexures and indeed of the affidavit

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to render probative value to the election petition that relies on certain facts to the point of worthlessness as evidence. This cannot be the purpose of affidavit evidence.

In his submissions, Counsel for the Petitioner, Mr. Katumba Chrisestom, dwelt too much on the question of **"lack of date and signature"** of the Commissioner on the question annextures. 5

Counsel for the Petitioner in my view never addressed properly in his submissions the issue of certification of the questioned annextures that are attached to the affidavit of the Petitioner in support of the petition. Lack of certification to the said impugned annextures cannot be said to be a matter of form as Counsel for the Petitioner seemed to argue, defects complained of by Counsel for the 1st Respondent offend the Commissioner for Oaths (Advocates) Act, Cap.5. Therefore, where an Act is offended in a pleading, that is a matter of substance and it goes to the very root of the documents/annextures in issue because they do not comply with the provisions of the law. 10 15

Consequently, Counsel for the Petitioner, Mr. Katumba Chrisestom relied heavily on the case of **Saggu -Vs- Road Master Cycles (U) Ltd [2002] EA 258**, with due respect to him, that case does not in any way refer to Rules 8 and 9 of the Commissioner for Oaths (Advocates) Act, Cap.5. That case also did not deal with the question of uncertified annextures. What their Lordships referred to in that case was a defect in the Jurat. 20

In the result, I agree with the submissions by Counsel for the 1st Respondent. I accordingly uphold the 1st Preliminary Objection in the affirmative. Wherefore, the impugned annextures attached to the affidavit of the Petitioner in support of the petition are struck out and expunged from the Court record. This means that the vital evidence offered by the said annextures in support of the petition has diminished. 25

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On the 2nd Respondent's Preliminary Objection

The affidavits in support of the petition which are not complained of by Counsel for the 2nd Respondent are affidavits of:-

1. P2 – Namboowa Rashida, her affidavit in support of the petition and its annexures thereto.
2. P10 – Nakiboneka Faridah
3. P51 – Mawanda Haruna
4. P52 – Mutyaba Ibrahim Star
5. P88 – Namboowa Rashida's supplementary affidavit in support of the petition, and
6. P89 – Namboowa Rashida's affidavit in rebuttal, all affidavits in the Petitioner's trial bundle of the affidavits in support of the petition.

The Petitioner filed in Court 89 affidavits in support of the petition. It is the contention and submissions by Counsel for the 2nd Respondent, Mr. Ellison Karuhanga that all the 83 remaining affidavits in support of the petition do not comply and conform to Section 2 and 3 of the Illiterates Act, Cap.78 and the Oaths Act, Cap.19, Laws of Uganda.

On the issue of the Oaths Act, Cap.19, Section 1 thereof provides:-

“The Oaths which shall be taken occasion shall demand, shall be the Oath set out in the First Schedule to this Act”.

The First Schedule to the Act has various Forms. My concern is Form B thereof.

When an illiterate person has deponed an affidavit, the law provides what the Commissioner for Oaths shall stated in the Jurat:-

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"Sworn at _____ in the district of _____ this _____ day of _____ 20_____ before me, I having first, truly, distinctly and audibly read over the contents of the affidavit(s) to the deponent he/she being blind or illiterate and explained the nature and contents of the exhibits referred to in the affidavit in the _____ language. 5

The deponent appeared perfectly to understand the same and made her/his mark/signature thereto in my presence.

Commissioner For Oaths"

The 2nd Form B of the Juratis where at third person has read the affidavit to the deponent. That Form provides":- 10

"Sworn at _____ in the district of _____ this _____ day of _____ 20_____ before me and I certify that his affidavit was read over in my presence to the deponent he/she being blind or illiterate and the nature and contents of the exhibits referred to in the affidavit explained to him/her in the _____ language. The deponent appeared perfectly to understand the same and made her/his mark/signature thereto in my presence. 15

Commissioner for Oaths" 20

I have looked and perused the said 83 affidavits in support of the petition and none of the said translated affidavits have the above-stated Jurat from the Commissioner For Oaths as required by law. There is, therefore, much doubt as to whether, each deponent on the 83 impugned affidavits in support of the petition did take an Oath before the Commissioner For Oaths as required by law. My proposition of the law is supported by the 25

decision in Ngoma Ngime -Vs- Electoral Commission and Hon. Winnie Byanyima – Election Petition Appeal No.11 of 2002 whereby the Justices of Appeal held that:-

“The next ground concern the affidavits of illiterates that the Learned trial Judge rejected for not complying with the provisions of the Illiterates Protection Act, (Cap.73 Laws of Uganda). The Act as the title suggests was intended to protect illiterate persons. Under the Oaths Act, (Cap.52 Laws of Uganda) an affidavit sworn or affirmed by an illiterate person before a Commissioner for Oaths or any other person authorized to administer an Oath is obliged to include a Jurat at the end of the affidavit or affirmation stating that the contents of the affidavit or affirmation were read over to the deponent. The Jurat has to state that the deponent appeared to have understood the same. To me this is not a matter of form as Mr. Kibedi submitted before us. It is a matter of substance. The contents of an affidavit or affirmation and any annexures attached must be explained and understood by the deponent. This is the protection that the law envisaged. The trial Judge was right to reject the affidavits in question for not complying with the provisions of the law”.

Therefore, absolute non-compliance with the Oaths Act, Cap.19 is a matter of substance and not form. These, all the 83 affidavits in support of the petition by illiterate persons are non-compliant with the said Oaths Act. The effect of such non-compliance would be that the said 83 affidavits in support of the petition be struck off the record.

Furthermore, Counsel for the 2nd Respondent complained that the said 83 affidavits in support of the petition do not comply and conform to

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Sections 2 and 3 of the Illiterates Protection Act, Cap.78 Laws of Uganda. For clarity Section 2 thereof provides:-

“No person shall write the name of an illiterate by way of signature to any document unless such illiterate shall have first appended his/her mark or signature thereto; and every person who so writes the name of the illiterate shall also write on the same document his/her full name and address as a witness and his/her so doing shall imply a statement that he/she wrote the name of the illiterate by way of signature after the illiterate had appended his/her mark/signature and he/she was so instructed to write by the illiterate and prior to the illiterate appended her/his mark/signature, the document was so read over and explained to the illiterate”.

The duties of a witness has towards an illiterate person in that regard, are clearly outlined in this Section 2 thereof.

Then for Section 3 of the Illiterates Protection Act, Cap.78, provides:-

“Any person who shall write any document or at the request of or on behalf of or in the name of the illiterate shall also write on the document her/his true and full name as the writer of the document and his/her full address as his doing so, shall imply a statement that he/she was instructed to write the document by the person of whom he/she purports to have written and that it fully and correctly represents fully his/her instructions and was read over and explained to him or her”.

In the case of **Tickens Francis & Chelimo Nelson Kaprokuto -Vs- The Electoral Commission, National Council For Higher Education, and Kapchemeiko Paul Manchinjach, Election Petition No.1 of 2012**, it was held by Hon. Mr. Justice Musota Stephen that:-

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"There is clear intention in the above enactments that a person who writes the document on behalf of the illiterate must append at the end of such a document a kind of "Certificate" consisting of that person's full names and full address and certifying that that person was the writer of the document; that he/she wrote the document on the instructions of the illiterate and in fact, that he read the document over to the illiterate or that he explained to the illiterate the contents of the document and that, in fact, the illiterate as a result of the explanation understood the contents of the document".

I agree with the holding of my brother Judge on the interpretation of Sections 2 and 3 of the Illiterates Act. And I hasten to add that the import of Section 3 of the Act is to ensure that documents which are purportedly written for and on instructions of illiterate persons are understood by such persons if they are to be bound by their contents.

In the case of **Abdallah Faraj -Vs- R.A. Odimbe & Co. Advocates** HCCS No.962 of 1986, Ntabgoba, Principal Judge (as he then was) held that:-

"These stringent requirements were intended to protect illiterate persons from manipulation or oppressive acts of literate persons".

I have looked at the 83 impugned affidavits in support of the petition. Those affidavits have some form of certificate but is not clear from the certification thereat whether the translator wrote the document on behalf of or on instructions of the deponent therein/illiterate. The Jurat shown on each certificate in the said 83 affidavits of the Petitioner do not conform and comply with Sections 2 and 3 of the Illiterates Protection Act. My finding as aforesaid is fortified by the cases of **Tikens Francis**

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& Anor (Supra) and the case of Nakiwala Violet, Sondolo James and Rwakibwande Francis -Vs- Ezekiel Rwekibira and Joyce Kaihangwe Rwekibira, HCCS No.280 of 2006. And in the case of Kasaala Growers Co-operative Society Ltd -Vs- Kakooza Jonathan & Kalemera Edison, Civil Application No.19 of 2010 at pages 5 and 6 of the Supreme Court decision, the Court held that the provisions of Section 3 of the Illiterates Protection Act are mandatory. That failure to comply with a Statutory requirement is where requirement of a Statute is not complied with, and that it is fatal. 5

Further in the case of Fredrick J.K. Zaabwe -Vs- Orient Bank and 5 Others Civil Appeal No.04 of 2006 at pages 24 and 25 of the Supreme Court Judgment in dealing with the issue of Article 126(2)(e) thereof does not say that Courts must not apply the law. That where the requirement of a signature under the Act to be in Latin character is a matter of a substantive provision of the law and not a mere technicality. 10 15

Similarly, the requirements under Sections 1 and 6 of the Oaths Act, Cap.19 and Sections 2 and 3 of the Illiterates Protection Act, are substantive and strict requirements of the law. They are not a mere technicality as is being argued by Counsel for the Petitioner. 20

Wherefore, as I have stated hereinabove, the impugned 83 affidavits in support of the petition, and in agreement with the submissions by Counsel for the 2nd Respondent, Mr. Ellison Karuhanga, I uphold the 2nd Respondent's Preliminary Objection in the affirmative.

Accordingly the said 83 affidavits in support of the petition are struck out and expunged from the Court record for failure to comply with the requirements of Sections 2 and 3 of the Illiterates Protection Act, Cap.78 and Section 1 of the Oaths Act, Cap.19, Laws of Uganda. 25

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5.6. Before I take leave of these Preliminary Objections, allow me to comment on the petition filed by the Petitioner in this Court.

In paragraph 6 of the petition under the following sub-paragraphs, the Petitioner complains:-

- (a) That on 5th February 2016 the 1st Respondent bribed the voters. 5
- (b) That on 12th February 2016 the 1st Respondent allegedly bribed voters.
- (c) That on 20th February 2016 the 1st Respondent bribed voters.
- (d) That on 22nd February 2016 the 1st Respondent bribed the voters.
- (e) That on 27th February 2016 the 1st Respondent bribed the voters. 10
- (f) That on 23rd February 2016 the 1st Respondent bribed the voters.
- (g) That on 14th January 2016 the 1st Respondent bribed the voters.
- (h) That on 21st July 2016 the 1st Respondent bribed voters.
- (i) That on 4th February 2016 the 1st Respondent bribed voters.
- (j) That on 29th January 2016 the 1st Respondent bribed voters. 15
- (k) That on 14th January 2016 the 1st Respondent bribed the voters.

Under paragraphs 7, 8, 9, 10, 11, 12 and 13 of the petition the Petitioner alleges that the 1st Respondent committed bribery offences.

All these complaints as alleged by the Petitioner in her petition had happened during the campaign period. This means that the Petitioner should have filed her complaints with the Electoral Commission, which has quasi judicial powers to solve such disputes, under the Section 15(1) of the Electoral Commission Act Cap.140 Section 15(1) of the Electoral Commission Act, thereof reads:

“15. Power of the Commission to resolve complaints, appeals. 25

(1) Any complaint in writing alleging any irregularity with any aspect of the electoral process at any stage, if not satisfactorily resolved at a lower level of authority, shall be examined and

decided by the Commission and where the irregularity is confirmed, the Commission shall take the necessary action to correct the irregularity and any effects it has caused".

Then Section 15(2) thereof provides that:-

“Any appeal shall be to the High Court against a decision of the Commission confirming or rejecting the existence of an irregularity”.

Wherefore, it is my considered view that all the matters/irregularities allegedly to have been committed by the 1st Respondent should have been lodged before the Electoral Commission for redress. Then the aggrieved party would prefer an appeal to the High Court. Therefore failure by Petitioner not to allege the said illegal practices during elections to the Electoral Commission before the election took place is fatal to this petition. The law does not allow any party/candidate in an election to do the campaigns during the campaigning period, and only becomes aggrieved after losing.

His/her actions after the voting in that regard would be time barred.

Or by interpretation there were no illegal practices which were committed during the campaign period; and that the allegations now in the petition are an afterthought. It is, therefore, my considered view that the above-stated facts would affect this petition.

Further I have looked at all the DR Forms which are the impugned documents as annexures to the affidavit of the Petitioner in support of the petition and noted that none of them are certified by the statutory body the Electoral Commission. Non-certification of the said DR Forms is in contravention with Sections 73 and 76 of the Evidence Act, Cap.6 Laws of Uganda. Under the aforesaid provisions they are inadmissible in

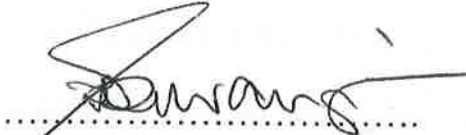
evidence. Still on the above-stated observations, this petition was bound to fail.

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Conclusion

In closing and consideration of the submissions by all Counsel for the parties, the law cited and relied on in this judgment, my analysis of the submissions of the parties on the Preliminary Objections by Counsel for the Respondents and my findings on each Preliminary Objection in the affirmative. Certainly, therefore there is no valid evidence left to support this petition. This petition in the result lacks merit. It is accordingly dismissed with costs to the 1st and 2nd Respondents.

Dated at Kampala this 8th day of August, 2016.


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MURANGIRA JOSEPH
JUDGE

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THE REPUBLIC OF UGANDA

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2. THE ELECTORAL COMMISSION]=====RESPONDENTS

JUDGMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA

08/08/2016

Mr. Birungi Wycliffe appearing together with Mr. Kabayo Alex and Mr. Paul 20
Rutisya for the 1st Respondent

The 1st Respondent is in Court

The 2nd Respondent is represented by Ms. Zulaika Kasajja who is holding brief
for Mr. Edison Karuhanga

Nobody is from Electoral Commission

For the Petitioner are: 25


Ms. Faridah Nabakiibi and Ms. Nasuuna Victoria -- They are holding brief for Mr. Katumba Chrisestom

The Petitioner - Namboowa Rashida is also in Court

The matter is for a ruling and we are ready to receive the ruling.

Ms. Lydia Birungi Nanfuuka the Clerk is in Court.

Court: Judgment is delivered to the parties in Open Court
Right of Appeal is explained.


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MURANGIRA JOSEPH
JUDGE
08/08/2016



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