

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

IN THE MATTER OF THE ELECTORAL COMMISSION ACT,
CAP.140 — 5

AND

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

AND

IN THE MATTER OF THE LOCAL GOVERNMENT ELECTIONS
HELD ON THE 9TH DAY OF MARCH 2016 — 10

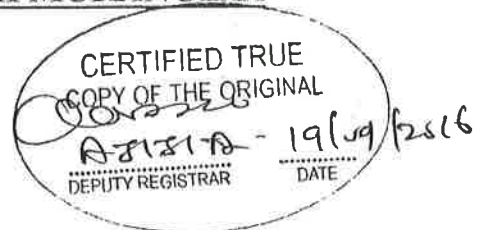
ELECTION PETITION NO.29 OF 2016

NSUBUGA SILVEST SSEKUTU ===== PETITIONER

VERSUS

1. KALIBBALA CHARLES]
2. THE ELECTORAL COMMISSION] ===== RESPONDENTS — 15

JUDGMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA



1. Introduction

- 1.1 The Petitioner, Nsubuga Silvest Ssekutu, is being represented by Mr. Kibirango Erasto from Wetaka, Kibirango & Co. Advocates, Kampala. — 20
- 1.2 The 1st Respondent, Kalibbala Charles, is being represented by Tom Magezi from Tumusiime, Kabega & Co. Advocates, Kampala.

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FEES PAID: 72,500.00
RECEIPT NO: 00-71073.8
HIGH COURT OF UGANDA
CIVIL DIVISION
DATE: 21/9/2016

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

2. Facts of the case/petition

2.1 The Petitioner was a candidate on the 9th day of March, 2016 Elections as Chairperson for LC III Makulubita Sub-county. The 1st Respondent, Kalibbala Charles was declared the winner of the said elections by the 2nd Respondent, The Electoral Commission. — 5

The Petitioner was aggrieved and complains that illegal multi-practices and offences were committed by the 1st Respondent, Kalibbala Charles, personally and by others with his knowledge, consent and or approach with a view of procuring voters to vote for the 1st Respondent and or refrain from voting for other candidates. — 10

The Petitioner further complains that during campaigns the 1st Respondent offered bribes to voters for the purposes of influencing them to vote for him and this was in form of money and material things. He gave places and instances where and how 1st Respondent committed the said alleged offences. — 15

Consequently, the Petitioner complains that the 2nd Respondent, The Electoral Commission, failed to conduct the said elections in accordance with the Electoral Commission Act Cap.140, the Local Governments Act, Cap.243, and the principles governing elections and non-compliance with the said laws affected the results of the said elections in the substantial manner. That the said illegal acts were brought to the attention of the 2nd Respondent but that the 2nd Respondent did not take any step to stop them thereby compromising the principle of impartiality and transparency by failing to refrain the 1st Respondent from carrying out the above illegal acts. — 20 — 25

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The Petitioner states that the said non-compliance with the Electoral laws affected the results of the said elections in substantial manner.

2.2 The Petitioner, therefore, prays that it be declared that:-

- (i) That the 1st Respondent committed illegal practices during the campaign period. — 5
- (ii) The 1st Respondent was not validly elected as the Chairperson LC III, Makulubita Sub-county.
- (iii) The said elections be annulled, set aside and new elections be conducted.
- (iv) The 1st and 2nd Respondents pay the costs of the Petition. — 10

2.3 The 1st and 2nd Respondent filed in Court their respective answers to the Petition and affidavits in support of the said answers to the Petition denying each and every allegation contained in the Petition and its supportive affidavits. Each Respondent prays that this Petition be dismissed with costs. — 15

3. Scheduling of the Petition

On 11th July, 2016 when the matter came up for scheduling, the parties were requested and encouraged by Court to first explore ways and means of having an amicable settlement outside the Court.

The matter was then adjourned to 12th July, 2016 to allow the parties to meet and sort out this matter with a view to enter a consent judgment. — 20

On 12th July, 2016 when the Court reconvened to hear the Petition, Counsel for the Petitioner, Kibirango Erasto, informed Court that the Petitioner said that he is not interested in the mediation. That, therefore, the mediation failed.

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Then it is at that point that Counsel for the Respondents informed Court that they have Preliminary Objections to raise that would dispose of the entire Petition.

4. The Respondents' Preliminary Objections

4.1 The 1st Respondent's Preliminary Objection — 5

- That the affidavits in support of the Petition numbered from P₁ – P₁₇ do not comply with Sections 2 and 3 of the Illiterates Protection Act, Cap.78, Laws of Uganda.

4.2 The 2nd Respondent's Preliminary Objection

That all the affidavits in support of the Petition do not comply with Sections 2 and 3 of the Illiterates Act, Cap.78, Laws of Uganda and Sections 1 and 6 of the Oaths Act — 10

5. Resolution of the Respondents' Preliminary Objections by Court

5.1 From the onset, it is clear that the Respondents' Counsel raised the same Preliminary Objections. Counsel for the Respondents complained in their respective submissions that the following affidavit in support of the Petition do not comply with Sections 2 and 3 of the Illiterates Protection Act, Cap.78 and the Sections 1 and 6 of the Oaths Act, Cap.19, Laws of Uganda. The affidavits complained of are sworn by: — 15

1. Kyejjusa Abdu, 2. Mugeiga Jackson Ronald, 3. Male Julius 4. Mwesige Edward, 5. Ssentongo Ronald Birungi, 6. Kizito Bernard, 7. Lubwama Samuel, 8. Mayega Edward, 9. Juuko Kevin, 10. Mwanje Anjero, 11. Lutaaya Erick, 12. Kalanzi Jackson, 13. Lutaaya Edimond, 14. Nsubuga Silvest Ssekutu (affidavit in rejoinder), 15. Ssentamu Ronald Birungi, 16. Kizito Bernard (supplementary affidavit), 17. Lubwama Samuel (supplementary affidavit). — 20 — 25

In their respective submissions, Counsel for the Respondents submitted and illustrated how all the above-stated affidavits do not comply with the above cited laws.

Counsel for 2nd Respondent, in addition attacked the Petitioner's affidavit in support of the petition to the extent that the same was sworn by the Petitioner on 9th May, 2016 before a Commissioner for Oaths, Mr. Deo Bitaguma, Advocate as illiterate. And that on 25th July, 2016, the same Petitioner swore an affidavit in rejoinder as an illiterate before the same Commissioner for Oaths, Mr. Deo Bitaguma. She submitted that, the aforesaid is a major contradiction in the affidavit evidence of the Petitioner and that as such it goes to the heart of the petition. They referred to a number of authorities.

Both Counsel for the 1st and 2nd Respondents, respectively prayed that all the affidavits in support of the petition be struck out with costs.

5.2 In reply, Counsel for Petitioner, Kibirango Erasto does not agree with the submissions and prayers by Counsel for the Respondents. He submitted that all the 17 (seventeen) affidavits in support of the petition do comply and conform to the provisions of Sections 2 and 3 of the Illiterate Protection Act, Cap.78. and that they are correctly on the Court record.

He further submitted that the Jurat on each of the impugned 17 affidavits do comply with the aforesaid Sections of the Illiterates Protection Act and Section 1 and 6 of the Oaths Act, Cap.19. He submitted at length justifying the correctness of the affidavits and Jurat(s) on the said 17 affidavits. He submitted that despite the fact that there are some missing elements in the certification, like the translated, Nakiwala Zamaladi not indicating that she is not the one who drew the document and that she does not state specifically that she was instructed to do so, the essential requirements in the verification were made. That she gave her full names

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and address being P.O. Box 3347, Kampala. He continued to submit that the law mandates that when such documents (affidavits) are drawn by a Law Firm, that thei Law Firm M/s Wetaka, Kibirango & Co. Advocates, Plot 4 Johnstone Street, London Chambers Building, 1st Floor, Room 113. P.O. Box 33471, Kampala. That it is clear that their Law Firm drew the affidavits and that at the bottom of the last page of the affidavits they rightly indicate that the document(s) (affidavits) were drawn by their Law Firm. That full address of the Law Firm that wrote the documents is indicated thereat.

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In his submissions, Mr. Kibirango Erasto, Counsel for the Petitioner emphasized that despite some requirements of the law missing in the Jurat, that the essential requirements which are the nerve of the Sections 2 and 3 of the Illiterates Protection Act, Cap.78 were met. And that it was done by the Commissioner for Oaths. He said that the Preliminary Objections only show the problem of form and not of substance.

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In his submissions he relied on the following cases:

1. **Col. Dr. Kizza Besigye –vs – Electoral Commission and Yoweri Kaguta Museveni, Election Petition No.1 of 2006** for his proposition that many Courts have taken a liberal approach to the affidavits evidence.

2. **Mugenyi Peter – vs – Mudiobole Abedi Nasser, Court of Appeal Election Petition Appeal No.30 of 2011** to support his submissions that the missing parts in the certification and Jurat in the 17 affidavits are procedural transgressions which cannot stop this Court from administering substantive justice.

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Counsel for the Petitioner endeavoured to distinguish all the cases that were cited and relied on by Counsel for the Respondents. He submitted that all the cases cited by Counsel for the Respondents were not applicable to this instant petition.

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He finally prayed that Court dismisses the said raised Preliminary Objections. And that the petition be set down for hearing on its own merits.

5.3 I had the benefit of listening to the submissions by Counsel for the 1st and 2nd Respondents and the submissions by Counsel for the Petitioner in respect of the said two (2) Preliminary Objections. I have also evaluated the said parties' submissions and analysed all the authorities cited and relied upon by Counsel for both parties. I hasten to add that the two Preliminary Objections are one and the same. Thus, I will deal with them jointly.

The said Preliminary Objections on the 17 affidavits of the Petitioner are that they do not conform and comply with Sections 2 and 3 of the Illiterates Protection Act, Cap.78, as well as Section 1 of the Oaths Act, Cap.19 in respect of the form of certification and the Jurat. There was also another concern that was raised in respect of 2 affidavits whereby to the affidavit accompanying the petition, the Petitioner, Nsubuga Silvest Ssekutu, swore as an educated person. Whereas in the affidavit in rejoinder the Petitioner swore on 20th July, 2016, he took Oath as an Illiterate person. The reasons why the Petitioner made such a contradiction were never explained by the Petitioner nor by his Counsel, Mr. Kibirango Erasto in his submissions. In his submissions, Counsel for the Petitioner submitted that the Petitioner is not illiterate. And that he ably swore an affidavit in support of his petition which is on Court record. But that the Petitioner's affidavit in rejoinder, he submitted that:

“to the 2nd affidavit, I pray that Court in the worst in the meantime Court to ignore it”.

By this it means that the said impugned Petitioner's affidavit in rejoinder is not evidence to rely on. To that extent I agree with the submissions by Counsel for the 2nd Respondent. Accordingly, therefore, the said

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Petitioner's affidavit in rejoinder is struck out and expunged from the Court record.

On whether the 17 Petitioner's impugned affidavits offend Sections 2 and 3 of the Illiterates Protection Act, Cap.78 and if so whether the Act was not complied with. — 5

Section 2 of the Act provides that:-

“No person shall write the name of an illiterate by way of a signature to any document unless such illiterate shall have first appended his mark thereto, and every person who so writes the name of the illiterate shall also write on the document his own true full name and address as witness and his so doing shall imply a statement that he wrote the name of the illiterate by way of a signature after the illiterate had appended his mark, and that he was instructed so to write by the illiterate, and that prior to the illiterate appending his mark the document was read over and explained to the illiterate”. — 10 — 15

The duties that a witness has towards the illiterate person are clearly outlined in this Section 2 thereof.

Then Section 3 of the Illiterates Protection Act provides that:-

“Any person who shall write any document for or at the request, on behalf or in the name of any illiterate shall also write on the document his or her own true full name as the writer of the document and his or her true and full address, and his or her so doing shall imply a statement that he or she was instructed to write the document by the person for whom it purports to have been written and that it fully and correctly represents his or her instructions and was read and explained to him or her”. — 20 — 25

And Section 1 of the Oaths Act, Cap.19 provides, that:-

“1. Oaths to be taken

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

Our concern in this matter is in respect of Oath for affidavits Form B, which has two forms of Jurat.

Form of Jurat where the Commissioner for Oath has read the affidavits to the deponent who is blind or illiterate is as follows:-

“Sworn at _____ in the district of _____ this _____ day of _____ 20____, before me, I having first truly, distinctly and audibly read over the contents of this affidavit(s) to the deponent he or she being blind or illiterate and explained the nature and contents of the Exhibits referred to in the affidavit in the _____ language. The deponent appeared perfectly to understand the same and made his (or her) mark (or signature) thereto in my presence.

**_____
COMMISSIONER FOR OATHS”**

The second form of the Jurat is where a third person has read the affidavit to a blind or illiterate deponent is as follows:-

“Sworn at _____ in the district of _____ this day of _____ 20____, before me, and I certify that this affidavit was read over in my presence to the deponent he (or she) being blind or illiterate and the

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nature and contents of the exhibits referred to in the affidavits explained to him (or her) in the _____ language. The deponent appeared perfectly to understand the same and made his (or her) mark (or signature) thereto in my presence.

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COMMISSIONER FOR OATHS”

It is clear from Section 2 of the Illiterates Protection Act, that it provides the verification of the illiterates mark (or signature) on any document and that prior to the illiterate appending his or her mark or signature on the document, the document must be read over and explained to the blind or illiterate deponent. And whereas Section 3 of the same Act provides that the document is written at the request or on behalf of the blind or illiterate deponent must bear the certification that it fully and correctly represents the instructions of the blind or illiterate person and that it has been read and explained to the said blind or illiterate person.

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Therefore, in my considered view the following elements must appear in the 17 impugned Petitioner's affidavits in support of his petition:-

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DEPUTY REGISTRAR
DATE

1. A kind of certificate consisting of the person's full names and address.
2. Certification that the person named in the Jurat is the very person who wrote the document on behalf of the blind or illiterate person.
3. That person wrote the document on the instructions of the illiterate.
4. That person read the document over to the illiterate and

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explained the contents of the documents to the said illiterate.

5. The illiterate person has as result of the explanation understood the contents of document (affidavit).

Consequently, I have read and analysed the impugned 17 Petitioner's affidavits in support of the Petition, whose deponents in respect of a particular affidavit are well set out hereinabove in this judgment, it is clear that none of the said affidavits has the required Jurat as per Sections 2 and 3 of the Illiterates Protection Act, Cap.78.

Counsel for the Petitioner, Mr. Kibirango Erasto, in his submissions in reply to the submissions by Counsel for the Respondents submitted that the said impugned 17 Petitioner's affidavits partially complied with the said Sections of the Act. Counsel for the Petitioner in his submissions stated that the errors or mistakes in the certificate of the Jurat in each said affidavit are mere procedural transgressions which are curable. I hasten to add that he did not tell Court how the said defects in the Jurat could be cured at this stage of the Court proceedings.

As I have said hereinabove that I looked at and analysed the said impugned 17 Petitioner's affidavits in support of the petition, the said 17 affidavits are couched in the same way, which lack the most important and fundamental ingredients that is provided in Sections 2 and 3 of the Illiterates Protection Act, that is, the instructions to write the affidavit on behalf of the each deponent who are believed to be illiterates. This requirement cannot be said to be simply a procedural requirement. It is a requirement to check and balance the value and weight of evidence that is adduced by way of affidavits from blind or illiterate persons.

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In my considered view, therefore, where the affidavit sworn by an illiterate does not have or contain the aforestated instructions within the Jurat, it leaves doubt as to the credibility and source of evidence as being adduced.

The authorities of **Nakiwala Violet & 2 Others – vs – Rwekibira Ezekiel & Joyce Kaihangwe Rwekibira, Civil Suit No.280 of 2006**, the Judgment of Hon. Mr. Justice Bashaija K. Andrew; and that of **Tikens Francis & Chelimo Nelson Kaprokuto – vs – The Electoral Commission, National Council For Higher Education and Kapchemeiko Paul Machinjach, Election Petition No.1 of 2012**, the Ruling of Hon. Mr. Justice Musota Stephen emphasise that Sections 2 and 3 of the Illiterates Protection Act are mandatory as a whole. I do agree with the holdings of my Learned brother in their Judgments. I hasten to add that those Sections do not permit partial compliance. They are mandatory legal requirements and not procedural requirements. Therefore, Article 126(2)(e) of the Constitution of the Republic of Uganda, relied by Counsel for the petition cannot be used to cure the defects in the impugned 17 Petitioner's affidavits in support of the petition, which do not comply with the law. This is a matter of substance and not a mere technicality.

Furthermore, on whether the impugned 17 Petitioner's affidavits in support of the petition are not in compliance with Section 1 of the Oaths Act, Cap.19.

Hereinabove in this Judgment, I reproduced Section 1 of the Oaths Act and the two sets of Form B in the First Schedule to the Act. I have compared the legal requirements in the said sets of Form B with the said impugned 17 Petitioner's affidavits in support of the petition. All the said affidavits in support of the petition indicate

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that all the deponents are illiterates and required the translation of all the affidavits. Again, looking at all the said affidavits there is no evidence to show that the Commissioner for Oaths complied with the strict requirements in the said Form B of the Oaths Act.

From the authorities cited by Counsel for the Respondents, the Superior Courts have held that there is a distinction between defective affidavits and affidavits which do not comply with a statute. A defective affidavit as stated in all the authorities provided which is curable is that one which for example does not have a date, the deponent did not sign. In the instant petition, however, the said impugned 17 Petitioner's affidavits in support of the petition do not comply with the said cited Acts. See the case of **Kasaala Growers' Co-operative Society Ltd – vs – Kakooza Jonathan and Kalemera Edson Civil Application No.19 of 2010** Supreme Court whereby it was held that:-

“the distinction must be drawn between a defective affidavit and failure to comply with a Statutory requirement. A defective affidavit is, for example, where the deponent did not sign or date the affidavit. Failure to comply with a Statutory requirement is where a requirement of a statute is not complied with. In my view, the latter is fatal”.

In that case the requirements of Sections 2 and 3 of the Illiterates Protection Act were held to be mandatory.

Counsel for the Petitioner in his submissions quoted and relied on the case of **Col. Dr. Kizza Besigye – vs – Kaguta Yoweri Museveni & Electoral Commission** (Supra), which states in part that a liberal approach must be trodden with regard to affidavits evidence especially in

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election petitions. I perused the entire case. In the same case, Katureebe, JSC (as he then was) held that regardless of the liberal approach the law must be complied with. And as such the liberal approach could not apply in that case to the affidavits in dispute.

In sum total, the Preliminary Objections are answered in the affirmative. The 17 impugned affidavits in support of the petition are accordingly struck out. So is the petitioner's affidavit in rejoinder. — 5

6. Conclusion

In closing and in consideration of all the submissions by Counsel for both parties, the authorities cited by the parties, my own evaluation and analysis of the each party's submissions, I hold that the two similar objections that were raised by both Counsel for the Respondents have merit. They are accordingly upheld. Therefore, the said impugned 17 Petitioner's affidavits in support of the petition are struck out and expunged from the Court record. This means that there is only one affidavit of the Petitioner which was filed along with the petition that remains in support of the petition. In the Petitioner's affidavit accompanying the petition, in paragraphs: — 10

"5. He states that he was informed by several people throughout the Sub-county that during the campaign period the 1st Respondent committed all the alleged offences. — 15

6. (a) The Petitioner was informed by Mayega Edward, Lutaaya Eric, Mwanje Angelo that the 1st Respondent committed the illegal practices and offences. — 20

(d) The Petitioner was informed by the above said people that the 1st Respondent donated a cow black in colour to the Kannyanda Football team and gave Shs.400,000/= which was in 10,000/= and 50,000/= denominations. — 25

9. The Petitioner was informed by his Supervisor of Makulubita Parish, Abdu Kyejjusa that the 1st Respondent committed illegal

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practices and offence at Nakusabyeki Revival Church Polling Station.

10. The Petitioner was informed by Muganga Ronald and Kalanzi that the 1st Respondent while campaigning at Kidukulu Village incited the voters to refrain from attending my rallies as they would be regarded among those people who will bring back the war in the area".

The Petitioner's above allegations in his sole affidavit in support of his petition are not corroborated by any independent evidence that would have been offered by his supervisors and grounds in affidavits forms. When the impugned 17 Petitioner's affidavits in support of his petition were struck out and expunged from the Court record, then the petitioner's petition was stripped naked. There is no credible evidence on the Court record in support of the petition. Certainly, the Petitioner with such sole affidavit in support of the petition cannot prove any of the alleged illegal practices and offences against any of the Respondents. It should be noted and appreciated that the 1st and 2nd Respondents' answers to the petition with the affidavits in support to answers to the petition do challenge the petitioner's petition. There is no way how the petitioner with his scanty evidence remaining on the Court record can discharge his burden of proof as required by the Electoral Laws. The truth is that there is no credible petition to talk about anymore.

Therefore, it is my finding that this petition lacks merit. It is accordingly dismissed with costs to the 1st and 2nd Respondents.

Dated at Kampala this 5th day of August, 2016.


MURANGIRA JOSEPH
JUDGE

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A. S. (S) P.
DEPUTY REGISTRAR
19/9/2016
DATE

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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
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IN THE MATTER OF THE ELECTORAL COMMISSION ACT,
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AND
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HELD ON THE 9TH DAY OF MARCH 2016

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ELECTION PETITION NO.29 OF 2016

NSUBUGA SILVEST SSEKUTU] =====PETITIONER

VERSUS

1. KALIBBALA CHARLES]
2. THE ELECTORAL COMMISSION]=====RESPONDENTS

— 15

PROCEEDINGS BY HON. MR. JUSTICE JOSEPH MURANGIRA

11/7/2016

Mr. Tom Magezi from Tumusiime Kabega & Co. Advocates appearing together with Zulaika Kasajja from Karuhanga, Kasajja & Co. Advocates for the 1st respondent is in Court

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The petitioner is in Court: My lawyer is not yet here.

Mr. Ellison Karuhanga from Karuhanga, Kasajja & Co. Advocates for the 2nd respondent. There is no officer in Court from the 2nd respondent.

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COPY OF THE ORIGINAL
[Signature]
DATE 19/09/2016
DEPUTY REGISTRAR

FEES PAID... 20,500
RECEIPT NO... 2710783
HIGH COURT OF UGANDA
CIVIL DIVISION
DATE... 21/01/2016

[Signature] 24

Mr. Tom Magezi for the 1st respondent

This morning we were served with the 7 affidavits in support of the petition. We therefore request for the time to respond to the said affidavits and subsequently we can proceed with the petition.

Mr. Kibirango Erasto from Wetaka, Kibarango & Co. Advocates for the petitioner

Court: The parties have agreed to have a meeting to explore ways and means to settling this matter out of Court. So be it.

Accordingly, therefore, this matter is adjourned to 12/7/2016 at 10.00a.m. to receive the expected amicable settlement of the matter or to schedule the matter as case shall be.

Today's costs in the cause.

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Murangira Joseph

JUDGE

11/7/2016

12/7/2016

MR. Kibirango ERasto for the petitioner

The petitioner is in Court

Mr. Tom Magezi appearing together with Zulaika Kasajja for the 1st respondent

The 1st respondent is in Court

Mr. Karuhanga Ellison for 2nd respondent

There is no official representative from the 2nd respondent in Court

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Ms. Lydia Birungi Nanfuka the Clerk is in Court

Counsel for the petitioner

As for yesterday the parties met briefly and they intimated that they need to contact their colleagues from their respective parties that is, DP and NRM.

The petitioner says that he is not intended in mediation. Therefore, the mediation failed. — 5

Mr. Tom Magezi for the 1st respondent

We have no objection we can proceed with the petition.

Ms. Zulaika Kasajja for the 1st respondent

We have no objection. — 10

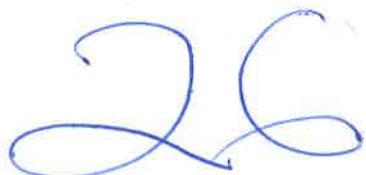
Mr. Ellison Karuhanga for the 2nd respondent

We have no objection to proceed with the hearing the petition.

We were served with additional affidavits yesterday and we need to file the rejoinders to them by 18/7/2016.

Court: — 15

1. Parties have agreed to file in Court the joint agreed facts and agreed issues by 20/7/2016 at 12.00noon.
2. Parties are still contemplating on the Preliminary Objections to raise.
3. Parties have agreed that they will number each point in affidavits to ease the submissions. — 20
4. Parties have agreed to state, name and file in Court the deponents each party intends to cross-examination by 20/7/2016 and serve the opposite party.
5. Parties have agreed to file in Court their respective authorities they intend to rely on with parts highlighted with a lighter on 25/7/2016 at 12.00noon and serve the opposite party on that same date. — 25



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Ms. Lydia Birungi Nanfuka the Clerk is in Court

Mr. Kibirango Erasto for the petitioner

This matter was fixed for hearing and we are ready to proceed. But Counsel for the respondents have raised Preliminary Objections.

My prayer is that they can raise their submissions and I reply later. — 5

That is my prayer.

Mr. Tom Magezi for 1st respondent

I move on to validate our objections and I reply on Section 2 and 3 of the Illiterates Protection Act.

Section 2 provides for the verification of the illiterates mark on any document and that prior to the illiterate appending his/her name on the document, the document must be read over and explained to him/her. — 10

Section 3 thereof provides that the document written at the request or on behalf of the illiterate must bear the certification that it fully and correctly represents the instructions of the illiterate and that it has been also read and explained to the illiterate. — 15

Therefore the following statements must appear in a document of an illiterate.

1. A kind of certificate consisting of the person's full names and the address.
2. Certification that the person was the writer of the document on behalf of the illiterate. — 20
3. That he/she wrote the document on instructions of the illiterates.
4. That he/she read the document over to the illiterate and explained the contents of the said document.
5. The illiterate has as a result of the explanation understood the contents of the document. — 25

I rely on the case of:

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Nakiwala & 2 Others -vs- Rwebikira & Another CS No.280 of 2006.

The import of this authority is that Sections 2 and 3 of the Illiterates Protection Act, are mandatory as a whole and not in selection. That is the Sections do not permit partial compliance.

Therefore, the failure to comply with the Sections as a whole renders the document inadmissible. — 5

Finally, I rely on the case of Tikens & Another -vs- Electoral Commission Petition No.1 of 2012. The emphasis of that authority is that the requirements of the Illiterates Protection Act are mandatory legal requirements and not procedural requirements. — 10

To that end they must be enforced fully without any selection and the said legal requirements under Sections 2 and 3 of the Illiterates Protection Act, cannot be bent under Article 126(2)(e) of the Constitution.

We, therefore, invite this Court to analyse the affidavits – P1 – P17 in support of the petition in respect of their complete fulfillment of the legal requirements as provided under Sections 2 and 3 of the Illiterates Protection Act. — 15

The partial fulfillment as portrayed in the said affidavits renders them inadmissible.

We, therefore, pray that the said affidavits be struck off. — 20

We so pray.

Ms. Zulaika Kassaja for the 2nd respondent

I associate myself with the submissions of my learned brother.

And I wish to add that in addition to non-compliance to Sections 2 and 3 of the Illiterates Protection Act on all the affidavits in support of the petition are not in compliance with Section 1 of the Oaths Act, Cap.19, which provides: — 25

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"The Oath which shall be taken as occasion shall demand shall be the Oath set out in the 1st Schedule to this Act. The 1st Schedule to this Act. = Form B under the petitioner's affidavits and under this we have a form of Jurat where the Commissioner had read the affidavits to an illiterate deponent. The Form must be as follows:

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"Sworn at _____ (Place where affidavit sworn) in the district of _____ this _____ day of _____ before me, I having first truly, distinctly and audibly read over the contents of this affidavit to the deponent he/she being illiterate and explained the nature and contents of the exhibits referred to in the affidavit in the _____ language. The deponent appeared perfectly to understand the same and made his or her mark/signature prior to in my presence".

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There is an alternative form under this Schedule where the 3rd person has read the affidavit to the deponent such deponent being illiterate or blind. The wording is as follows:

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

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My Lord, all the affidavits in support of the petition indicate that all the deponents were illiterates and required the translation of all the affidavits. Even the affidavit of the petitioner needed to be translated.

— 25

There is, however, no indication by looking at the affidavits that the Commissioner for Oaths complied with the strict requirements of the Oaths Act.

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My Lord, I reiterate the prayer of my learned brother that the partial fulfillment as portrayed in the said affidavits renders them inadmissible. And we pray that they be rendered inadmissible and be struck off from the record.

We so pray.

My Lord, the affidavits of the petitioner in support of the petition sworn by the petitioner on 9/5/2016 indicates that the petitioner is literate. — 5

The same petitioner on 26/7/2016 swore an affidavit in rejoinder as an illiterate person.

My Lord, this is a material contradiction that indicates a falsehood that goes to the root of the nature of evidence of which this Honourable Court should take Judicial notice of and have his evidence expunged from the Court record. — 10

We so pray.

Counsel for the petitioner: In reply

I have listened to the submissions of my learned friends which we intend to strongly object to. However, reiterate my prayer, that we be given an adjournment tomorrow for our reply. — 15

Mr. Tom Magezi for the 1st respondent

I have no objection.

Ms. Zulaika Kassajja for the 2nd respondent

I have no objection. — 20

Court: Very well. This matter is adjourned to 28/7/2016 at 1.00p.m. for the petitioner's counsel's reply to the submissions by counsel for the

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respondents. Today's costs in the cause.

.....
MURANGIRA JOSEPH
JUDGE
27/7/2016

28/7/2016

— 5

Mr. Kibirango Erasto for the petitioner

The petitioner is in Court

Mr. Tom Magezi for the 1st respondent. The 1st respondent is not present

Ms. Zulaika Kassajja for the 2nd respondent

— 10

Nobody is from the 2nd respondent

Ms. Lydia Birungi Nanfuka the Clerk is in Court

Counsel for the petitioner

The matter is coming up for my submissions in reply to the Preliminary Objections that were raised.

I am ready to proceed.

— 15

1. Preliminary Objection on the 17 affidavits of the petitioner that they do not comply with Sections 2 and 3 of the Illiterates Protection Act as well as Section 1 of the Oaths Act in respect of the Form of the Jurat.

Both counsel submitted that those affidavits be inadmissible and expunged from the record.

— 20

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