

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
IN THE MATTER OF THE PARLIAMENTARY ELECTIONS ACT 2005
AND
IN THE MATTER OF THE ELECTORAL COMMISSION ACT CAP 140
AND
IN THE MATTER OF THE PARLIAMENTARY ELECTIONS (APPEALS TO THE HIGH COURT FROM COMMISSION) RULES SI NO. 141-1
ELECTION PETITION NO.012 OF 2020
AKELLO CHRISTINE AKURU----- PETITIONER

VERSUS

- 1. ELECTORAL COMMISSION**
- 2. KISARALE RAYMOND**
(RETURNING OFFICER BUKEDEA DISTRICT)-----RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

This is an appeal by way of Petition, in which the Petitioner, Akello Christine Akuru, is challenging the decision of the respondent, the Electoral Commission, upholding the decision of the Returning Officer not to nominate Akuru Christine Akello as a candidate for Bukedea Woman Member of Parliament, on grounds that; She did not appear for nomination within the prescribed time.

The said decision was contained in a letter dated 26th October, 2020 communicated by the Chairman of the Respondent, Justice Byabakama Mugenyi

Simon to the petitioner's lawyer M/s Alliance Advocates copied to the petitioner personally and the Returning Officer, Bukedea Electoral District.

The above decision was made as a result of the 2nd respondent's decision who refused to nominate the petitioner on account of the following grounds:

- i) The petitioner had not complied with all the conditions precedent for nomination as she had not resigned in the manner and within the timelines prescribed by law.
- ii) At the time of appearance for nomination, the petitioner was not in possession of original academic certificates or any letters of verification or certified copies thereof.
- iii) The petitioner was advised that she would only be nominated upon presentation of proper documents and the same were not presented within the time for conducting and concluding nominations.
- iv) By the time of closure of the nominations which were strictly for 15th and 16th, the Appeal/Petition had not presented the required documents.

The petitioner after rejection of her nomination, she appealed to the 1st respondent on 21st October 2020, seeking to be nominated through a letter of her advocates-M/s Alliance Advocates.

The Commission sat and made a decision rejecting the petitioner's complaint or request to be nominated after the set dates of 15th and 16th October 2020.

The petitioner was represented by *Mr. Nabigumba Stephen and Nabwire Juliet* while the respondents were represented by *Mr. Sabiiti Eric*

The following issues were raised for courts determination.

1. *Whether the petition is competently before this court?*
2. *Whether the 1st respondent decision of rejecting the nomination of the petitioner was lawful?*
3. *What remedies are available?*

Whether the petition is competently before court?

The petitioner's counsel contended that the petition is competently before the court since it was presented under the provisions of the law i.e the Constitution and the Electoral Commission Act and the Parliamentary Elections Act.

The respondent's counsel submitted that for a petition to be competent, the reliefs sought must still be tenable under the law. The position of the law is that a petition is rendered incompetent and improperly before the court in so far as the orders or remedies which affect the 3rd party interests who are not party to the petition. See ***Constitutional Petition No. 15 of 2006 Carolyne Turyatamba & 4 Others vs Attorney General***

Determination

The competency of the petition is a question of law and can be determined from the provisions which give the petitioner locus to appear in court. The petitioner has locus to bring this petition as a person aggrieved by the decision of the Electoral Commission since the following laws allow her to do.

Article 64(1) of the Constitution provides;

Any person aggrieved by a decision of the Electoral Commission in respect of any of the complaints referred to in article 61(1)(f) of this Constitution may appeal to the High Court.

Section 15(2) of the Electoral Commission Act provides;

An Appeal shall lie to the High Court against a decision of the commission confirming or rejecting the existence of an irregularity.

The failure by the petitioner to add all the necessary parties would not render the petition incompetent or improperly before the court but rather it would affect the final orders the court may give based on the facts and circumstances of the case.

In the present case, the petition was filed on 3rd November 2020 and the 3rd party (Hon Among Anita Annet) was declared and gazetted on 3rd November 2020. This

court would not impute that the petitioner ought to have known about the gazette that was issued on the same date.

Whether the 1st respondent decision of rejecting the nomination of the petitioner was lawful?

The petitioner's counsel contended that the petitioner appeared before the 1st respondent office on 23rd October 2020 and presented both original and certified copies of her academic qualifications which original were able to obtain within seven days.

Secondly, the petitioner contended that she resigned on 4th day of November 2019 to join politics whose application was alter confirmed and approved on the 19th day of October 2020 after the normal nominations.

The petitioner appeared on 23rd day of October 2020 made appearance before the 1st respondent offices at Kampala and was in possession of the release Order from her Employer which was a necessary requirement.

The respondents in their submission contended that in as much as the Constitution is given powers to hear complaints arising during elections, the said provisions do not give any power to conduct fresh nominations of candidates who failed to present proper documentations by the closure of nominations on the gazetted date.

The respondents' counsel further argued that the petitioner indeed conceded that on the closure of nominations 16th October 2020, the petitioner had failed to present her academic credentials in the required form. The petitioner does not deny that her nomination was rejected on that day was in accordance with the law.

Determination

It can be deduced from the petitioner's submission and evidence presented that indeed she was not in possession of the required documentations to facilitate her nomination on the said dates for nomination.

The petitioner seems to think that she stood a chance to have her nominated outside the said gazetted dates after putting her papers in order by 21st October 2020.

This court agrees with the respondents' counsel that the Electoral Commission does not have any powers to nominate persons outside the gazetted dates unless it is by order of Court. Otherwise it would be subject to abuse administratively, by any person like the petitioner who fails to properly present themselves with the required documentations and later bounce back after organising the required documents.

The Electoral Commission in exercise of its powers has no jurisdiction to make rules, regulations or issue directions in contravention of the express provisions of the Constitution or statutes made thereunder. The powers of the Electoral Commission are meant to supplement rather than supplant the law (both Statute and Rules) in the matter of superintendence, direction and control as provided by the Constitution and other Electoral laws.

The Electoral Commission acts in conformity with the Constitution as the case may be and not in violation of it. But where the law is silent then it possesses reservoir of power (plenary powers) to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition.

The Electoral Commission shall be responsible to the rule of law, act bonafide and be amenable to norms of fairness and natural justice in so far as conformance to such cannons can reasonably and realistically be required of it as fairplay-in-action in most important area of the Constitutional order viz., election.

The petitioner in this case concedes that she did not have all the requirements for her nomination and she was able to organise them afterwards and presented them to Electoral Commission by way of a complaint on 21st October 2020.

In addition, the petitioner as a (police constable) in this case was required to have resigned her three months before the nomination date. The petitioner obtained the letter confirming her resignation on 19th October 2020. This clearly confirms

that by the time she presented herself for nomination she had not resigned 3 months before nomination.

The exercise of power to refuse nomination or sometimes denomination may have far reaching consequences to the intending candidates but such exercise of power must be thoroughly scrutinized to avoid abuse of power or authority and should be clearly guided by the law.

The courts should always bear in mind that, superintendence, control and conduct of elections are in exclusive jurisdiction of the Electoral Commission and this jurisdiction of the Electoral Commission should be interfered with in unavoidable or exceptional circumstances which may involve breach of the law and not exercise of discretion or invoking of plenary powers.

The petitioner in this case failed to comply with the law within the set timelines and any exercise of power to allow the nomination out of the set time would be an act of extending time limit in exercise of discretionary powers which is limited by legislation of resignation within three months before nomination.

In the final result this Petition fails and the 2nd respondent was right to not nominate the petitioner.

Each party shall bear their costs.

It is so ordered

SSEKAANA MUSA

JUDGE

1st /12/2020