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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
ELECTION PETITION APPEAL NO. 53 OF 2016

(Arising From Mbale High Court Election Petition No. 011 of 2016)

HERBERT TOM KINOBERE APPELLANT

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VERSUS

WAIRAGALA GODFREY KAMBA.....RESPONDENT

CORAM: Hon. Mr. Justice Alfonse C. Owiny-Dollo, DCJ

Hon. Mr. Justice Kenneth Kakuru, JA

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Hon. Lady Justice Hellen Obura, JA

JUDGMENT OF THE COURT

This is an appeal from the Judgment and decree of the High Court at Mbale Election Petition No. 11 of 2016. The appellant was challenging the election of the respondent as a directly elected Member of Parliament for Kibuuku County in Kibuuku District, held on 18th February 2016. The Electoral Commission returned, declared and gazzetted the appellant as the duly elected Member of Parliament for Kibuuku constituency in Kibuuku District. The respondent challenged the election of the appellant in his capacity as a registered voter.

25 The trial Judge, found in favour of the respondent. The respondent then filed this appeal. This appeal was first called for hearing on 28th March 2017 before a Coram constituted as follows:- Kavuma DCJ, Obura JA and Owiny-Dollo JA. After a full hearing Judgment was reserved to be delivered on notice.

In September 2017 Justice Kavuma retired before the Judgment could be delivered.

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5 The Coram was therefore re-constituted as follows Owiny-Dollo DCJ, Kakuru JA and Obura JA. The appeal was reheard on 4th October 2018 and again Judgment was reserved to be delivered on notice. On 20th August, 2020 Justice Owiny-Dollo DCJ (as he then was) was elevated to the office of the Chief Justice before Judgment was ready for delivery.

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This appeal therefore, would ordinarily have to be placed before a reconstituted Coram for fresh hearing. However, we have considered the fact that the election period 2016-2021 is closing. Nomination of aspirants for parliamentary seats has already ended and campaigns are underway. The presidential candidates have already been nominated. Proceeding to reconstitute a new Coram and rehearing this petition would be an exercise in futility. It would entail a fresh hearing. Judgment writing would then have to follow. All this would take time.

20 In view of the above we consider that this appeal in as far as it relates to the 2016 elections is moot. We are alive to the fact that the question of the appellant's qualification may be alive. That is a matter that can be dealt with in the next election or whenever it comes again.

25 See :- *Prof. Ephraim Kamuntu vs The NRM Electoral Commission And Others, Election Petition Application No. 45 of 2012.*

National Resistance Movement (NRM) and Others vs Naome Kibaaaju, Civil Appeal No 40 of 2012.

30 We highly regret the inconvenience and injustice this delay has caused to the parties.

5 This appeal stands dismissed having abated. We order that each party bears his own costs here and at the High Court.

We so order.

10 Dated at Kampala this ^{4th}.....day of ^{APR}..... 2020.

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Alfonse C. Owiny-Dollo
JUSTICE OF APPEAL



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Kenneth Kakuru
JUSTICE OF APPEAL

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Hellen Obura
JUSTICE OF APPEAL