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**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**CONSOLIDATED ELECTION PETITION APPEAL NO.02 and 06 OF 2021,**

**1. KOMAKECH CHRISTOPHER**

**2. THE ELECTORAL COMMISSION ..... APPELLANTS**

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**VERSUS**

**ODONGA OTTO..... RESPONDENT**

**CORAM: HON.MR.JUSTICE GEOFFREY KIRYABWIRE, JA**

**HON.MR.JUSTICE STEPHEN MUSOTA, JA**

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**HON.MR.JUSTICE CHRISTOPHER GASHIRABAKE, JA**

**JUDGMENT OF COURT**

This is an Election Petition Appeal against the Judgment of High court sitting at Gulu presided over by Tadeo Asimwe, J, delivered on 20<sup>th</sup> August, 2021 in Election Petition No. 03 of 2021, where he nullified the election of the appellant as the Member of Parliament of Aruu constituency, Pader District and made the following orders;

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1. The 1<sup>st</sup> Respondent was illegally /invalidly nominated to contest as a candidate for Member of Parliament, Aruu county constituency, Pader District.

2. The 1<sup>st</sup> Respondent's election is hereby nullified.

3. An order directing Electoral Commission to conduct a fresh election for the seat of member of parliament Aruu Constituency, Pader District

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4. No orders as to costs.

## **Background**

The facts giving rise to this appeal are that on the 14<sup>th</sup> January 2021, elections for Member of Parliament of Aruu Constituency Pader district were held. The Appellant, Respondent and five others  
35 participated and the 1<sup>st</sup> Appellant was declared the winner by the 2<sup>nd</sup> Appellant with 9,796 votes, while the Respondent came second with 6,199 votes. The Respondent was dissatisfied with the outcome of the elections and filed Election Petition No. 03 of 2021, in Gulu High Court against the 1<sup>st</sup> Appellant and the Electoral Commission  
40 on grounds that the Appellant's nomination was invalid on account of alleged improper resignation. He sought the nullification of the Appellant's Election, have the judgment set aside and that he be declared the duly elected Member of Parliament for Aruu County.

In response to the petition, the Appellant/ 1<sup>st</sup> Respondent  
45 contended that he was validly nominated and duly elected Member of Parliament for Aruu County, having duly resigned within the prescribed 90 days before nomination as required by law. He averred that he submitted his resignation letter on 25<sup>th</sup> April, 2020. His affirms that the resignation became effective upon it being  
50 received by Director Butabika Hospital on 30<sup>th</sup> June, 2020.

The 2<sup>nd</sup> Appellant in response to the petition contended that the election for the directly elected Member of Parliament for Aruu County Constituency, Pader District was conducted in accordance with the law and that the 1<sup>st</sup> Appellant fulfilled all requirements at  
55 the time of his nominations as a Parliamentary Candidate.

**The grounds of appeal are that;**

1. The learned trial judge erred in fact and law when he held that the 1<sup>st</sup> Respondent was invalidly nominated to contest for Aruu county, Pader district ; and
- 60 2. The learned Trial judge erred in law and fact when he nullified the elections and ordered the 2<sup>nd</sup> Respondent to conduct fresh Parliamentary elections for Aruu constituency.

**Representation**

65 The 1<sup>st</sup> Appellant was represented by Mr. Kyazze Joseph, Mr. Kamonga Patrick and Mr. Omwonyi Stanley. The 2<sup>nd</sup> Appellant was represented by Mr. Sabiti Eric, Mr. Honest Haguma and Angela Kanyiginya. The 1<sup>st</sup> Respondent was represented by Mr. Charles Opwonya. Court with the consent of the counsel of both parties  
70 adopted the submissions filed by the parties as their legal arguments. The parties consolidated EPP 002 of 2021 and EPP 006 of 2021.

**Submissions of counsel for the appellant.**

Having consolidated the two Appeals, we have consolidated the  
75 submissions of counsel as well because they are similar in substance. The Appellants argued the two grounds of appeal jointly.

Counsel for the Appellants invited this court to pronounce itself on Articles 61(1)(f) and 64(1) of the Constitution, Section 15 of the Electoral Commission Act and Section 15(a)&(b) of the  
80 Parliamentary Elections Act 2005. He posed a question as to

whether a registered voter/candidate in a Parliamentary election, who is aware of an alleged ground of disqualification on the part of a candidate and does not contest can subsequently contest such pre-elections complaint after losing the election to overturn the will  
85 of the people.

The factual basis for this contention is that;

1. The complaint by the 1<sup>st</sup> Respondent was alleged invalid nomination. The 1<sup>st</sup> Respondent had the liberty to inspect nomination documents and lodge complaints if any with the  
90 EC. His request for documents comes after losing the elections.
2. And indeed the 2<sup>nd</sup> Respondent was alive to this when in its letter to the 1<sup>st</sup> Respondent's lawyer expressed an opinion that they were not vested with jurisdiction over an elected  
95 member of parliament regarding pre-nomination events that ordinarily present themselves as administrative matters to which the 2<sup>nd</sup> Respondent has jurisdiction.
3. Secondly, issue (1) framed at trial clearly demonstrated that the Petitioner clearly challenged the eligibility of the  
100 appellant for nomination not election. The 1<sup>st</sup> Respondent waited, allowed the Appellant to freely participate in the electoral process and for the electorate to express its will. The electorate no doubt massively voted for the appellant with a winning margin of 3,587 votes. It is upon being  
105 heavily defeated in the elections that the 1<sup>st</sup> Respondent as an afterthought belatedly raised the issue of alleged improper nomination.

Counsel for the Appellants submit that a cause of action challenging the validity of the Appellants' nomination and not

110 election, on account of alleged want of proper resignation is not  
and should not be maintainable in law by the Petitioner, after  
conclusion of the elections and after expression of the will of the  
electorate both as a matter of law and public policy. That the trial  
court ought to have evaluated this concern even if the parties  
115 had not raised it. **(see Ndawula Ronald vs. Al Hajji Abdul  
Nadduli EPA No. 20/2006)**

It is the Appellants' counsel's submission that there's a law  
prescribed to determine pre-election complaints. The law is set  
out in Article 61(1) (f) and 64(1) of the Constitution Section 15 of  
120 the Electoral Commission Act and Section 15 (a) and (b) of the  
Parliamentary Elections Act 2005. That the Trial Judge ought to  
have directed his mind to the fact that such complaints fall  
within the constitutional mandate of the Electoral Commission to  
hear and determine. **(Akol Hellen Odeke vs. Okodel Umar,  
125 Court of Appeal EPP No.6 of 202, Kasirye Zzimula Fred vs.  
Bazigatirawo Kibuuka Francis Amooti and anor EPP No 01 of  
2018)**. Counsel for the Appellants averred that these laws  
provide for various stages to be followed by the Electoral  
Commission while conducting elections. At each stage of the  
130 electoral process, procedure for complaint is stipulated. After  
elections are held and results declared, a reasonable complaint  
should be about the conduct of the election itself not against an  
earlier segment of the process. **(Ongole James Michael vs.  
Electoral Commission and anor. Election Petition No. 08 of  
135 2016)**

Counsel for the Appellants submitted that the import of section 15(a) and (b) of the Parliamentary Election Act, is that if a registered voter / candidate in a parliamentary election knows of any irregularity in respect of electoral process at any stage of such an election is required to report any such irregularity to the Electoral Commission at its lowest level. That this level included the determination of a complaint relating to whether a nominated candidate was actually qualified for nomination or not. If the Electoral commission finds that the complaint has merit, it has the power to de-nominate the candidate and any party aggrieved with that determination has a right of appeal to the High Court, whose decision is final and no longer appellable.

This position was affirmed in ***Akol Hellen Odeke vs. Okodel Umar EPP No. 06 of 2020***. That the rationale for such a remedial process is that timely complaints will avoid undue expense and inconvenience to the parties, the electorate, the electoral commission and the taxpayer. That the issue of eligibility of a candidate for nomination should be resolved before elections, and any aggrieved party who fails to do so should be estopped.(see ***Kasirye Zzimula Fred vs. Bazigatirawo Kibuuka Francis Amooti and Anor, EPP No. 01 of 2018***)

Turning to the merits of this appeal counsel for the Appellants contend that the findings by the learned Judge that the Appellant improperly resigned when he addressed his letter to a wrong

160 authority , and received an acceptance from the wrong authority  
is not supported by the law.

The learned Judge correctly set out the law, Article 80(4), Article  
252(1) and (2) of the Constitution, Section 4(4) of the  
Parliamentary Elections Act, Section 10, 11 and 16 of the Public  
165 Service Standing Orders.

It is not in dispute that the 1<sup>st</sup> Appellant was employed as a  
nurse at Butabika Hospital. He submitted his resignation letter  
dated 25/04/2020, which was officially received by Butabika  
Hospital on 30/06/2020. He ceased from further work at  
170 Butabika Hospital. The letter of acceptance was by the director of  
Butabika Hospital on 3<sup>rd</sup> August, 2020, that he ceased from  
further work at Butabika Hospital. The salary that had been paid  
after his resignation was demanded back by Butabika Hospital  
and he refunded it.

175 Counsel for the Appellant further submitted that in their view the  
principal law on resignation in the context of electoral matters is  
Article 252 of the Constitution which prescribes the procedure of  
resignation of a public officer and envisages a resignation letter  
addressed to the person or authority by whom he or she was  
180 appointed or elected and the resignation takes effect in  
accordance with the terms on which that person was appointed  
or if there are no such terms, when the writing signifying the  
resignation is received by the person or authority to whom it is



185 addressed or any person authorized by that person or authority  
to receive it.

The learned Judge defined the term resignation, but counsel for the Appellants sought to add that a resignation requires both intent to resign, and an affirmative act of relinquishment  
**(Kalemba Christopher and EC vs. Lubega Drake Francis EPA No. 32/2016.)** However the learned judge did not consider what constitutes acceptance of letter of resignation. Acceptance of a resignation from public employment occurs where the public employer or its designated agent initiates some type of affirmative action preferably in writing that clearly indicates to the  
190 employees resignation is accepted by the employer. **(Kalemba Christopher and EC V Lubega Drake Francis Court of Appeal Election Petition, No.32 of 2016)**

Counsel for the Appellant further argued that the learned trial Judge erroneously considered acceptance to be effective from the  
200 date it is issued. He considered the belated date of 3<sup>rd</sup> August 2020 as the effective date and concluded that it was not 90 days from the days of nomination on 15<sup>th</sup> and 16<sup>th</sup> October 2020. This in the context of electoral practice was erroneous and contrary to precedents of this court **(Okeyoh Peter vs. Abbot George Ouma, EPA No. 08 of 2011).**

The trial Judge applied Sections 10, 11 and 16 of the Public Service Standing Orders 2010 in complete isolation of Article 252 of the Constitution. Had the Judge applied Article 252, he would



210 have found that in the absence of proof that the Appellant's  
appointment letter was not signed off by the Executive Director of  
Butabika Hospital, the only reasonable conclusion in the context  
of Article 252 of the Constitution was that the Executive Director  
was a designated officer to receive the resignation letter and issue  
an acceptance on behalf of the Government. That the Executive  
215 Director of Butabika Hospital is an authorized person under  
Article 252 of the Constitution.

Counsel for the Appellant argued that in the alternative but  
without prejudice, that addressing the letter to the Executive  
Director Butabika Hospital rather than the Permanent Secretary  
220 Health Service Commission was a mere technicality that did not  
go to the root of the matter. A wrong address or an error in the  
name of the office is a mere technicality that could not vitiate a  
nomination of a candidate. It was a technicality curable under  
Article 126(2) (e). (**Kevin Taaka vs. Wanaha Wandera, EPA No.  
225 35/2016**)

He further argued that the learned Judge should not have set  
aside the election on a mere technical objection. (**Karokora  
Katono Zedekia vs. Electoral Commission and Kagonyera  
Mondo EP No 02/200 cited in Lutanya Jack Odur vs. EC and  
230 anor EP No. 03/2021 Musoke –Kibuuka J**, observed;

‘Setting aside an election of a member of parliamentary is ,  
indeed , a very grave subject matter . It is a matter of both  
individual and national importance. The decision carries  
with it much weight and serious implications. Parliament

235 will continue to carry out its legislative function on matters  
of national importance without any representation of the  
consistency affected ..... thus, the crucial need for courts  
to act in matter of this nature only instances where the  
grounds of the petition are proved at a very high degree of  
240 probability”

The said letter was duly received and endorsed by the office of  
the Executive Director, Butabika Hospital on 30<sup>th</sup> June, 2020.  
There was no evidence that the Appellant continued working  
after 30<sup>th</sup> June 2020. The only evidence related to erroneous  
245 payment of salary on the Appellant’s account, was money which  
was refunded for the period from 30<sup>th</sup> June 2020.

### **Counsel for the Respondent’s submissions**

Counsel for the Respondent submitted that the 1<sup>st</sup> Appellant  
addressed his resignation to the wrong authority and that  
250 amounts to no resignation at all. Articles 80(4) of the 1995  
Constitution provides for resignation of a candidate from public  
office at least 90 days before nominations.

He submitted that the Executive Director of Butabika Hospital is  
not the responsible Permanent Secretary as provided for under  
255 Section 16(b) of the Public Service Standing Orders 2010, which  
states that the authority to accept resignation on behalf of  
Government is the responsible permanent secretary for all  
pensionable officers below the level of permanent secretary in  
ministries and departments. The 1<sup>st</sup> Appellant, at the time of  
260 nomination, was a pensionable employee of Government who

ought to have addressed his resignation to the responsible permanent secretary. The Executive Director of Butabika Hospital can only accept the resignation of the lower cadres of employees for example janitors, gatemen, cook etc but not pensionable employees such as the Appellant who was a nursing officer. The Executive Director of Butabika Hospital had no authority to accept the appellant's resignation and therefore acted in contravention of the law

He submitted that the 2<sup>nd</sup> Appellant's assertion that the Respondent should be estopped from complaining about nomination irregularities does not hold. Non qualification of a candidate is one ground for setting aside an election. It does not matter whether the nomination irregularity was discovered at the time of nominations or after the declaration of the results. The law gives an aggrieved party the liberty to choose when to complain either during an election or after an election. That is why there are two procedures to choose from either, The Parliamentary Elections (Appeal to the High Court from the Commission) Rules or The Parliamentary Elections (Election Petition) Rules. The Respondent chose the latter procedure so he should not be faulted for it.

Counsel for the Respondent further submitted that the resignation letter of the Appellant was not on his file on the day of nomination as admitted by the Returning officer of the 2<sup>nd</sup> Appellant in his affidavit when he stated that he only

saw the purported resignation letter but returned it to the appellant. That since the letter was not on the file it could not be inspected. That the purported letter only emerged when the Respondent/Petitioner petitioned court after elections.

290 Regarding the appointment of the 1<sup>st</sup> Appellant to public service, counsel for the Respondent averred that the Appellants did not raise the issue in the lower court and neither did they provide an appointment signed by the Executive Director of Butabika Hospital as they are alleging now to defend the resignation letter.

295 The Permanent Secretary of Public Service confirmed that the 1<sup>st</sup> Appellant was indeed a Government employee and was receiving salary. That means there was no issue regarding the 1<sup>st</sup> appellant's appointment to Government. The issue was whether the 1<sup>st</sup> Appellant left Government according to the law? The

300 Permanent Secretary of Public Service confirmed in her affidavit that there was no record of resignation by the 1<sup>st</sup> Appellant. This is exactly why the resignation ought to have been addressed to the Permanent Secretary and not the Executive Director, of Butabika Hospital. In **Wasike Stephen Mugeni vs. Aggrey Awori Siryoi, Supreme Court Election Appeal No05 of 207**,

305 the court held that;

“The cumulative effect of all this is that the appellant was not eligible for nomination to contest in the parliamentary election because of pending disciplinary proceedings.”

310 The resignation of public servants is governed by clear provisions of the law. A Public Officer cannot, by merely intimating that

he/she resigns his or her office, at once legally divest himself /herself of all his/ her official duties and responsibilities.( see **Attorney general vs. Major General David Tinyefunza Constitutional Appeal No. 1 of 1997)**

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That if the resignation letter had been addressed to the right authority, it would still be ineffective due to the fact that it was accepted on 3<sup>rd</sup> August 2020 and did not inform the 1<sup>st</sup> Appellant when he was supposed to handover and stop working as per Standing Orders. Nominations were held on 15<sup>th</sup> and 16<sup>th</sup> of October. That means his resignation was accepted less than 90 days to the nominations yet resignation is complete on the date of acceptance by the right authority of government. Counsel made reference to Public Service Standing Orders section A-N Paragraph 11. With the above Court should find that the appellant did not qualify to be nominated as the candidate for Member of Parliament of Aruu County.

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### **Submissions in rejoinder.**

In rejoinder counsel for the Appellant submitted that section 16(b) of the Public Service Standing Orders relied on by the respondent cannot be construed as overriding Article 252 of the constitution (**Kalembe Christopher and EC V. Lubega Drake Francis EPA No. 32 of 2016**). That Section 61 (d) should be construed in a manner that does not render Article 61(1) (f) and 64(1) of the Constitution, section 15 of the Electoral Commission

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Act and section 15(a) and (b) of the Parliamentary Elections Act 2005 non operational.

340 That the petitioner must plead reasons why he did not take benefit of the remedy available under the law under Articles 61(1)(f) and 64 of the Constitution, Section 15 of the Electoral Commission Act and section 15 (a)&(b) of the Parliamentary Elections Act 2005. That the petitioner must demonstrate that the alleged disqualification was not within his knowledge and could not have been within their knowledge after nominations and before elections. **(Kasirye Zzimula Fred vs. Bazigatirawo Kibuuka Francis Amooti & Anor, EPA No. 01 of 2018, at page 10)**

350 The contention that the law gives two options and that he was at liberty to pursue the option under section 61 (d) of the PEA, if upheld renders the constitutional forum created under Article 61(f) of the constitution redundant.

### **Consideration of the Appeal**

355 We have studied the record of appeal and considered the submissions of respective counsel for both parties. We have also considered the authorities availed to court by the parties. For this we are grateful.

This being the first appellate court, we find it necessary to remind ourselves of the duty of the 1<sup>st</sup> Appellate Court under

**Rule 30 (1) (a) of the Court of the Appeal Rules** which provides  
360 thus;

1. On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction , the court may-  
(a). reappraise the evidence and draw inferences of fact.”

In **Kifamunte Henry vs. Uganda, SCCA No. 10 of 1997**, it was  
365 held that;

“The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate court must then make up its own mind not disregarding the judgment appealed from but carefully  
370 weighing and considering it.”

In election petitions the standard of proof is similar to that of any civil matter as provided for under section 61(3) of the Parliamentary Elections Act that it shall be proved on the basis of a balance of probabilities. We are also guided by the decision of this court in  
375 **Paul Mwiru versus. Hon. Igeme Nabeta & Others: Election Petition Appeal No.06 of 2011** in the following terms:

“Section 61(3) of the Parliamentary Elections Act sets the standard of proof in parliamentary election petitions. The burden of proof lies on the Petitioner to prove the  
380 allegations in the petition and the standard of proof required is proof on a balance of probability. The provision of this subsection was settled by the Supreme Court in the case of *Mukasa Harris v Dr. Lulume Bayiga* when it upheld the interpretation given to the subsection by this court and  
385 the High Court.”



The question before this court just like it was in the lower court is to determine whether the appellant as a public officer properly resigned. The lower court found that;

390 “A Public Officer cannot be said to resign when in public service, in this case health service commission has not received and accepted his resignation letter. The 1<sup>st</sup> Respondent is as good as one who did not resign in my view.

395 It is therefore my finding that the 1<sup>st</sup> Respondent resignation letter was addressed to the wrong person / authority”

The Appellant invited this court to pronounce itself, on Article 61(1)(f) and (64(1) of the Constitution together with Section 15 of the Electoral Commission Act and Section 15 (a) & (b) of the  
400 Parliamentary Elections Act 2005. On whether a party who was aware of the non qualification of a party does not take action by making a complaint to the electoral commission but waits until the elections are concluded and loses then raises the concern. What happens when someone does not seek to enforce his rights? These  
405 provisions provide that;

**Article 61 (1) of the Constitution of the Republic of Uganda**

The Electoral Commission shall have the following functions;

410 (f) To hear and determine election complaints arising *before and during polling( emphasis ours)*

**Article 64 (1), of the Constitution of the Republic of Uganda**

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

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Article 64 provides for finality of the pre-election complaints. This decision of the High Court is final and the Appellant therein has no other recourse. **Articles 61(1)(f)** and **64** of the Constitution of the Republic of Uganda 1995, have been ably applied by this court in **Akol Ellen Odeke vs. Okodel Umar EPA No. 6 of 2020**, stated that;

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“I opine that the “unlimited original jurisdiction” conferred upon the High Court by Article 139(1) of the Constitution is, first and foremost, subject to Article 61(1) (f) of the Constitution. The import of this is that the mandate to hear and determine election complaints arising *before and during polling* as a “Court” of first instance is vested in the Electoral commission .....

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Accordingly, it is my finding that the High Court sitting at Soroti did not have jurisdiction to hear and determine the Respondent’s application as a Court of first instance.

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..... The Constitution like Article 61(1)(f) which confers original jurisdiction to the Electoral commission to settle election related disputes arising *before and on polling day*. It is also subject to article 64(1) of the constitution which expressly confers the High Court with appellate jurisdiction in respect of dispute decisions made by electoral commission under article 61(1)(f). It could not have been that the intention of the framers of the constitution to confer both original and appellate jurisdiction to the same institution (High court) in respect of the same subject of

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settling election related disputes arising *before and on*  
*polling day.*

445 The right procedure to be followed by any aggrieved party is to first  
file the complaint for non qualification at the Commission under  
Articles 61(1) (f). If not satisfied with the finding of the Commission,  
he/she can appeal to the High court under Article 64, which is the  
final court in pre-election complaints.

450 We therefore agree with the finding in *Akol Ellen Odeke (supra)* that  
the Electoral commission is mandated to hear matters arising out of  
the elections before or during nomination, thereafter it becomes  
functus officio. This was the same response the Electoral  
Commission gave to the Respondent when he tried to raise the  
issue to it. In a letter authored by Hajat Aisha M. Lubega  
455 Basajjanake, Deputy Chairperson, Electoral Commission, dated 2<sup>nd</sup>  
February, 2021, stated that,

460 “As you may be aware, and in accordance with the  
Provisional orders **in Byanyima Winnie versus Ngoma  
Ngime, Civil Revision No. 0009 of 2001**, the Electoral  
Commission’s powers can only be exercised in relation to  
candidates and not to the declared elected members of  
Parliament.”

465 The Constitution and the Parliamentary Election Act create  
jurisdiction for the Electoral Commission to administratively handle  
all complaints before and during nomination. A person dissatisfied  
with the finding files an appeal to the High Court which is the final  
court on pre-election matters according to Article 64(1). Such

administrative avenues are beneficial in expediting justice. It is only reasonable and prudent that such avenues are fully utilized to avoid backlog in the courts of judicature. It is common sense and public policy that an aggrieved candidate must exhaust all statutory remedies before going to court. Such practice enhances good Electoral Governance, accountability and transparency and this comes to finality on the voting day. **(See Kasirye Zzimula Fred vs. Bazigatirawo Kibuuka Francis Amooti EPA No. 01 of 2018)**

A Petitioner on an Election petition who did not bring complaints within the stipulated time at the time of nomination under section 15 of the Parliamentary Election Act and 15 of the Elections Commission Act is estopped for doing so after the election because he/she is taken to have waived his/her rights to complain within the stipulated period. **(See Kasirye Zzimula Fred vs. Bazigatirawo Kibuuka Francis Amooti EPA No. 01 of 2018)**

It is worth noting that the law does not give two avenues of addressing the nomination complaints as suggested by the respondent. It is clear that the Electoral Commission has administrative jurisdiction under Article 61(1) (f) to handle all complaints before and during nomination, which cease upon the party becoming a Member of Parliament or has lost the race. Thereafter, the only court with the jurisdiction to hear any election complaint from a Member of Parliament is vested in the High Court under section 60(1) which states that,

“Election petitions under this Act shall be filed in the *High Court.*”

To operationalise Article 61(1) f, the Parliament under its mandate  
495 enacted the Parliamentary Elections Act where under Section 15 of  
the Parliamentary Elections Act, a participant is at liberty to go and  
inspect the nomination documents of the candidates, to enable  
them raise any complainants to the Returning Officer or the  
Commission with regard to the eligibility of the other Candidates.  
500 **Section 15 of the Parliamentary Elections Act**, provides thus;

**Inspection of nomination papers and lodging of  
complaints**

Any voter registered on the voters roll of a constituency  
may—

505 (a) during office hours on the nomination day at the office of  
the Returning Officer, inspect any nomination paper filed  
with the Returning Officer in respect of the constituency;  
(b) after the closure of the nomination time and during such  
period as may be prescribed, inspect any nomination paper  
510 in respect of the constituency at such time and subject to  
such conditions as may be prescribed; and lodge any  
complaint with the Returning Officer or the Commission in  
relation to any nomination in respect of the constituency  
challenging the qualifications of any person nominated.

515 This court in interpreting the above provisions of the law held in  
**Kasirye Zzimula Fred vs. Bazigatirawo Kibuuka Francis Amooti  
EPA No. 01 of 2018**, that,

“From the reading of the above provisions of the law, it  
appears to us that the intention of the legislature in

520 enacting section 15 of the Electoral Commission Act was to  
ensure that all disputes arising prior or during nominations  
before voting are resolved with finality before the election  
date, except where the law otherwise specifically provides.  
Timely complaints will avoid undue expense and  
525 inconvenience to the parties inclusive of the electorate who  
do not have to vote where nomination is contested. Issues  
of nomination should be resolved before elections.

It appears to us that, the Appellant waived his rights to  
complain when he failed to bring the complaints within the  
530 stipulated period and as such would be stopped from doing  
so after the election”

We entirely agree with the finding in the above case, that the import  
of Section 15 of the Parliamentary Elections Act was to ensure that  
all disputes arising prior or during nominations before voting are  
535 resolved with finality before the election date except where the law  
otherwise specifically provides.

According to the record the Respondent does not adduce any  
evidence that he inspected the nomination documents on the  
nomination day. He testifies that the Returning Officer stated that  
540 he saw the resignation letter but handed it back to the Appellant.  
There is no evidence to contravene the Returning Officer’s  
averments. If the Respondent had acted diligently by inspecting the  
nomination documents as required by Section 15 of the  
Parliamentary Election Act, he would have known the actual truth.  
545 The actions of not inspecting the nomination documents when the  
opportunity arose demonstrated that the 1<sup>st</sup> Respondent was

content with the resignation status of the Appellant. Consequentially he waived his right to question the eligibility of the appellant by his dilatory conduct.

550 The framers of the provisions of Section 15 of the PEA had in mind such complaints that is why they provided mechanisms of their being resolved before elections in order to save the voters time but also the resources that come with mobilizing for elections.

It is our view that Section 61(d) aids the vigilant participants in the  
555 elections. One who diligently carried out the steps that were required of them. In the circumstances of this case it would aid the Respondent if only he adduced evidence that he took the initiative during the office hours of the nomination day to inspect the papers filed with the Returning Officer according to Section 15 of the  
560 Parliamentary Elections Act. In the affidavit in reply to the petition Mr. Ebong Denis averred that he looked at the retirement letter of the Appellant and handed it back to the Appellant. He also averred in paragraph 7 that as a Returning Officer he did not receive any complaint about the eligibility of the Appellant.

565 The essence of the inspection is to enable the participants to lodge any complaint such as the one alleged by the Petitioner/1<sup>st</sup> Respondent in this matter with the Returning Officer or the Commission in relation to any nomination in respect of the constituency challenging the qualifications of any person  
570 nominated. Court cannot condone the negligence of parties who fail to be vigilant in the due process because equity aids the vigilant.



During the hearing the Court did not address the Respondent's failure to conduct the inspection and make the necessary complaints. Had court addressed its mind on this fact, it would  
575 have arrived at a different decision. As the first appellate court we have re-evaluated the evidence as a whole and we find that the dilatory conduct of the 1<sup>st</sup> Respondent cannot be visited on the electorate and the Appellant.

**Final Result and Orders**


580 For the above reasons the Petitioner/Respondent is estopped from challenging the victory of the Appellant. We therefore find that the appeal succeeds. The decision and orders of the High Court are hereby set aside. We make the following orders:-

- 585 1. The Appellant is the validly elected Member of Parliament for Aruu constituency, Pader district.
2. Costs are awarded to the Appellant here and in the Court below.

We so order

Dated at Kampala this... 28<sup>th</sup> ... day of ... April ... 2022

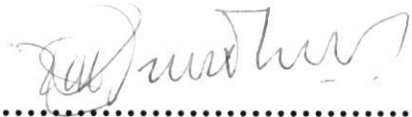
590

  
.....

**GEOFFREY KIRYABWIRE**

**JUSTICE OF APPEAL**

595



.....

**STEPHEN MUSOTA**  
**JUSTICE OF APPEAL**

600



.....

**C. GASHIRABAKE**  
**JUSTICE OF APPEAL**