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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

ELECTION PETITION APPEAL NO.19 OF 2021

(Arising from the decision of the High Court at Fort-Portal by Victoria N.M. Katamba, J in Election Petition No.007 of 2021)

10 HON. BAGUMA SPELLANZA MUHENDA:.....APPELLANT

VERSUS

15 1. KUNIHIIHIRA FAITH PHILO

2. THE ELECTORAL COMMISSION:.....RESPONDENTS

CORAM: HON. JUSTICE RICHARD BUTEERA, DCJ

20 HON. JUSTICE HELLEN OBURA, JA

HON. JUSTICE CATHERINE BAMUGEMEREIRE, JA

JUDGMENT OF COURT

25 **Background**

The Appellant, Hon. Baguma Spellanza Muhenda and the 1st respondent, Kunihiro Faith and 2 other candidates contested for the post of Woman Member of Parliament for Kyenjojo District. The 2nd respondent returned the 1st respondent as the winner of the election with 75,576 votes and the Petitioner/Appellant was the 2nd runner up with 51,965 votes. The results were published in the Uganda Gazette of 17th February 2021.

35 Dissatisfied with the election results, the Appellant filed a Petition in the High Court at Fort-Portal alleging that the 1st respondent was illegally elected as at the time of her election, she was not qualified to be nominated as a candidate and/or elected as a Member of Parliament because she lacked the required academic qualifications of a minimum formal education of Advanced level standard or its equivalent. She argued that the election was marred with illegal practices and non-compliance with the electoral laws.

40 When the Petition came up for hearing at the High Court, counsel for the 1st respondent raised a preliminary objection as to the competence of the Petition. It was argued that the affidavits in support of the Petition were commissioned by an advocate who had no valid practicing certificate. Counsel for the appellant argued

5 that the said error could be corrected under **section 14A of the Advocates (Amendment) Act.**

The trial Judge found that an affidavit sworn before an advocate without a valid practicing certificate is invalid. The trial Judge upheld the preliminary objection and struck out the Petition with costs to the respondents.

10 Aggrieved by the decision of the trial Judge, the Appellant appealed to this Court.

Grounds of Appeal

- 15 1. **"The learned trial Judge erred in law and fact when she denied the Appellant (Petitioner)'s application to re-administer the oath in two affidavits in support of the petition which were commissioned by an unlicensed advocate. This occasioned a grave failure of justice as the election dispute in issue was dismissed on a technicality without being heard and determined by court on its merits.**
- 20 2. **The learned trial Judge erred in law and fact when she blamed the mistake of Counsel on the Petitioner (Client) and denied the Appellant (Petitioner) the legal remedy available to her to make good the defect in the two affidavits in issue by re-administering the oath thereby occasioning a miscarriage of justice.**
- 25 3. **The learned trial Judge erred in law and fact when she misconstrued the provisions of Section 14A (1) (b) (ii) of the Advocates Act as amended by the Advocates (Amendment) Act No. 13 of 2002 as bringing a new petition out of time and as a result, she came to the wrong conclusion that the Appellant (Petitioner) was not entitled to the relief sought, which occasioned a miscarriage of justice.**
- 30 4. **The decision to dismiss the petition with costs due to the mistake of Counsel was harsh and excessive as the Appellant (Petitioner) was an innocent victim not Privy to the mistake by Counsel.**
- 35 5. **The learned trial Judge erred in law and fact when she emphasized a quick trial at the expense of resolving the election petition in issue on its merits which occasioned a miscarriage of justice as the Appellant (Petitioner) was denied a fair hearing and her petition dismissed on technicalities rather than on its merits.**
- 40 6. **The Appellant reserves the right to amend or vary the aforesaid grounds of appeal, as and when she is availed a copy of the judgment in the matter, which has not been availed to her by the trial court in spite of numerous demands for the same, as evidenced in Annexures "B" and "C".** [sic]
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The Appellant prayed for the following orders:-

- a) **That the Appeal is allowed with Costs in this Court and the Court below to be borne by the Respondents.**
- b) **That the Ruling/Judgment and Decree of the lower Court is set aside.**
- c) **That a re-trial of the Petition by a different and impartial Judge is ordered.**
- d) **That this Court makes any other appropriate orders it deems fit and proper.**

Legal Representation

At the hearing of the appeal, the Appellant was represented by Mr. James Byamukama.

Mr. Alfred Madaba appeared for the 1st respondent and Mr. Enoch Kugonza appeared for the 2nd respondent.

All counsel applied to rely and adopt their written submissions, which Court granted.

The appellants case

Counsel for the appellant submitted on grounds 1,2,3 & 5 together and ground 4 separately.

Grounds 1,2,3 & 5

Counsel submitted that the learned trial Judge erred in law and fact when she declined to grant leave to the appellant to re-commission the appellant's affidavit and that of a one Odong in support of the Petition.

Counsel contended that the learned trial Judge misconstrued the applicability of **section 14A of the Advocates (Amendment) Act** when she subjected its applicability to **Rule 3 (c) and 4(8) of the Parliamentary Elections (Interim Provisions) (Election Petition) Rules S.I 141-2**. He argued that this was against the principles of statutory interpretation.

Counsel relied on the case of **Murisho Shafi & ors vs. Attorney General & Anor, Constitutional Application No.02 of 2017**, where Egonda-Ntende, JCC stated:-

5 ***“To me, this provision made in a statute of parliament overrides the subsidiary legislation cited in Isabirye (supra) and does not need any interpretation or modification...”***

Counsel contended that, in the instant case, the provisions of the subsidiary legislation in **section 14A of the Advocates (Amendment) Act** take precedent over subsidiary legislation from the **Parliamentary Elections (Interim Provisions) (Election Petition) Rules**.

He submitted that a proper construction of **section 14A of the Advocates (Amendment) Act** would have offered remedy to the Appellant whose affidavits would have been sworn before another Commissioner for Oaths with a valid practicing certificate. Counsel relied on the case of ***Suubi Kinyamatama vs. Sentongo Robina, Election Petition Appeal No.92 of 2016*** to support his argument.

Counsel submitted that during cross-examination, the issue on Mr. Mugisa’s lack of a practicing certificate was raised. He noted that the same was not raised in any of the affidavits or Answers to the Petition of the respondents.

Counsel contended that when it was confirmed that the said Commissioner for Oath’s did not have a valid practicing certificate, an application for leave to re-commission the said affidavits in line with **section 14A of the Advocates (Amendment) Act** was immediately made. He argued that the said application was brought in time, in accordance with the exigencies of trying an election petition.

He contended that, had the trial Judge applied the correct principles of interpretation of **section 14A of the Advocates (Amendment) Act**, she would have allowed the application for leave to re-commission the affidavits in issue.

Counsel prayed that grounds 1,2,3 and 5 be allowed.

Ground 4

Counsel for the appellant submitted that the learned trial Judge erred in law and fact when she dismissed the Petition with costs.

Counsel argued that, in the practice of law, where a party is represented by an advocate, it is the advocate who chooses the Commissioner for Oaths to administer the oath. He, therefore, contended that the mistake made by counsel by inviting the Commissioner for oaths who did not have a current practicing certificate should not be visited on the innocent litigant. He relied on the cases of ***Attorney General vs. AKPM Lutaaya, S.C.C.A No.12 of 2007*** and ***Joel Kato & another vs. Nuulu***

5 **Nalwoga, Supreme Court Misc. Application No.04 of 2012**, to support his argument.

Counsel prayed that the appeal be allowed with costs in this Court and the Court below. He prayed that Court orders for a retrial of the Petition, before another Judge.

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The 1st respondent's case

Counsel for the 1st respondent submitted on grounds 1 & 5 together, 2 & 4 together and ground 3 separately.

Grounds 1 and 5

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Counsel for the 1st respondent submitted that the learned trial Judge rightly dismissed the Petition for being incompetent. He submitted that the issue on the competence of the Petition was raised upon ascertaining that the main affidavit in support of the petition had been commissioned by an advocate who did not possess a valid practicing certificate and was thus invalid thereby rendering the Petition incompetent.

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Counsel contended that the said issue was brought to the attention of Court and to counsel for the Petitioner/Appellant during the scheduling conference and cross-examination of the Petitioner/Appellant. Thereafter, Court advised that all preliminary objections be formulated as issues and would be determined by Court.

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Counsel, therefore, argued that this issue was well within the knowledge of the appellant and her counsel since the beginning of the trial. He argued that counsel for the Appellant/Petitioner chose not to invoke and seek for a remedy, if any, to rectify the error or defect. He contended that, had Court permitted the appellant/petitioner to re-administer the oath of the invalid or defective affidavits, it would have prejudiced the 1st respondent's case which would amount to a miscarriage of justice in the circumstances.

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He contended that section 1(4) of the Commissioner for Oaths (Advocates) Act is to the effect that a commission terminates upon the holder ceasing to practice as an advocate. He argued that it is clear that at the time Mugisha Ronal Ronnie purported to commission the affidavit of the appellant in support of the Petition, his practicing certificate had expired and had not been renewed. According to counsel, this in effect rendered the affidavit invalid and incapable of supporting the Petition in accordance with **Rules 3(c) and 4 (8) of the Parliamentary Elections (Interim Provisions) (Election Petitions) Rules** which make it a mandatory requirement for a Petition to be accompanied by an affidavit. He relied on the case of **Kabogere Coffee Factory vs. Hajji Twalibu, S.C.C.A No.10 of 1993** and **Professor Syed vs. The Islamic University of Uganda, S.C.C.A No.47 of 1995**.

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Counsel further argued that the said defect was not a mere technicality that could be cured by **Article 126 (2) (e) of the Constitution**. See: **Suubi Kinyamatama Juliet vs. Sentongo Robinah Nakasirye, Civil Appeal No.92 of 2016**.

10 He submitted that the learned trial Judge rightly found that an affidavit commissioned by someone who is not a practicing advocate cannot be saved by **Article 126 (2) (e) of the Constitution** and accordingly dismissed the Petition for being incompetent.

15 **Grounds 2 and 4**

Counsel for the 1st respondent submitted on ground 2 that although mistakes of counsel ought not to be visited on a litigant, the invalid affidavit was the main piece of evidence supporting the Petition. He argued that Court had the duty to apply the law to the facts and in doing so rightly found that the Petition was incompetent for lack of a supporting affidavit. According to counsel, the issue of whether or not mistake of counsel was occasioned, was not in issue at the time.

On ground 4, counsel argued that the award of costs to the respondents is a discretionary power of the Court which ought to be exercised judiciously. He noted that, it is trite law that costs follow the event pursuant to **section 27 of the Civil Procedure Act**, unless for good cause, the Court orders otherwise. See **Apama Amato vs. Obiga Kania & Electoral Commission, High Court Election Petition No.002 of 2021**.

He submitted that the trial Judge correctly applied the principles on awarding costs to the successful party when it granted costs to the respondents in the Court below since no good cause had been adduced for the Court to order otherwise.

35 **Ground 3**

Counsel for the 1st respondent submitted the learned trial Judge correctly interpreted the **section 14A of the Advocates (Amendment) Act, 2002**, when she held that since there was no contention that the affidavit in support of the Petition was invalid, the Petition was not a Petition as envisaged under the provisions of the Parliamentary Elections Act and the Rules made thereunder. He added that the learned trial Judge correctly held that allowing the application to correct the defect would amount to extending time within which to file a Petition, which would be in contravention of section 60 (3) of the Parliamentary Elections Act, which provides for the mandatory time frame of 30 days after gazettelement as the period which to lodge a Petition. Therefore, **section 14A of the Advocates (Amendment) Act** was not applicable to this case.

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5 He relied on the case of **Apama Amato vs. Obiga Kania & Electoral Commission** (*supra*), where Wamala J, held:-

10 *“that there is a window for the litigant to take steps to ameliorate the situation by having another affidavit properly commissioned and filed. It is clear however, that the said option exists where it is lawfully available and where such a party applies to the Court for leave to take such a step before the issue is brought before the Court for consideration.....*

15 *It is my considered view that the option is not lawfully available as well because once the accompanying affidavit is invalid, there is no petition before me. Rectifying the affidavit would imply bringing a new petition which is not permissible under section 60 of the Parliamentary Elections Act and Rules 3(c) and 4 (8) of the Parliamentary Elections Rules. This Court has no residual power to extend the time within which to bring the Petition since the same is fixed by an Act of Parliament. As such, the option of rectifying the affidavit is not legally available in the present case.”*

25 Counsel submitted that from the authorities cited and the reasoning of the trial Court, **section 14A of the Advocates (Amendment) Act** is not applicable in the circumstances of this case.

Counsel prayed that the appeal be dismissed, the ruling of the High Court be upheld and costs be awarded to the 1st respondents, in this Court and in the Court below.

30 **The 2nd respondent’s case**

Counsel for the 2nd respondent submitted on grounds 1,2,3 & 5 together and ground 4 separately.

Grounds 1,2,3 & 5

35 Counsel for the 2nd respondent submitted that the application to re-commission the said supporting affidavit was made late on 8th August 2012, when the appellant and other witnesses had already been cross-examined and re-examined by the 1st of August 2021.

40 Counsel submitted that this issue is a matter of law that goes to the root of the Petition. He stated that the learned trial Judge was right to underpin the fact that the competence of the Petition itself had been accordingly endangered. According to counsel, **section 14A of the Advocates (Amendment) Act** cannot be read in isolation in light of **Rules 3(c) and 4 (8) of the Parliamentary Elections (Interim Provisions) (Election Petitions) Rules**

45 He submitted that **section 11 of the Advocates (Amendment) Act Cap.267** provides that a person cannot be a practicing advocate unless he or she has been



5 admitted and his or her name is on the role of Advocates and has a valid Practicing
Certificate. According to counsel, affidavit evidence is by its nature very delicate
notwithstanding the pressure under which elections are organised, some mistakes
cannot be ignored or held to be inconsequential. counsel noted that it is of
10 paramount importance that affidavits are carefully drafted because they are the
principal source of evidence in election matters. He relied on the case of **Hon.
George Patrick Kassajja vs, Fredrick Ngobi Gume & anor, Election Petition
Appeal No.68 of 2016.**

15 Counsel further relied on the case of **Nabukeera Hussein Hannifah vs. Kusasira
Peace K. Mubiru & anor, Election Petition Appeal No.67 of 2016**, where Court
held that affidavits that do not meet the requirements of propriety are inadmissible
and cannot form part of the record. That to condone such an unsworn statement
seeking to pass as affidavit evidence would undermine the importance of affidavit
which is rooted on the fact that it is made on oath.

20 Counsel submitted that the law protects affidavit evidence in order to preserve its
sanctity. He argued that a client is bound by the actions of her counsel who is a
professional person in matters of the law and thus is expected to know that renewal
of a practicing certificate is a condition precedent to renew an advocate's right to
25 commission documents and/or to administer oaths. He added that careless and/or
negligent drafting of pleadings or some incompetence in carrying out the same is
not an excuse for a client to escape being bound by her incompetent actions and
inactions. See: **Mohammed B. Kasasa vs. Jasper Buyonda Sirasi Bwogi, Civil
appeal No.42 of 2008.**

30 Counsel contended that the trial Judge should not be blamed for not applying
Article 126 (2) (e) of the Constitution and **section 14A of the Advocates
(Amendment) Act**. He submitted that **section 60 (3) of the Parliamentary
Elections Act** is of the import that an election petition should be filed within 30
35 days after gazetting of the results and that **Rule 4 (8) of the Parliamentary
Elections (Interim Provisions) Rules** provide that an affidavit shall be
accompanied by an affidavit. Counsel argued that the significance of these
provisions is that a Petition properly accompanied by an affidavit is only competent
if filed within 30 days. He contended that, where the affidavit is severed from the
40 Petition, it collapses and cannot be resurrected by another affidavit especially when
the 30 day's time period has expired.

He cited **Election Application No.09 of 2017, Muliro Wanga Karim vs.
Wakalawo Sam Paul where Kakuru JA**, held that Parties cannot just hide behind
45 the curtain and alleged that it was the fault of counsel. It may well be so, in many
instances, but it is not so in electoral matters.



5 Counsel further relied on **Supreme Court Presidential Election Petition No.01 of 2021, Kyagulanyi Ssentamu vs. Yoweri T. Museveni & Ors**, where their Lordships emphasised the fact that Courts have no power to enlarge time that has been set by statute.

10 He prayed that the appeal be dismissed with costs.

Ground 4

15 Counsel for the 2nd respondent submitted that the law on costs is that they follow the event as is borne out of **section 27 of the Civil Procedure Act**. He submitted that **Rule 27 of the Parliamentary Elections (Interim Provisions) Rules** provides that all costs of and incidental to the presentation of a Petition and the proceedings consequent on the Petition shall be defrayed by the Parties to the Petition.

20 He prayed that the appeal be dismissed with costs in this Court and in the Court below.

Determination by the Court.

25 This is a first appeal and such this Court is required to reappraise all the evidence before the trial Court and make its own inferences of law and fact. See: **Rule 30(1) of the Judicature (Court of Appeal Rules) Directions, S.I 13-10; Mugema Peter vs. Mudiobole Abed, Election Petition Appeal No.30 of 2011** and **Kifamunte Henry vs. Uganda, Supreme Court Criminal Appeal No.10 of 1997**.

30 We have carefully studied the record of the lower Court and taken into consideration the submissions of counsel as well as the authorities relied on by counsel of all the parties to the Appeal.

35 We shall proceed to resolve the grounds of appeal.

Resolution of grounds 1, 2, 3 & 5

40 The main issue in regard to these grounds of appeal arose from the fact that the appellant's affidavit in support of the Petition and that of a one Dan Odong were sworn before an advocate without a valid practicing certificate. It is for that reason that the learned trial Judge rejected the said affidavits in support of the Petition.

45 The question, therefore, is whether an advocates Commission ceases to exist upon expiry of his or her practicing certificate.

5 **Section 1 of the Commissioner for Oaths (Advocates) Act** provides:-

“1. **Appointment of practicing advocates as commissioners for oaths**

10 (1) **The Chief Justice may, from time to time, by commission signed by him or her appoint persons being practicing advocates who have practiced as such for not less than two years in Uganda immediately prior to making any application for appointment and who are certified to be fit and proper persons by two other practicing advocates to be commissioners for oaths, and may revoke any such appointment; but the power to revoke a commission shall not be exercised till the commissioner in question has been given an opportunity of being heard against any such order of revocation.**

20 (2) **Each commission signed as provided in subsection (1) by which any commissioner for oaths shall be appointed shall bear a revenue stamp of the value of sixty shillings to be paid for by the commissioner for oaths named in the commission; but no other charge or fee shall be made or be payable in respect of the appointment or in respect of anything requisite to be done to perfect it.**


25 (3) **After the commission shall have been duly signed and stamped as provided in subsections (1) and (2), the appointment of the person named in it as a commissioner for oaths shall be immediately published in the Gazette.**

30 (4) **Each commission shall immediately terminate on the holder ceasing to practice as an advocate.**” Emphasis is ours

35 In the recent decision of this Court in ***Election Petition Appeal No.09 of 2021, Hon. Lokeris Samson vs. Komol and the Electoral Commission***, Court held that the expiry of the practicing certificate granted to an advocate under section 11 of the Advocates Act on the 31st day of December of the year of issuance does not *ipso facto* terminate the commission of the concerned advocate.

40 It is pertinent to note that a person only ceases to practice as an advocate when he or she is either suspended or struck off the Roll of Advocates by the Disciplinary Committee of the Law Council under **section 20 (4) (b) (c) of the Advocates Act**. Expiry of a practicing certificate does not make one cease to be an advocate, therefore, **section 1(4) of the Commissioner for Oaths (Advocates) Act** does not
45 apply to the circumstances of this case.

We find that the learned trial Judge erred when she held that the appellant’s affidavit in support of the Petition and that of a one Dan Odong were defective,



5 having been sworn before an advocate who had not yet renewed his practicing certificate for 2021.

10 Counsel for the appellant also contended that the learned trial Judge erred when she denied the appellant's application to re-administer the oath on the two affidavits that were commissioned by an advocate without a valid practicing certificate using **section 14A of the Advocates (Amendment) Act**. The section provides:-

15 **“(1) Where-**

(a) an advocate practices as an advocate contrary to subsection (1) of section 14:- or

(b) in any proceedings, for any reason, an advocate is lawfully denied audience or authority to represent a party by any court or tribunal; then-

20 **(i) no pleading or contract or other document made or action taken by the advocate on behalf of any client shall be invalidated by any such event; and in the case of any proceedings, the case of the client shall not be dismissed by reason of any such event;**

25 **(ii) the client who is a party in the proceedings shall, where necessary, be allowed time to engage another advocate or otherwise to make good any defects arising out of any such event.**

30 **(2) Any advocate not in possession of a valid practicing certificate or whose certificate has been suspended or cancelled as an advocate, commits professional misconduct; and the Law council or any person may make a complaint to the Disciplinary Committee in respect of the misconduct; and paragraphs (b) (i) and (b) (ii) of subsection (1) shall apply with necessary modifications.**

35 **(3) In addition to any punishment prescribed under any provision of this Act, the client of an advocate to whom subsection (1) or (2) relates, is entitled to a refund by the advocate concerned of any fees paid to that advocate by the client and also to compensation in respect of any costs or loss incurred by the client as a result of the conduct of the advocate.”**
Emphasis added.

40 This Court in **Hon. Lokeris Samson vs. Komol and the Electoral Commission, (Supra)**, held that **section 14A of the Advocates (Amendment) Act** only covers documents made and actions taken where an advocate-client relationship existed. Court noted that there is no advocate-client relationship in commissioning an



5 affidavit. **Section 4 of the Commissioners for Oaths Act** bars a Commissioner for
Oaths from commissioning any document “in any proceeding or matter in which he
or she is an advocate for any of the parties to the proceeding or concerned in the
matter or clerk to any such advocate or in which he or she is interested.” An
10 advocate who has a client that needs to commission an Affidavit would normally
trace a Commissioner for oaths that the client would normally have no advocate /
client relationship with in respect of the matter at hand.

We agree with the above finding of Court. We, therefore, find that the learned trial
Judge rightfully declined to invoke **section 14A of the Advocates (Amendment)**
15 **Act** to rectify the alleged defective affidavits in support of the Petition.

Counsel for the appellant contended also that the learned trial Judge misconstrued
the applicability of **section 14A of the Advocates (Amendment) Act** when she
subjected its applicability to **Rule 3 (c) and 4 (8) of the Parliamentary Elections**
20 **(Interim Provisions) (Election Petition) Rules S.I 141-2** and declined to grant the
petitioner/appellant leave to rectify her affidavit in support and that of a one Dan
Odong.

The trial Judge held as follows:-

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30 **“Section 14A of the Advocates Amendment Act would, in the opinion of
this Court give some leeway to the Petitioner to re-commission her
supporting affidavit if the provisions of both Rules 3(c) and 4(8) were
not couched in mandatory terms. My interpretation of those provisions
is that if a petition is not accompanied by an affidavit, it is not a
petition at all.”**

In the case of **Hon. Lokeris Samson vs. Komol and the Electoral Commission,**
(Supra), Court held:-

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40 **“The definition of “election petition” as set out in section (1) of the PEA
read together with section 60 of the PEA leads to the conclusion that
once the “petition” meets the components set out in section of the PEA,
then it qualifies to be termed as an “Election Petition” for purposes of
the PEA. The “Affidavit accompanying the Petition” (principal affidavit)
is not one of the components set out in section 60 of the PEA.**

45 **Second, the principal affidavit simply contains evidence in proof of the
allegations and claims as set out in the Petition. However, the PEA in
section 64 expressly provides, inter alia, the mode of proof of the
allegations and claims in election petitions to be in the same manner
as in any other civil proceedings. The section is couched as follows:**

5 **"64 witnesses in election petitions**

(1) **At the trial of an election petition-**

- 10 a) **Any witness shall be summoned and sworn in the same manner as a witness may be summoned and sworn in civil proceedings;**
- 15 b) **The court may summon and examine any person who, in the opinion of the court is likely to assist the court to arrive at an appropriate decision;**
- c) **Any person summoned by the court under paragraph (b) may be cross-examined by the parties to the petition if they so wish.**

20 **(2) ...Not applicable" [Emphasis added]**

25 **The inference from the above section is that an election petition can stand without the accompanying affidavit and the allegations in the petition may be proved by other forms of evidence as usually happens in ordinary civil proceedings.**

30 **Third, the requirement for an election petition to be accompanied by an affidavit, the principal affidavit, was a creature of Rule 4(8) of the election petition rules. Rule 4(8) of the election petition rules provides:**

"the petition shall be accompanied by an affidavit setting out the facts on which the petition is based together with a list of any documents on which the petitioner intends to rely."

35 **My understanding of the above rule is that it was intended to expedite the trial of election petitions. But in the absence of the principal affidavit, the above rule cannot be said to have excluded recourse to proof of the allegations in the election petition using the other modes applicable in ordinary civil proceedings which are permissible by section 64 of the PEA. So, Rule 4(8) of the election petition rules does not form a valid legal basis for holding that the petition cannot stand without the accompanying principal affidavit.**

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As for the definition of the term "petition" by Rule 3 of the election petition rules, it is stated thus:

45 **"3) Interpretation**

In these rules, unless the context otherwise requires-

- a) **....not applicable**
- b) **....not applicable**
- c) **"petition" means an election petition and includes the affidavit required by these rules to accompany the Petition.**
 Emphasis added]

5 ***My understanding of the use of the expression “in these rules” in rules 3 is that the definition of the term “petition” as set out in the Rule applies and/or is limited to the election petition rules only. To stretch the said definition to extend to the PEA which itself has its own definition of the same term has no basis.***

10 ***In the premises aforesaid, I would hold that an invalid or defective principal affidavit does not automatically render an election petition under section 60 of the PEA defective. The requirement by the Election Petition Rules for use of the affidavit accompanying the Petition and affidavit evidence generally in the trial of election petitions was intended to expedite the trial of election petitions in compliance with the spirit of the PEA. It should be encouraged and ought to be respected by litigants in election petitions. But it does not oust the other forms of evidence ordinarily used in civil proceedings which are permissible under section 64 of the PEA. Such forms of evidence include oral evidence and witness statements. Where the trial Court finds that the affidavit accompanying the petition (principal affidavit) is defective, the court still has the option of granting the affected party the option to proceed to prove the claims in the petition using the other options ordinarily available to litigants in ordinary civil proceedings like the use of oral evidence, witness statements or any other form of adducing evidence.”***

We adopt the interpretation of the above provisions as ably given in the above decision and the reasoning which we wholly apply to the instant case.

30 It follows, therefore, that the absence of the appellant’s affidavit in support of the petition did not automatically render the election petition defective. The learned trial Judge therefore erred in law when she held that a petition without an affidavit, is not a petition at all.

35 Before we take leave of this matter, we would like to note that although a defect in an affidavit does not automatically render the Petition defective, we urge counsel to comply with the Election Petition Rules to enable expeditious disposal of Election Petitions.

40 For the reasons stated hereinabove, we accordingly order as follows: -

1. This appeal succeeds in part.
2. The learned trial Judge’s decision striking out Election Petition No.007 of 2021 with costs to the respondents is hereby set aside.
3. The file should be remitted to the High Court for trial of the petition on its merits before another Judge.
4. Each party shall bear their own costs for this appeal.



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Dated at Kampala this ^{5th} day of ^{Aug} 2022.

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**RICHARD BUTEERA
DEPUTY CHIEF JUSTICE**

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**HELLEN OBURA
JUSTICE OF APPEAL**

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**CATHERINE BAMUGEMEREIRE,
JUSTICE OF APPEAL**

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