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**THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO.31 OF 2015**

THE CONSERVATIVE PARTY..... PETITIONER

VERSUS

10 **1. ATTORNEY GENERAL**
2. THE ELECTORAL COMMISSION.....RESPONDENTS

CORAM: Hon. Mr. Justice Richard Buteera, DCJ
Hon. Mr. Justice Kenneth Kakuru, JA/JCC
15 **Hon. Lady Justice Catherine Bamugemereire B.K, JA/JCC.**
Hon. Mr. Justice Christopher Madrama, JA/JCC
Hon. Lady Justice Irene Esther Mulyagonja, JA/JCC

JUDGMENT OF COURT

20 The petitioner is a registered political party in Uganda, under the political parties and organizations Act 2005.

The petitioner contends that:-

25 *“the amendment by parliament of the Presidential Elections Act, 2005 and Parliamentary Elections Act, 2005 by Acts 14 and 15 of 2015 respectively was not preceded by bills published in sufficient time to enable the participation of the public, contrary to Articles 91(1) and 94 of the Constitution. Furthermore Section 11(3) of the Parliamentary Elections Act as amended that provides for the nomination fee for the Parliamentary Candidate shall be Ushs 3,000,000/= (Uganda Shillings*

5 *Three Million Only) is a violation of Articles 1(2), (3) & (4) of the Constitution which provides that the sovereignty of the people shall be exercised by them choosing a leader of their choice through free and fair election.*

10 ***Sections 10(6)(b) of the Presidential Elections Act and 11(3) of the Parliamentary Elections Act are unconstitutional for providing for prohibitive amounts of money for presidential and parliamentary candidates that has the unconstitutional effect of disqualifying potential candidates and thereby disenfranchising the people of their sovereignty guaranteed in Articles 1(2), (3) & (4) of the Constitution.***

15 *Sections 10(6) of the Presidential Elections Act and 11(3) of the Parliamentary Elections Act as amended have an unconstitutional effect providing qualification and disqualification for presidential and parliamentary candidates beyond those provided by the Constitution contrary to Article 2 of the Constitution for the supremacy of the*
20 *Constitution.”*

Both respondents in their respective answers to the petition contend that; the Presidential Elections (Amendment) Act 14 of 2015 and the Parliamentary Elections Act 15 of 2015 do not in any way contravene Article 91(1) and 94(1) of the Constitution.

25 Further that, while passing of those impugned Acts, Parliament did not avail the public an opportunity to participate in the legislative process.

The following issues are set out for determination.

1. *Whether the Presidential Elections (Amendment) Act 14 of 2015 and the Parliamentary Elections (Amendment) Act 15 of 2015 are*

5 *unconstitutional for having been passed by parliament in violation of Article 91 (1) & 94(1) of the Constitution.*

10 2. *Whether Sections 10(6)(b) of the Presidential Elections Act and 11(3) of the Parliamentary Elections Act are unconstitutional for providing for prohibitive amounts of money for presidential and parliamentary candidates that has the unconstitutional effect of disqualifying potential candidates and thereby disenfranchising the people of their sovereignty guaranteed in Article 1(1), (2), (3) (4) of the Constitution of Uganda.*

15 3. *Whether Section 10(6) of the Presidential Elections Act and Section 11 (3) of the Parliamentary Election Act as amended have an unconstitutional effect of providing qualification and disqualification for presidential and parliamentary candidates beyond those provided by the Constitution `contrary to Article 2 of the Constitution that provides for the supremacy of the Constitution.*

20 4. *Whether the 2nd respondent by demanding that presidential and parliamentary candidates pay the prohibitive amounts as nomination fees, is acting in violation of Article 21(1) of the Constitution that guarantees (equal) protection of the law, and thereby prohibits retrospective.*

25 5. *What are the remedies available.*

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5 **Representation**

When the petition came up for hearing on 1st February 2021 *Ms. Patricia Mutesi* learned Principal State Attorney appeared for the 1st respondent while *Ms. Stella Nakamya* learned Counsel appeared for the petitioner. Both Counsel were granted leave to proceed by way of written submissions and conferencing notes already on record. It's on that basis that this Judgment has been prepared.

For the petitioner, it was submitted on issue one that the passing of the impugned Acts 14 and 15 of 2015 by Parliament was not preceded by bills published in sufficient time to enable the participation of the public contrary to Article 91(1) and 94(1) of the Constitution.

15 In respect of issue two it was submitted that, Sections 10(6) (b) of the Presidential Elections Act and 11(3) of the Parliamentary Elections Act are both unconstitutional as they provide for prohibitive amounts of money for Presidential candidates that has the unconstitutional effect of disqualifying potential candidates and thereby disenfranchising the people of their sovereignty to elect a leader of their choice
20 guaranteed under Articles 1(1), (2), (3) and (4) of the Constitution.

It was submitted that Ugshs.3,000,000/= and Ugshs.20,000,000/= nomination fees set out in the impugned legislation was excessively high to be afforded by ordinary citizens the effect of which, is a deterrent for citizens that would otherwise have been available as candidates for the Parliamentary and Presidential elections.

25 In respect of issue 3 it was submitted that, the impugned laws, provide for qualifications and disqualification standards beyond those provided for in the Constitution and are therefore unconstitutional since wealth or paucity of a candidate is not a qualification or disqualification under the Constitution.

5 It was contended that, by requiring potential candidates for parliamentary and presidential elections to pay exorbitant nomination fees the impugned laws are in contravention of Article (21) of the Constitution that guarantees the right to equality before the law and also amounts to retrospective legislation.

10 Lastly that, at the time the impugned laws were enacted , the petitioner had already rolled out its programmes on 15th May 2015 on the basis of the earlier law that provided for lesser nomination fees, yet the impugned laws were passed several months later in October 2015.

The petitioner asked Court to allow the petition and declare the impugned laws null and void.

15 The respondents' reply was in form of a general denial. They both contended that the impugned laws were not unconstitutional. Further that imposing the nomination fees was as a result of changing circumstances which Parliament was obliged to consider and take into account.

They both asked the Court to dismiss the petition.

20 **Resolution of the issues**

Issue 1

25 In respect of issue one, it is contended that, the passing by parliament of the impugned legislation Act 14 of 2015 and Act 15 of 2015 into law was contrary to the Articles 91(1) and 94 of the Constitution. It is the petitioner's case that, the time allowed between the publishing of the bills in the Gazzette by Parliament and the passing of the same into law was insufficient to enable the participation of the public.

Article 91(1) stipulates as follows;-

30 *Exercise of legislative powers.*

5 *(1) Subject to the provisions of this Constitution, the power of Parliament to make laws shall be exercised through bills passed by Parliament and assented to by the President.*

There is nothing in the above Article that sets the time frame within which legislations may be passed by Parliament. In any event no evidence was provided by
10 the petitioners, to prove that, Parliament contravened the Constitution or any other law made under it.

Whereas, it is a principle of good governance that as far as practically possible Parliament should involve the public in the legislation process, this is not a
15 constitutional requirement.

On the contrary Article 94(3) provides as follows;-

The presence or the participation of a person not entitled to be present or to participate in the proceedings of Parliament shall not, by itself, invalidate those proceedings.

20 In view of the above, we find no merit in this ground and we hereby dismiss it.

Issue 2

It is not in dispute that, the Constitution recognises and provides for the right of every citizen to participate in the affairs of Government, individually or through his or her representatives.

25 Further that, under Article 1(4) the people of Uganda have a right to express their will and consent on who shall govern them and how they should be governed through regular free and fair elections of their representatives.

In this regard every citizen has a right to participate in elections as a voter and or a candidate.

5 By its very nature democracy connotes representative government. The people elect those they wish to represent them or to hold offices of authority. Invariably the representatives or the offices of authority must be much fewer than the electorate.

The Constitution therefore sets out qualification and disqualifications a person must possess in order to represent others under Articles 80 and 102 of the Constitution,
10 for members of Parliament and the President respectively.

The right to vote and elect political leaders and representations are set out under Chapter Five of Constitution Articles 59 to 76.

Article 76 in particular provides as follows:-

Parliament to enact laws on elections.

15 *Parliament may, subject to the provisions of this Constitution, enact such laws as may be necessary for the purposes of this Chapter, including laws for the registration of voters, the conduct of public elections and referenda and, where necessary, making provision for voting by proxy.*

We take cognisance of the fact that the Constitution cannot provide each and every
20 thing in detail. It sets out the basic laws, rights and privileges. The Constitution is the basic infrastructure upon which the body of laws exist. Laws flow from the Constitution.

It is under this authority that the Parliament enacted a number of laws regulating elections including but not limited to the Presidential Elections Act, the
25 Parliamentary Elections Act, Referendum and other Provisions Act, the Electoral Commissions Act and others. The impugned Acts fall under the above category.

The issue here is whether in enacting the impugned legislation Parliament contravened the Constitution or whether the effect of the impugned legislation in

5 any way violated or abridged the people's right to freely stand for elections as President or Member of Parliament.

Our understanding of this petition is that Parliament was well within its right to set nomination fees for Parliamentary and Presidential candidates as a pre-requisite to nomination. However, the petitioner complains that having set the fees in 2005
10 legislation Parliament acted in violation of the Constitution in the impugned amendments of 2015, the fees were enhanced to Ugshs. 3,000,000/= for Members of Parliament and Ugshs. 20,000,000/= for Presidential candidates. This amount, it is contended by the petitioner, was manifestly excessive and rendered the impugned amendment unconstitutional.

15 We observe that, the petitioners conceded to the fact that, Parliament could in the first instance provide for nomination fees by legislation. However, they contended that Parliament acted unconstitutionally when it set the fees too high as to render a large part of the electorate ineligible. This being the case, the petition ought to fail as it raises no issues for constitutional interpretation. The issues raised fall under
20 the category of enforcement of rights and as such this Court has no jurisdiction to entertain it. See:- *Mbabaali Jude Vs Hon. Edward Kiwanuka Ssekandi, Constitutional Petition No. 0028 of 2012, Attorney General Vs Major General David Tinyenfuzza, Supreme Court Constitutional Appeal No. 1 of 1997, Serugo vs KCC and Attorney General, Supreme Court Constitutional Appeal No. 2 of 1998 (unreported)*.

25 Be that as it may, the right to stand for election is not absolute. It is derogable right as it does not fall under Article 44 of the Constitution. It is therefore subject to the limitations set out under Article 43 (2) (C).

The question we are required to answer here is whether or not the limitation set out in the impugned laws in beyond what is acceptable and demonstrably justifiable in a
30 free and democratic society. The burden to prove the above lay with the respondent.

5 However, the petitioner has not made any attempt by evidence or otherwise to prove its own allegations of fact set out in the petition.

We have on our own endeavored to find out whether or not in other free and democratic societies person intending to contest in Parliamentary and Presidential elections are by law required to pay nomination fees as a pre-requisite and if so how
10 much.

We have found that, nomination fees are set for political parties and candidates standing for nation-wide elections in Guinea, Sierra Leone, Nigeria, Ghana, Cote d'Ivoire and South Africa in the following categories, Presidential candidate and Members of Parliament is as follows;

15 Presidential:

- *Ghana* 5,000 Cedis (2012, ca USD 2,600)
- *Guinea* 400,000 GNF (2010, ca USD 55,000)
- *Sierra Leone* 1 million Leones (2012, ca 225).
- *Benin* 15,000,000 CFA francs , refundable if the candidate obtains at least 10
20 percent of the votes cast in the first round
- *Burundi*, 15,000, 000 Burundian francs (FBU), refunded if the candidate earns a minimum of 5 percent of the vote in the first round

Parliamentary:

- *Ghana* 500 Cedis (2012, ca USD 260),
- *Sierra Leone* 100,000 Leones (2012, ca 25)
- *South Africa* 180,000 Rand (2009, ca USD 20,000)
- *Benin* 100,000 CFA francs per candidate
- *Kenya* 200,000 Kenyan shillings (Kshs) for men and 100,000 (Kshs for women)

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- *Burundi 500,000 francs FBU per list or party list, refunded if the list earns at least 2 percent of votes at the national level*
 - *Kenya Men, 20,000 Kshs per candidate and Women, persons with disabilities, and youth, 15,000 Kshs*

10 In South Africa to contest for the National Assembly elections (lower house of parliament) parties must pay a deposit of 180,000 South African rand (18,000 US Dollars). However for the 2014 elections this figure was increased to 200, 000 Rand (20,000 US Dollars). Similarly in Senegal political parties and candidates participating in legislative elections must pay a deposit of 20 million CFA francs to participate in elections, which is refundable if the candidate receives 5 percent of

15 votes in the first round. In the case of Cote d'Ivoire, candidates must make a deposit that is reimbursed if candidates earn at least ten percent of the national votes cast. The same member noted that this deposit was 20 million francs for Presidential candidates and 100,000 francs for parliamentary candidates. Presidential candidates in the Republic of the Congo must pay a deposit of 5 million francs CFA,

20 which is also returned upon the candidate receiving 15 percent of the vote. In the case of parliamentary candidates, this deposit is 100,000 francs CFA.

In Burundi, candidates for presidential and legislative elections have to pay fees to participate in elections. This is enshrined in the following articles of the electoral act of 2009. For presidential elections, the article 104: Since the notification of

25 acceptance of the candidature to participate in election, the candidate has to put within seven working days, on the Central Bank account, opened for this purpose, 15.000.000 burundi francs(FBU) as fees of surety and transmit the receipt to the EMB. The failure to pay the fees is punished by the radiation of the candidature. This surety is totally refunded to the candidate if he/she gets at least 5% of the suffrage

30 for the first round. The fee is not refundable in case of withdrawing the candidature.

5 In Zimbabwe political parties do not register for their existence but the Electoral Management Body calls for all political parties who wants to participate in an election soon after proclamation. Nomination or registration fees for Presidential candidates in Zimbabwe is five hundred (500) USD, for the National House of Assembly they pay each ten (10) USD whilst the local authorities/councilors do not
10 pay for their registration.

See:<https://aceproject.org/electoraladvice/archive/questions/replies>

In view of the above statistics, we are inclined to find that, imposition of nomination fees as a prerequisite for intending candidate to run for an elective office is an acceptable norm in a free and democratic society under Article 43 (c) of the
15 Constitution.

We have found no evidence that, the shs. 3,000,000/= appx 850 USD for members of Parliament and Ugshs.20,000,000/= appx 5600 USD Presidential candidate in a multiparty democracy is too high as to amount to an infringement of the right to contest for any of the said offices in Uganda.

20 We further observe that, the Constitution provides for elections under a multiparty system. In which case, political parties are free to sponsor their candidates. Party sponsored candidates do not have to pay the fees themselves. Independent candidates are at liberty to raise funds for their campaigns as individuals within the law.

25 We are unable to accept the petitioner's argument that, by providing for payment of nomination fees, Parliament set qualifications for Members of Parliament and Presidential aspirants beyond what is provided in Articles 80 and 102 of the Constitution. The requirements for candidates seeking electoral offices set out in *Section 10(6)(b)* of the Presidential Elections Act and *Section 11(3)* of Parliamentary
30 Elections Act are regulatory. They are intended to regulate the election process and they do not to impose additional qualifications.

5 Nomination fees in respect of elections are comparable to Court fees imposed on
Court users by the law, as a requirement to accessing justice. In our view the
imposition of Court fees does not take away the right to access to justice. Unless of
course it is shown that fees are manifestly high. In this petition we have found that
the nomination fees set by Parliament are not manifestly high as to amount to an
10 injustice.

We therefore, find no merit in this petition which is hereby dismissed. As it was
brought largely in public interest, we make no order is to costs.

Dated at Kampala this¹⁵.....day of *March*..... 2021.

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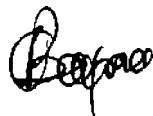

Richard Buteera, DCJ

JUSTICE OF APPEAL/CONSTITUTIONAL COURT

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Kenneth Kakuru

20 **JUSTICE OF APPEAL/CONSTITUTIONAL COURT**



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