

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
Coram: Buteera, DCJ; Kakuru, Bamugemereire, Madrama &
Mulyagonja, JJCC

CONSTITUTIONAL PETITION NO.004 OF 2016

1.NOBERT MAO
2.CHAPTER FOUR }PETITIONERS

VERSUS

1.ATTORNEY GENERAL
2.ELECTORAL COMMISSION }RESPONDENTS

JUDGMENT OF IRENE MULYAGONJA, JCC

I have had the benefit of reading in draft the judgment of my learned brother, Madrama, JCC/JA. I generally agree with his reasoning and his conclusion that this petition should succeed. I have also had the benefit of reading in draft the supporting judgment of my learned brother Kakuru, JCC/JA, and I agree with his findings and conclusions.

However, there are two points in respect of which I have a different view from that expressed by my learned brother, Madrama, JCC. It is my considered opinion that election complaints before and during polling which are provided for in Article 61 (1) (f) do not only arise after the Electoral Commission has exercised its functions under Article 61 (1) (b) of the Constitution, of organising, conducting and supervising elections and referenda in accordance with the Constitution. It is also my opinion that the functions of the Electoral Commission under Article 61 (f) have got everything to do with its functions under Article 61 (e) of the Constitution of compiling, maintaining, and updating the register.

Iran.

Further, a complaint handled by the Commission under Article 64 (1) of the Constitution does not have to be related to the hearing and determination of election complaints which arose during the organising, conduct and supervision of elections and referenda in accordance with the Constitution. It is my view that the acts of compiling, maintaining and revising, as well as updating the voters register are among the acts of organising, conducting and supervising elections and referenda by the Electoral Commission.

In order to express my understating of the functions of the Electoral Commission under Article 61 (f) of the Constitution, it is useful to reproduce Article 61 (1) of the Constitution which provides for the functions of the Electoral Commission as follows:

The Electoral Commission shall have the following functions—

- (a) to ensure that regular, free and fair elections are held;**
- (b) to organise, conduct and supervise elections and referenda in accordance with this Constitution; (c) to demarcate constituencies in accordance with the provisions of this Constitution;**
- (d) to ascertain, publish and declare in writing under its seal the results of the elections and referenda;**
- (e) to compile, maintain, revise and update the voters register;**
- (f) to hear and determine election complaints arising before and during polling;**
- (g) to formulate and implement civic educational programmes relating to elections; and**
- (h) to perform such other functions as may be prescribed by Parliament by law.**

It has been stated time and again by this court and the Supreme Court, as it was stated in **Paul K. Ssemowgerere & 2 Others v. Attorney General, Supreme Court Constitutional Appeal No. 001 of 2002**, that:

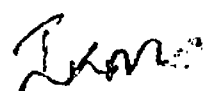
*"It is a cardinal rule in constitutional interpretation, that provisions of a constitution concerned with the same subject should, as much as possible, be construed as complimenting, and not contradicting one another. The Constitution must be read as an integrated and cohesive whole. The Supreme Court of U.S.A., in **Smith Dakota v. North Carolina** 192 US 268 (1940) put the same point thus -*

'It is an elementary rule of constitutional construction that no one provision of the Constitution is to be segregated from the others and to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be interpreted as to effectuate the great purpose of the instrument.'"

The various paragraphs under Article 61 of the Constitution must therefore be seen as a whole and interpreted in such a manner that none of them detracts from each of the others. They should be harmonised in order to get the full meaning of the intention of the framers of the Constitution.

It is also important to note that where a list is provided in a statute, including the Constitution, the different components of the list must be seen as related to each other, as they are to the whole purpose of the provision under which they are listed, either negatively, or positively. It is therefore my view that the contents of clause (e) of Article 61 (1) must be seen as related to clause (b) thereof. Clause (f) also must relate to clauses (a) to (e) of the same Article.

Although the function of the Electoral Commission under Article 61 (1) (e) of the Constitution to hear and determine election complaints comes further on in the list, it is my view that it is an important part of what the Commission does when it carries out its functions stated in paragraph 1 (a) to (e) of Article 61 whose main objective is to provide for what is stated in clause (a) as *"ensuring that regular, free and fair elections are held."*



In carrying out all of its functions in Article 61 the register is a crucial instrument for the Electoral Commission because what comes out as results of the polls depends on the veracity of the register. It is therefore the duty of the Commission, even before organising the main event of the elections which is polling, and on a continuous basis, to ensure that the register of voters is in order as is required by Article 61 (1) (e) of the Constitution; it is a crucial part of the organisation of any election.

Article 76 of the Constitution made provision for the enactment of laws on elections as follows:

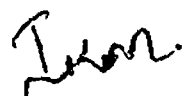
“Parliament may, subject to the provisions of this Constitution, enact such laws as may be necessary for the purpose of this Chapter, including laws for the registration of voters, the conduct of public elections and referenda and, where necessary, making provision for voting by proxy.”

This provision points out the registration of voters as an important aspect for which legislation should be enacted. The conduct of elections then follows.

By virtue of Article 76 of the Constitution, Parliament enacted the Electoral Commission Act and other related legislation for the various kinds of elections in the country. The Electoral Commission Act is stated to be *“An Act to make miscellaneous provisions relating to the functions of the Electoral Commission under the Constitution and to provide for other related matters.”*

In the enactment of the Electoral Commission Act, Parliament took cognisance of the importance of the role of the Commission under Article 61 (f) and included section 15 of the Electoral Commission Act which provides for the powers of the Commission in the resolution of complaints as follows:

“15. Power of the commission to resolve complaints; appeals.



- (1) Any complaint submitted in writing alleging any irregularity with any aspect of the electoral process at any stage, if not satisfactorily resolved at a lower level of authority, shall be examined and decided by the commission; and where the irregularity is confirmed, the commission shall take necessary action to correct the irregularity and any effects it may have caused."**

The provision above shows that the electoral process contains many stages; the stages of course include the process of registration of voters which is emphasised in Article 76 of the Constitution, and the actual conducting of the elections; polling. There are others such as demarcation of boundaries, nomination and tallying. At any of these stages complaints may arise and the Commission may be called upon to intervene where an irregularity or illegality is perceived or found.

The compilation, maintenance, revision and updating of the voters' register is a stage and a continuous process during which complaints or objections may arise. Section 25 of the Electoral Commission Act provides for the display of copies of the voters rolls and objections to the rolls. It states that before any general election is held, the Commission shall by notice in the Gazette appoint a period of not less than 21 days during which a copy of the voters' roll for each parish or ward shall be displayed for public scrutiny.

Further provision is made for the display of the rolls in the case of a by-election, for 10 days and an allowance of 6 days is given for any objections or complaints about the names of voters included in the voters' rolls. Section 25 (3) to (9) of the Electoral Commission Act provide for the process of resolving the objections and complaints as follows:

- (3) During the period of the display of the voters roll under this section, any person may raise an objection against the inclusion in the voters roll of any name of a person on grounds that the person is not qualified to vote or to be registered as a**

- voter in the constituency, parish or ward or that the name of a person qualified to vote or to be registered has been omitted.
- (4) An objection under subsection (3) shall be addressed to the returning officer through the chairperson of the parish council of the person raising the objection.
 - (5) The chief magistrate of a magisterial area or magistrate grade 1 appointed by him or her shall appoint a tribunal comprising five members not being public officers to determine objections received by the returning officer under subsection (4)
 - (5a) The tribunal shall comprise of –
 - (a) two elders one female and the other male;
 - (b) three other members who shall be appointed by the Chief magistrate or magistrate Grade 1 in consultation with political parties or organisations participating in the elections in the area.
 - (6) In this section “an elder” means a person of sixty years or age or above.
 - (7) The following shall apply to decisions of a tribunal appointed under this section-
 - (a) all decisions shall as far as possible be by consensus;
 - (b) in the absence of a consensus on any matter, decision on it shall be taken by vote, each member having one vote, and none having a casting vote;
 - (c) in case of voting, any matter shall be taken to have been decided if supported by the votes of a majority of members of the tribunal present and voting.
 - (8) Any decision of a tribunal appointed under subsection (5) shall be subject to review by the commission.
 - (9) The members of the tribunal shall elect from among themselves a chairperson and a secretary.

According to section 25 (8), the Electoral Commission has the mandate to make the final decision with regard to complaints and objections about persons that qualify to vote who are included on or excluded from the voters' rolls.

Consequently, in any election process be it for a general or by-election, the register is crucial to the success of the election. The right to vote is established by being entered on the register. The acts of compiling,

maintaining, revising and updating the register fall in the first stage of organising both general and by-elections in Uganda.

As to whether Article 64 (1) applies to complaints that arise during the actions of compiling, maintaining, revising and updating the register, Article 64 (1) provides that:

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

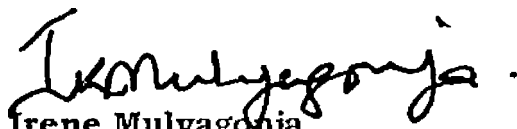
I have already stated that complaints about compiling, maintaining, revising and updating the voters register are subject to the powers of the Electoral Commission to deal with complaints under Article 61(1) (f) of the Constitution. It therefore follows that decisions of the Electoral Commission on review of the decisions of the Tribunal appointed under section 25 (5) of the Electoral Commission Act may be appealed against to the High Court under Article 64 (1) of the Constitution.

And if that is the case, why did the petitioner not appeal against the decision of the Electoral Commission for omitting his name from the new register, after the purported retirement of the old, and against the refusal to reinstate it upon his complaint? It is my view that this was because the petitioner did not complain about the omission at the time that the rolls were displayed in his parish or ward. He states that at some point before he put in his application to be nominated he was taken ill and so could not follow the processes of the Commission before he applied to be nominated to stand as Member of Parliament.

But that is not the main question as to the interpretation of the Constitution in this petition that is required under Article 137 (3) (a) of the Constitution for interpretation by this court. The main question that had to be determined was whether the Electoral Commission had the mandate to retire the entire voter's register and create a new one.

LM.

My learned brothers Madrama and Kakuru, JCC have dealt with the question in detail and conclusively. I entirely agree that the act of retiring the register is not included among the powers conferred on the Electoral Commission under Article 61 of the Constitution. The Electoral Commission's actions were therefore *ultra vires* its powers granted in the Constitution and therefore unconstitutional. The actions curtailed the constitutional rights of the petitioner to vote and participate in the elections as a contestant for a seat in Parliament contrary to Article 38 (1) of the Constitution. For those reasons, this petition should succeed.


Irene Mulyagonja

27-04-2021

JUSTICE OF APPEAL/CONSTITUTIONAL COURT

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**THE REPUBLIC OF UGANDA,
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO 004 OF 2016**

**1. NOBERT MAO}
2. CHAPTER FOUR}PETITIONERS**

10

VERSUS

**1. ATTORNEY GENERAL}
2. ELECTORAL COMMISSION}RESPONDENTS**

CORAM:

HON. MR. JUSTICE RICHARD BUTEERA, DCJ

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HON. MR. JUSTICE KENNETH KAKURU, JCC

HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE, JCC

HON. MR. JUSTICE CHRISTOPHER MADRAMA, JCC

HON. LADY JUSTICE IRENE ESTHER MULAYGONJA, JCC

JUDGMENT OF JUSTICE CHRISTOPHER MADRAMA, JCC

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The Petitioners filed this petition under Article 137 (1), (3)(a)(b), (4) & (7) of the Constitution and the Constitutional Court (Petitions and References) Rules based on the grievance of that the second Respondent refused to nominate the first Petitioner for election as a Member of Parliament for Gulu Municipality in the 2016 general elections on the ground that the first

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Petitioner was not a registered voter. The omission of the first Petitioner's name came about pursuant to the act of the second Respondent to retire the old voters' Register which had the first Petitioner's name and based on a new voters' Register compiled from data from the National Identification Register thereby omitting to include the first Petitioner's name on the

30

voters' Register for the 2015 – 2016 General Elections.

5 The Petitioners aver that in the course of preparing the National Voters' Register, the second Respondent omitted the names and registration of several people across the country whose registration were on the previous register as voters. This was on account of their failure to register for National Identity Cards.

10 The Petitioners sought the following reliefs namely:

1. Declarations that:

- 15 a) The second Respondent's act of not recognizing the first Petitioner and other persons who possess voters' cards and voter Identification Numbers issued by itself contravenes Article 28(1), 42, 44, 59(1), (3) and 61(e) of the Constitution.
- b) The second Respondent's act of unlawfully removing the first Petitioner from the voters' Register is inconsistent with Articles 28(1), 42, 44, 59(1), (3) of the Constitution.
- 20 c) The second Respondent's act of declining to reinstate the first Petitioner to the voters' Register contravenes Article 59(1) and (3) of the Constitution.
- d) The second Respondent's act of declining to nominate the first Petitioner for election as a Member of Parliament for Gulu Municipality for purposes of the 2016 Parliamentary Elections contravenes Article 80(1) of the Constitution.
- 25 e) The second Respondent's act of purporting to retire the voters' Register used for the 2011 general elections contravenes Articles 61 (a) & (e) of the Constitution.
- f) The second Respondent's act of purporting to import data from the National Identification and Registration Authority or any other sources into the Voters' Register contravenes Articles 61 (e) and 62 of the Constitution.
- 30 g) The action of requiring the first Petitioner to produce a National Identity card for nomination purposes contravenes Articles 61 (e), 62 and 80 of the Constitution.
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2. Orders:

- 5 a) Compelling the second Respondent to recognize the first Petitioner and any other person bearing a voters' card and voter Identification number previously issued by the second Respondent as a registered voter and as eligible to vote and participate in the electoral process in its entirety.
- 10 b) Compelling the second Respondent to nominate the first Petitioner for election as a Member of Parliament for Gulu Municipality for purposes of the 2016 Parliamentary elections.
- 15 c) Restraining the second Respondent from conducting parliamentary elections for Gulu Municipality without the nomination and participation of the first Petitioner as a candidate.
- d) Compelling the second Respondent to set aside and refrain from using any alleged register compiled from data from other sources other than the data originated by the second Respondent.
- 20 e) Compelling the second Respondent to reinstate the voters' Register utilized for the 2011 general elections as the proper register to be used for the 2016 general elections.
- f) That the Respondents pay costs of the petition.

25 The petition is supported by the affidavits of the first Petitioner, Norbert Mao, and Nicholas Opiyo, an Advocate and Team Leader of the second Petitioner.

The facts deposed to in the first Petitioner's affidavit are as follows.

30 The first Petitioner participated in the electoral process of Uganda for over twenty years having first voted in the Constituent Assembly elections of 1994 where he was a candidate for Gulu Municipality. Before nomination, he registered as a voter and he has been on the voters' Register since then. He voted in the general elections of 1994, 1996, 2001, 2006 and 2011. On the 17th August, 2005, the second Respondent issued the first Petitioner with a voters' personal Identity Card No. 11051709 under location code number 05027020401 which were never been recalled. The first Petitioners polling station is Holy Rosary A located at Queens Avenue Parish, Laroo Sub-County, Gulu Municipality Constituency in Gulu District.

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5 The first Petitioner name was removed from the Voters' Register by the second Respondent who later declined to re-enter his name on the Voters' Register in the circumstances stated below.

On second December 2015, the first Petitioner presented himself for nomination as a candidate for the parliamentary seat of Gulu Municipality and also paid the nomination fees. He duly filled and returned the nomination forms in compliance with the electoral law but to his dismay, was informed by the second Respondent that he could not be nominated because he did not have a National Identity Card. The Petitioner lodged a complaint with the second Respondent and was invited by the EC for a hearing on 10th December 2015. At the hearing, he learnt that the second Respondent retired the previous Voters' Register used in the 2011 general elections. The second respondent based decisions on a new Voters' Register compiled from data sourced from the National Identity Card register. On 14th December 2015, the first Petitioner was informed by letter from the second Respondent that he could not be nominated because he was not a registered voter.

In the further affidavit in support of the petition Mr. Nicholas Opiyo, on behalf of the second Petitioner deposed that the second Respondent's act of retiring the Voters' Register and replacing it with a new voters Register compiled from data from the National ID registration project was without constitutional or other legal basis and contravened the constitutional mandate of the second Respondent. He asserts that the retirement of the Voters Register deprived many people who had been previously registered with the second Respondent but whose names were not reregistered in the new register of the right to vote as they had not registered for issuance of National Identity cards.

In reply, the first respondent opposed the petition and in the answer to the petition contends that Article 61 (1) (e) of the Constitution and Sections 12 (f) and 18 of the Electoral Commission Act give a mandate to the second Respondent to compile, maintain, revise and update the National Voters' Register on a continuous basis. Pursuant to Article 79 (1) of the Constitution,

5 Parliament enacted the Registration of Persons Act which was passed on
26 March, 2015 with the objective of harmonizing and consolidating the law
on registration of persons in Uganda. Under section 65 (2) thereof, the
Electoral Commission may use the information contained in the National
10 Identification Register to compile, maintain, revise and update the Voters'
Register. The first respondent contends that the act of the second
Respondent of retiring the old Voters Register used in the 2011 general
elections and compiling a new one do not contravene Articles 28 (1), 42, 59
(1) & (3), and 61 (e) of the Constitution. The acts were compliant with Article
15 61 (1) (e) of the Constitution and Section 18 (1) of the Electoral Commission
Act. Further, the first Respondent contended that Section 66 (2) of the
Registration of Persons Act which requires the mandatory use of National
Identity cards for identification of voters instead of the voters' cards is not
inconsistent with or in contravention of Article 61(e), 62 and 80 of the
Constitution.

20 The first Respondent's Answer to the Petition is supported by an affidavit of
Josephine Kiyingi, a Principal State Attorney in the first Respondent's
chambers that majorly reproduces the contents of the first Respondent's
Answer to the Petition on oath.

The second Respondent's Answer to the Petition is that its mandate is to
25 compile, revise and update the Voters' Register and that its act of retiring
the National Voters' Register used in the 2006 and 2011 general elections
was legitimate and did not violate any provisions of the Constitution.
Secondly, the second Respondent set the period between 2nd July, 2015
and 11th August, 2015 for display of the updated National Voters' Register
30 where it attended to and addressed all complaints relating to the Voters'
Register but the first Petitioner did not raise any complaint in the set period.
Further, the first Petitioner could not be nominated because he was not a
registered voter.

The second Respondent's Answer to the Petition is supported the affidavit
35 of Eng. Dr. Badru M. Kiggundu, the Chairperson of the second Respondent
at the time of filing the petition who also mainly repeated the averments in

5 the second Respondent's Answer to the Petition on oath and attached some correspondence that are self-explanatory.

Representation

At the hearing, the Petitioners were represented by learned Counsel Mr. Peter Walubiri and learned Counsel Mr. Robert Kirunda while the first
10 Respondent was represented by learned Counsel Mr. Geoffrey Wangolo Madete, Senior State Attorney. The second Respondent was represented by learned Counsel Mr. Kugonza Enock. With leave of court, counsel addressed the court in written submissions that they filed on court record.

Petitioners' submissions

15 The Petitioners raised the following issues for determination by this Court.

- 1) Whether the second Respondent's act of not recognizing the first Petitioner and any other person who possess voters' cards and voter Identification numbers issued by the second Respondent as registered voters and as such, eligible to participate in the electoral
20 processes of Uganda as they so wish is inconsistent with and contravenes Article 28(1), 42, 44, 59(1), (3) and 61(e) of the Constitution?
- 2) Whether the second Respondent's act of unlawfully removing the first Petitioner from the voters Register is inconsistent with and in
25 contravention of Articles 28(1), 42, 44, 59(1) & (3) of the Constitution?
- 3) Whether the second Respondent's act of declining to reinstate the first Petitioner to the voters Register is inconsistent with and in contravention of Article 59(1) and (3) of the Constitution?
- 4) Whether the second Respondent's act of declining to nominate the
30 first Petitioner for election as a Member of Parliament for Gulu Municipality for purposes of the 2016 Parliamentary Elections contravenes and is inconsistent with Article 80(1) of the Constitution.
- 5) Whether the second Respondent's act of purporting to retire the
35 voters' Register used for the 2011 general elections is inconsistent

- 5 with and in contravention of Articles 61(a) & (e) of the Constitution.
- 6) Whether the second Respondent's act of purporting to import data from the National Identification and Registration Authority or any other source into the Voters' Register is inconsistent with Articles 61(e) and 62 of the Constitution.
- 10 7) Whether the action of requiring the first Petitioner to produce a National Identity card for nomination purposes is inconsistent with and in contravention of Articles 61(e), 62 and 80 of the Constitution.

The Petitioners' counsel submitted that the rules of interpretation of the Constitution as set out in decisions of this court and the Supreme Court include the following. The Constitution is the Supreme law of the land and any other law that is inconsistent with or in contravention of the Constitution is null and void to the extent of its inconsistency (See Article 2(2) of the Constitution and **Rtd Dr. Col. Kiiza Besigye v Y.K. Museveni, SC Presidential Election Petition No. 2 of 2006.**)

20 Secondly, in determining the constitutionality of legislation, its purpose and effect must be taken into consideration (See **Attorney General v Salvatore Abuki, SC Constitutional Appeal No. 1 of 1998.**)

25 Thirdly, the entire Constitution has to be read together as an integral whole with no particular provision destroying the other but each sustaining the other (See **Paul K. Ssemwogerere & Anor. V Attorney General, SC Constitutional Appeal No. 1 of 2002** and **The Attorney General of Tanzania v Rev. Christopher Mtikila [2010] EA 13**).

30 Fourthly, a constitutional provision declaring a fundamental human right is a permanent provision intended to cater for all times and should be given a dynamic, progressive, liberal and flexible interpretation in light of the ideals of the people, their social economic and political cultural values so as to extend the benefit of the same to the maximum possible (See **Okello Okello John Livingstone & 6 others v The Attorney General & Anor, Constitutional Petition No. 1 of 2005**, and **South Dakota v South Carolina 192, USA 268, 1940**).

5 Furthermore, where words or phrases are clear and unambiguous, they must be given their primary, plain, ordinary or natural meaning and where the language used is imprecise or ambiguous, a liberal, general and purposive interpretation thereof should be given (see **Uganda Revenue Authority v Siraje Hassan Kasura & others, SCCA No. 9 of 2015**).

10 Lastly, the history of the Country and the legislative history of the Constitution are relevant to constitutional interpretation (See **Okello Okello John Livingstone & 6 others v The Attorney General & Anor, Constitutional Petition No. 1 of 2005**)

15 The Petitioner's Counsel submitted that the wording of Article 61 (e) of the Constitution is clear and unambiguous and must therefore be construed in its natural and ordinary sense. The word "**compile**" according to **Blacks' Law Dictionary, Fifth Edition**, page 149 means the 'bringing together of pre-existing statutes in the form in which they appear in the books, with the removal of sections which have been repealed and substitution of amendments in an arrangement designed to facilitate their use.' Further,
20 the **Little Oxford Dictionary 9th Edition** states that 'to compile' is to 'produce a book, record etc. by bringing together material from different services.' Counsel further referred to the dictionary meanings ascribed to the words 'maintain, revise and update:

25 "**Maintain**" is defined by the **Black's Law Dictionary, Fifth Edition, page 490** *inter alia* as 'the acts of reports and other acts to prevent or decline, lapse or cessation from existing state or conditions... hold or preserve in an existing state of condition **Little Oxford Dictionary 9th Edition** defines it to mean 'keeping something in the same state or at the same level.'

30 "**Revise**" according to **Black's Law Dictionary**, (supra) at page **686** means to 'review and re-examine for correction'. **Little Oxford Dictionary** (supra) defines it as 'an examination of something to decide whether changes are necessary.'

35 "**Update**" according to **Little Oxford Dictionary** (supra) page 773 means to make something more modern.'

5 According to counsel, from the ordinary meanings of the words given above,
nowhere in the wording of Article 61(e) of the Constitution was the second
Respondent given the mandate to 'retire' the voters Register. The ordinary
meanings of the words 'compile, maintain, revise and update' as used in
Article 61(e) of the Constitution do not give the second Respondent power
10 to retire the voters' Register. Instead it gives it the mandate to bring
together data keep it in the same state or make it more modern.

With regard to issue one, the Petitioners' counsel submitted that the first
Petitioner was possessed of all requirements to contest as a candidate for
Member of Parliament. The second Respondent had the Constitutional duty
15 under Article 61(b) of the Constitution to organize, conduct and supervise
elections and the duty to ensure that all Ugandans of 18 years and above
exercise their right to vote guaranteed under Articles 59 (1), (2) and (3) of
the Constitution. Instead of facilitating the first Petitioner's right to vote, the
second Respondent failed in its duty to recognise the Petitioner as a
20 registered voter and refused to re-enter his name on the Voters' Register
in contravention of Articles 28 (1), 42, 44, 59(1) & (3) and 61(e) of the
Constitution.

With regard to issue two, counsel submitted that contrary to its duty to
compile, maintain, revise and update the Voters' Register as provided under
25 Article 61(e) of the Constitution, the second Respondent failed to maintain
the first Petitioner on the National Voters' Register. Counsel submitted that
the second Respondent contravened Article 61 (e) of the Constitution when
it retired an entire Register thereby unlawfully removing the first Petitioner
from the Voters' Register. According to counsel, the act of the second
30 Respondent of retiring the entire Voters Register and adopting a new one
renders the word 'maintain' used in Article 61(e) of the Constitution
redundant. Counsel submitted that it could not have been the intention of
the framers of the Constitution to vest the mandate in the second
Respondent to compile a new Voters Register before every general election.
35 This is why the word 'maintain' was used immediately after the word
'compile' which implies that the second Respondent's mandate is to

5 maintain the Voters Register that it has compiled and not to discard any Register. For this interpretation, counsel relied on the rule that the Constitution must be read as a whole with no provision destroying the other. The word 'maintain' and the word 'compile' have to be read together or else the use of the word 'maintain' would have been unnecessary and redundant.
10 Counsel contended that the second Respondent should have imported data from the National registration project to supplement the already existing National Voters Register. Had this been done, the first Petitioner would not have been deprived of his right to vote.

To offer an insight into the history of the provision in Article 61(e) of the
15 Constitution, counsel relied on Article 47 of the 1967 Constitution which established the Electoral Commission but did not confer on it any functions. Instead, Article 112(1) of that Constitution authorised the Electoral Commission, subject to the consent of the President, to make regulations to confer power on any officer for the purpose of discharging its functions.
20 The 1995 Constitution moved away from this by specifically prescribing functions. The framers of the 1995 Constitution sought to limit the hitherto wide powers of the Electoral Commission and the President.

The Petitioner's Counsel submitted that the first Petitioner was not given a fair hearing guaranteed under Articles 28 (1), 42 and 44 of the Constitution
25 when the second Respondent refused to re-enter his name on the Voters Register thereby depriving him of the right to vote. He referred to the first Petitioner's affidavit in support of the petition where the first Petitioner deposed that he wrote to the second Respondent on 16th October 2015 complaining about the removal of his name from the Voters Register. The
30 second Respondent replied to the letter after two weeks informing the first Petitioner that his name could not be re-entered on the Voters Register. Further, counsel contended that the second Respondent being a body conferred with powers to resolve disputes under Article 61(f) of the Constitution should have given the first Petitioner an opportunity to be
35 heard before depriving him of the right to vote.

5 With regard to issue three, counsel submitted that the second Respondent's act of declining to re-instate the first Petitioner to the Voters Register contravened Article 59 (1) and (3) of the Constitution which provides that the second Respondent has a duty to ensure that every citizen of Uganda of eighteen years of age and above has a right to vote. According to counsel,
10 the first Petitioner having been a registered voter in the 1994, 1996, 2001, 2006 and 2011 elections automatically qualified to be appear on the new voters Register for the 2016 general elections. It was not for the first Petitioner to show cause why he should be on the new voters Register but for the second Respondent to include him on the new voters Register.

15 With regard to issue four, counsel submitted that the second Respondent's act of declining to nominate the first Petitioner contravened Article 80 of the Constitution. He contended that under Article 80 (1) of the Constitution, a person qualifies to be nominated as a Member of Parliament if that person is a citizen of Uganda, is a registered voter, and has completed the minimum
20 formal education of Advanced Level standard or its equivalent. In the present case, the nomination forms provided an option for a candidate to provide either their voter ID number or National ID number. It was on this basis that the first Petitioner presented himself as a candidate after meeting all the requirements including payment of nomination fees. In the
25 premises, counsel submitted that it was unconstitutional for the second Respondent to decline to nominate the first Petitioner.

On issue five, counsel submitted that the second Respondent's act of purporting to retire the voters Register used for the 2011 general elections contravened Article 61(e) of the Constitution. He relied on the ordinary
30 meanings of the words 'maintain, compile, revise and update' from the Black's Law Dictionary which do not envisage retiring of the whole voters Register.

With regard to issue six, counsel submitted that the mandate given to the second Respondent under Article 61(e) of the Constitution is to compile,
35 maintain, revise and update the voters Register. The second Respondent's act of importing data from the National Identification and Registration

5 Authority to compile a new Voters Register contravened Article 61(e) of the
Constitution in so far as the Article does not envisage the authority to
restart the entire process by adopting a new voters Register. Further,
counsel submitted that the second Respondent had to compile its own data
to be used in the compilation or update of the National Voters Register
10 pursuant to Article 62 of the Constitution which provides that the second
Respondent shall be independent in the performance of its functions.

On issue seven, counsel submitted that it was unconstitutional for the
second Respondent to require the first Petitioner to produce a National ID
for purposes of nomination. He submitted that whereas the second
15 Respondent averred that Section 66 (2) of the Registration of Persons Act,
2015 requires mandatory use of National IDs for identification, the section
is silent on the use of voters' cards and does not in any way prohibit the use
of voters' cards.

Second Respondent's Submissions in Reply

20 Counsel for the second Respondent in reply submitted on all the seven
issues concurrently.

The second Respondent's Counsel submitted that the entire Constitution
has to be read as an integrated whole with no particular provision
destroying the other but each sustaining the other. Secondly, all provisions
25 bearing on a particular issue should be considered together to give effect
to the purpose of the instrument. Thirdly, the purpose and effect of a
provision are relevant in determining constitutionality. For these principles,
counsel relied on **Paul. K. Ssemwogerere & 2 others v Attorney General, SC
Constitutional Appeal No. 1 of 2002; South Dakota v North Carolina, 192, US
30 268 (1940) LED 448; and Attorney General v Salvatori Abuki, SC
Constitutional Appeal No. 1 of 1998**, respectively.

Counsel submitted that under Article 61 (e) of the Constitution, the second
Respondent is mandated to compile, revise, maintain and update the
National Voters Register. He relied on **Amama Mbabazi v Electoral
35 Commission & Yoweri Kaguta Museveni, SC Presidential Election Petition**

5 **No. 1 of 2016** where the Supreme Court held that there was a National Voters Register which was compiled, updated, displayed and used to conduct the 2015-2016 general elections. Further, counsel submitted that pursuant to Section 18 (1) of the Electoral Commission Act and Section 65 (2) of the Registration of Persons Act, the Electoral Commission is allowed to use
10 information contained in the Register of Persons to compile, maintain, revise and update the Voters Register.

Furthermore, counsel submitted that under Article 59(1) & (2) of the Constitution, every citizen of eighteen years and above has the duty to register as a voter for public elections and referenda. The duty is also
15 provided for under Article 17(1) (h) of the Constitution. According to counsel, the right to vote and the enjoyment of the right to vote is inseparable from the duty to register for public elections. He referred to Objective XXXIX of the National Objectives and Directive Principles of State Policy which postulates the relationship between the exercise and enjoyment of rights
20 and freedoms and the performance of duties and obligations. In view of the foregoing authorities, counsel contended that the second Respondent requested all persons who were registered for purposes of the elections prior to the 2010/2011 general elections but did not register during the enrolment exercise for issuance of National Identity Cards to register for
25 purposes of voting in the 2015/2016 general elections.

In addition, counsel submitted that the second Respondent is required to execute its mandate within specified timelines which are prescribed by law; for instance, under Article 61(2) of the Constitution, the second Respondent must conduct general elections within the first thirty days of the last one
30 hundred and twenty-two days before the expiry of the term of the President, Member of Parliament or Local Government. The second Respondent must therefore set particular timelines for purposes of proper planning, management and organization of elections. It is in this spirit that the second Respondent set timelines for display of the voters Register under Section
35 25 of the Electoral Commission Act. The display of the Voters Register is intended to admit and address any complaints arising from the Voters

5 Register. Counsel contended that the first Petitioner neglected or ignored
to execute his duty to register to vote within the prescribed timeframes
thereby forfeiting the enjoyment of his right to vote. Further, counsel
submitted that the first Petitioner could not vote since he was not a
10 registered voter. He cited section 19 (2) of the Electoral Commission Act
which provides that no person shall be qualified to vote at an election if that
person is not registered as a voter in accordance with Article 59 of the
Constitution.

With regard to the Petitioners' allegation that the first Petitioner was not
given a fair hearing, counsel submitted that the second Respondent
15 entertained and determined the first Petitioner's complaint in accordance
with Article 61 (1) (f) of the Constitution. The first Petitioner could have
appealed the decision of the second Respondent in accordance with Article
64 (1) and (4) of the Constitution but he instead opted to file this petition.

In conclusion, counsel submitted that the second Respondent's act of
20 declining to nominate the first Petitioner was justified, legitimate and not in
contravention of the 1995 Constitution.

RESOLUTION OF PETITION

I have carefully considered the grounds in the petition together with the
affidavit evidence in support as well as in opposition. The petition was
25 commenced under article 137 (1) of the Constitution for declaratory orders
that the acts of the second respondent are inconsistent with the
Constitution and its material provisions which are referred to. Article 137 (1)
of the Constitution gives this court the exclusive mandate to determine any
question as to the interpretation of the Constitution and the first question
30 should be whether there is any issue or question as to interpretation of the
Constitution disclosed in this petition.

Article 137 (1) of the Constitution confers exclusive jurisdiction on the
Constitutional Court to determine "*any questions as to the interpretation of
this Constitution*" while Article 137 (3) of the Constitution requires the

5 petition to aver the inconsistency of the act or omission or law with a provision of the Constitution. Article 137 (1) of the Constitution provides that:

(1) Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court.

On the other hand, Article 137 (3) provides that:

10 (3) A person who alleges that –

(a) an Act of Parliament or any other law or anything in or done under the authority of any law; or

15 (b) any act or omission by any person or authority, is inconsistent with or in contravention of a provision of this Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress where appropriate.

Article 137 (3) (a) covers any action to declare an Act of Parliament or any other law or anything in or done under the authority of any law inconsistent with a provision of the Constitution. On the other hand, Article 137 (3) (b) covers any action to declare any act of omission by any person or authority as inconsistent with or in contravention of a provision of the Constitution and for redress where appropriate.

25 In **Ismail Serugo v Kampala City Council & Attorney General; Constitutional Appeal No. 2 of 1998**, Prof. Kanyeihamba JSC held that there is a distinction between a consideration of whether the Constitutional Court has jurisdiction from a consideration of whether the petition discloses a cause of action. Prof Kanyeihamba JSC stated that:

30 In my opinion, the question of cause of action must be distinguished from the matter of jurisdiction. A court may have jurisdiction while the plaintiff lacks a cause or a reasonable cause of action and vice –versa. In other words, a Plaintiff may have a perfectly legitimate and reasonable cause but the court before which the plaintiff is filed lack jurisdiction, just as the court may have jurisdiction but the litigant before it lacks a cause of action.

Clearly, Prof Kanyeihamba JSC was making a distinction in line with article 137 (1) of the Constitution which gives exclusive mandate to the constitutional court to determine any question as to interpretation of the

5 Constitution and therefore giving it exclusive jurisdiction from the question
of the pleadings as required by article 137 (3) of the Constitution. Where the
constitutional court has jurisdiction in terms of article 137 (1) of the
Constitution, the petitioner is further required to have a cause of action
under article 137 (3) (a) or (b) or both, of the Constitution. This holding is
10 further clarified by Wambuzi CJ who held that it was not sufficient to allege
inconsistency of a law, act or omission. The petition must further show that
a question as to interpretation of the Constitution is involved. Wambuzi CJ
held that:

15 ... for the Constitutional Court to have jurisdiction the petition must show, on the
face of it, that interpretation of a provision of the Constitution is required. It is not
enough to allege merely that a Constitutional provision has been violated. If
therefore any rights have been violated as claimed, these are enforceable under
Article 50 of the Constitution by another competent court.

The question that remains is when interpretation of a provision of the
20 Constitution is required. This is because all courts are bound to interpret
the Constitution and to enforce it. This applies to all provisions of the
Constitution from the Bill of Rights to articles which deal with the
establishment of authorities and their powers. The keywords in establishing
whether there is a question as to interpretation of the Constitution are found
25 under article 137 (1) of the Constitution itself which has been cited above. It
means that there should be a controversy or question as to interpretation
of a provision of the Constitution involved in the petition. Where there is no
substantial question or dispute as to the meaning of statutory words, there
is no question as to interpretation of the Constitution. An attempt to clarify
30 on this was made by this court in **Hon. Ssekikubo Theodore (NRM) MP –
Lwemiyaga County and 10 Others v National Resistance Movement;
Constitutional Petition No 09 of 2019**; where the court determined what is
meant by question as to interpretation using the definition of the word
“construction” and “interpretation” from **Black’s Law Dictionary 8th Edition**
35 and held *inter alia* that:

The word *question* in Article 137 (1) means the existence of a doubt about the
meaning, scope, purpose, ambit etc. or a dispute or controversy about the

5 meaning of an Article or Articles or their application in terms of scope, ambit etc.
in short it means *a controversy as to interpretation*.

The constitutional court agreed with the aspect in the definition in **Black's Law Dictionary 8th Edition** *inter alia* about the word interpretation that:

10 Some writers treat interpretation as something which is only called for
when there is a dispute about the meaning of statutory words, while
speaking of construction as a process to which all statutes, like all other
writings, are necessarily subject when read by anyone. Others treat
15 interpretation as something which is mainly concerned with the meaning
of statutory words, while regarding construction as a process which
mainly relates to the ascertainment of the intention of legislature." Rupert
Cross, Statutory Interpretation 18 (1976).

In the above meaning, the words "construction" seems to import the
definition of the purpose of construction which is the ascertainment of the
intention of legislature. In the context of the 1995 Constitution of the
20 Republic of Uganda, the word "construction" or "construe" is purposively
used for the interpretation of existing law against the Constitution for
purposes of construing the existing law with the necessary modifications
introduced by the promulgation of the Constitution of the Republic of
Uganda in October 1995. The context of these words are made clearer by
25 article 274 of the Constitution which provides that:

274. Existing law.

(1) Subject to the provisions of this article, the operation of the existing law after
the coming into force of this Constitution shall not be affected by the coming into
force of this Constitution but the existing law shall be ***construed*** with such
30 modifications, adaptations, qualifications and exceptions as may be necessary to
bring it into conformity with this Constitution. (emphasis italicized)

(2) for the purposes of this article, the expression "existing law" means the
written and unwritten law of Uganda or any part of it as existed immediately
before the coming into force of this Constitution, including any Act of Parliament
35 or Statute or statutory instrument enacted or made before that date which is to
come into force on or after that date.

5 All courts and authorities therefore are required to construe the existing law at the time of promulgation of the Constitution in 1995 with the necessary modifications, adaptations, qualifications and exceptions as to bring it into conformity with the Constitution. In the context of article 137 (1) of the Constitution, where there is a dispute or question as to interpretation
10 of the Constitution, what is meant is clearly a dispute as to the meaning of statutory words that requires the constitutional court to determine the question for purposes of giving guidance to the courts which enforce the Constitution and to all authorities who are concerned with the interpretation and application of any provision of the Constitution. Where there is no
15 dispute as to the meaning of statutory words, any other court can construe the Constitution and apply any provision thereof for purposes of enforcement.

In my understanding of the petition, there is clearly a controversy about the scope and mandate of the Electoral Commission in enforcement of article
20 61 (1) (e) of the Constitution which gives the function of the EC to compile, maintain, revise and update the voters register. What is being challenged are the acts of the Electoral Commission for inconsistency with *inter alia* Article 61 (1) (e) of the Constitution. The first question is whether the act of retiring (which means to withdraw from use) the register fell within the
25 mandate of the Electoral Commission to compile, maintain, revise and update the voters register. For that purpose, the petitioners counsel sought to rely on the ordinary meanings of the words compile, maintain, revise, and update. On the other hand, the second respondent stated the contrary to the extent that it had the power to retire the register in its mandate to compile,
30 maintain, revise and update. The controversy becomes much more involving considering the contention of the second respondent that it invited citizens of Uganda of 18 years and above to inspect the register and failure to do so, if a name is missing, was in breach of the duties of the citizen to register to vote.

35 In the facts and circumstances of this petition, it is not in dispute that the first petitioner was a registered voter by the time the EC confirmed that he

5 was not a registered voter after omitting his name because he did not participate in the registration process under the national identification project. The project involved issuing national IDs to all citizens of majority age as well as creating a data bank. The second respondent used the data bank to update the voters' register and the question was whether they
10 maintained, or updated the register in the circumstances in which they relied on the data bank under the national identification card project run by another Ministry. Resolving this issue would lead to determination of all the issues in this petition.

I would find that there is a question as to interpretation of the Constitution that is disclosed in this petition that is substantial enough for the court to
15 consider the controversy about the mandate of the Electoral Commission in the exercise in which it had relied on the data bank of the national ID project and further invited citizens whose names were not displayed to make objections for further actions such as rectification of the register. Why did
20 it not only "maintain" the existing register and update it with occurrences in the status of registered voters that would take them out of the register or addition of new voters to the register based on an increasing population or other relevant factors such as acquisition of citizenship rights by a former alien. There are further matters to be considered in light of the jurisdiction
25 of the Electoral Commission under Article 61 of the Constitution and I refer to them in determining the petition on the merits.

I have carefully considered the written submissions in reply of the second respondent. At the end of those submissions, the second respondent raised a matter that ought to have been handled preliminarily. This is that in
30 accordance with Article 61 (1) (f) of the Constitution, the petitioner could only appeal the decision of the Commission in accordance with Article 64 (1) and (4) of the Constitution but had no right to commence an action in the Constitutional Court. The second respondent's counsel contended that upon discovering that his particulars were not on the national voters register for
35 the 2015 – 2016 general elections, the first petitioner lodged a complaint with the second respondent which was entertained and determined in

5 accordance with the Article 61 (1) (f) of the Constitution. Article 61 (1) (f) stipulates that the Electoral Commission has functions to hear and determine election complaints arising before and during polling. The complaint was determined by the Commission and the way out for the first petitioner was to appeal the decision of the Commission in accordance with
10 Article 64 (1) and (4) of the Constitution but not to file a petition in the constitutional court. Article 64 of the Constitution stipulates as follows:

64. Appeals from decisions of the Commission.

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

(2) A person aggrieved by a decision of the Commission in respect of a demarcation of a boundary may appeal to a tribunal consisting of three persons appointed by the Chief Justice; and the Commission shall give effect to the decision of the tribunal.

20 (3) A person aggrieved by a decision of the tribunal made under clause (2) of this article may appeal to the High Court.

(4) A decision of the High Court on an appeal under clause (1) or (3) of this article shall be final.

25 (5) Parliament shall make laws providing for procedure for the expeditious disposal of appeals referred to in this article.

Article 64 (1) and (4) stipulates that a person aggrieved by the decision of the Electoral Commission in respect of any of the complaints referred to in article 61 (1) (f) of the Constitution may appeal to the High Court. Secondly, it stipulates under article 64 (4) of the constitution that a decision High
30 Court, under article 64 (1) and (3) shall be final.

The way I see it, the petition of the petitioners, challenge the act of the second respondent of retiring the voters register whereupon the first Petitioner's name was cancelled or omitted and he was required to reregister as a voter again. The act of "retiring" the register had the effect
35 of denying the petitioner the right to contest for elective office or to vote. In

5 this petition, he challenges the constitutionality of the acts of the second
respondent. Secondly, the second respondent refused to nominate the first
petitioner as a candidate for the 2015 – 2016 general elections. There are
two aspects that may be considered here. The act of retiring the voters
register can be considered on its own. Secondly, the act of refusing to
10 nominate the first petitioner may also be considered on its own merit. The
common ground between the two matters is that the first petitioner was not
nominated on account of his name not appearing in the voters' register. Only
registered voters can be nominated. As a matter of law, when does
registration as a voter take place?

15 The function of the Electoral Commission under article 61 (1) (a) and (b) of
the Constitution to ensure that regular, free and fair elections are held and
secondly to organise, conduct and supervise elections and referenda in
accordance with the Constitution respectively are separate functions from
the function to compile, maintain, revise and update the voters register
20 under article 61 (1) (e) of the Constitution. This is an ongoing or continuous
process.

On the first aspect of organising, conducting and supervising elections, this
ought to be read together with the qualifications for nomination as a
candidate. Article 80 (1) (b) is clear that a person is qualified to be a member
25 of Parliament if that person is a registered voter among other qualifications
that I do need to consider. Secondly, to qualify to be nominated as a
candidate for the post of president, article 102 (c) of the Constitution gives
one of the qualifications of a candidate to be that of being a person qualified
to be a member of Parliament. It follows that the candidate has to be a
30 registered voter. A complaint on the basis of failure to nominate a candidate
is a complaint that may be determined by the Electoral Commission
according to its functions under article 61 (1) (f) which stipulates that one of
its functions is to hear and determine election complaints arising before
and during polling. Election complaints arising before and during polling can
35 only arise where the Electoral Commission has exercised its functions as
under article 61 (1) (b) to organise, conduct and supervise elections and

5 referenda in accordance with the Constitution. It has nothing to do with the function of the Electoral Commission under article 61 (1) (e) to compile, maintain, revise and update the voters register. The EC could only rely on its records to confirm whether the first Petitioner was a registered voter.

10 It follows that any complaint handled by the Commission under article 64 (1) must be related to the hearing and determination of election complaints which arose during the organisation, conduct and supervision of elections and referenda in accordance with the Constitution by the Electoral Commission. The act of compiling, maintaining and revising as well as updating the voters register is not among the acts of organising, conducting and supervising elections or referenda but is a separate act that facilitates the organizing, conducting and supervising of elections. It is stated as a separate function under article 61 and therefore is not in the category of the matters relating to election complaints arising before and during polling. In any case the acts of compiling, maintaining, revising or updating the register occurred way before the organization, conduct and supervision of elections. It ought to have been completed before organising elections on the basis of information on the voters' register

25 Further, it should be noted that the answer of the Electoral Commission that it could only nominate a person who is on the voters' register is technically correct. The Electoral Commission can only nominate a candidate who qualifies to be a member of Parliament and that is a registered voter. On the other hand, the failure of the second respondent to nominate the first petitioner on the ground that he is not a registered voter is not a preliminary matter about the right of appeal. An answer to the dispute goes to the issue of whether the second respondent failed in its duty to compile, maintain and revise as well as update the voters register. The respondent denies that it has failed in its duty and instead asserts that it is the first petitioner who failed to register himself as a voter as is his duty to do so.

35 On the other hand, the first petitioner maintains that he was a registered voter and a candidate in the general elections of 1994, 1996, 2001, 2006 and 2011. He also adduced in evidence his personal ID number 1105 1709 which

5 he contends has never been recalled. On the other hand, the second
respondent's answer is that the first petitioner ought to have participated in
another exercise involving the registration of citizens for national IDs. The
question arises as to whether the second respondent failed in its duty under
10 article 61 (1) (e) of the Constitution and the matter calls for interpretation of
the Constitution by examining articles 17 and 59 which give the duty of the
citizen to register as a voter Vis-à-vis the functions of the Electoral
Commission to maintain the register under article 61 (1) (e) of the
Constitution. Particularly those functions are to compile, maintain, revise
15 and update the voters register. It follows that what is to be examined in this
petition is not whether the first petitioner was a registered voter but
whether, the act of retiring the voters register and thereby omitting to
revise or update it with regard to the first respondent's register was a
violation of the function of the Electoral Commission and therefore in
20 breach of article 61 (1) (e) of the Constitution. This determination would
substantially resolve the Petition. In the premises, I would overrule the
preliminary objection and would further proceed to determine the petition
on the merits.

Before proceeding with the determination of the issues, I would like to refer
to the facts which are not in dispute by way of a clear background as to
25 what happened in the circumstances of the first petitioner. The first
petitioner Mr. Norbert Mao, deposed to an affidavit in support of the petition
in which he clearly states that on 17th August, 2005 during the voter update
exercise during which the photographic register was introduced, he
participated in the voters' register update exercise and the Electoral
30 Commission issued him with a voters' card with a voter personal ID number
1105 1709. However, sometime in May 2015 he went to the polling station
during the voter register display exercise and was unable to check the
register because the officials of the Electoral Commission were absent. He
thereafter called a Commissioner to whom he explained their absence from
35 their duty station. Later (in 2 days) the first Petitioner travelled to Kampala
but upon arrival was taken ill and hospitalised in IHK hospital and only went
back in July 2015. From that period until mid-October 2015 he contacted the

5 Ministry of Internal Affairs who were providing data from the National ID
Project to the Electoral Commission (EC). He established through officials
that his name was missing from the National Voters' Register.
Subsequently, he made an appointment to meet the chairman of the EC who
10 advised him to write to the Commission about the issue. Later the first
Petitioner received communications stating that the Commission was
unable to re-enter his name on the register. Subsequently, on 2nd
December, 2015 the first petitioner presented himself for nomination as a
candidate for the parliamentary seat of Gulu municipality, duly paid for and
picked nomination forms and also filled them and returned the nomination
15 forms. He identified himself with his registered voter ID issued by the EC in
August 17, 2015. The Gulu district returning officer after consulting the EC
headquarters informed the first petitioner that he could not be nominated
because he did not have a national ID.

Subsequently, the first petitioner instructed advocates who wrote a letter
20 addressed to the Electoral Commission. Of the correspondences attached
to the affidavit and of particular relevance is the fact that the first petitioner
filed a complaint in accordance with article 61 (1) (f) of the Constitution and
section 15 (1) of the Electoral Commission Act, cap 140 (as amended). In a
letter dated 3rd December, 2015, the Electoral Commission requested the
25 Gulu office to expeditiously furnish the Commission with a report on the
matter for purposes of their decision. They also indicated that the concerns
raised in the complaint would be considered on 10th December, 2015 in the
Commission Boardroom. On 14th December, 2015, the EC informed the first
petitioner that he could not be nominated because he was not a registered
30 voter thereby confirming the decision of the returning officer.

The main contention in the affidavit in support of the petition by the
petitioner is that the Electoral Commission has no powers whatsoever to
retire an entire electoral register as their mandate is basically to compile,
maintain and update the register. Secondly, by allowing the National ID
35 Project which is manned by the Uganda People's Defence Forces to take

5 charge of the voters register to update, the Electoral Commission reneged on performing its cardinal duties thereby undermining its independence.

I have further considered the affidavit in reply by Josephine Kiyingi, Principal State Attorney in the office of the Attorney General which states that the mandate of the EC under article 61 (1) (e) of the Constitution is to
10 compile, maintain, revise and update in National voters register on a continuous basis. Secondly, Parliament enacted the Uganda Registration of Persons Act on 26th of March 2015 the objective of which was to modernise and consolidate the law on registration of persons in Uganda and to provide for that registration. Under that Act, the National Identification Register and
15 an Authority were established which made it mandatory for registration of all Ugandans citizens within Uganda and abroad. Most importantly, she deposed that section 65 (2) of the Registration of Persons Act 2015 provides that the EC may use the information contained in the National Identification Register to compile, maintain, revise and update the voters register and to
20 do so was not inconsistent with and does not contravene articles 28 (1), 42, 59 (1) and (3) as well as Article 61 (e) of the Constitution. The position of the Attorney General is that the retiring the Voters Register used for the 2011 elections complies with Article 61 (1) (e) of the Constitution and it is further not inconsistent with or in contravention of Article 61 (a) and (e). The
25 respondent focused on the fact that the updating of the register using national IDs does not contravene the Constitution and therefore the petition was without merit.

As far as the second respondent is concerned, I have considered the affidavit of Engineer Dr. Badru M. Kiggundu, the chairperson of the Electoral
30 Commission. The second respondent pursuant to its constitutional and statutory mandate, carried out the exercise of updating of the National Voters Register through which the eligible citizens were requested to register for purposes of voting in the 2016 General Elections. The second respondent set 11th May 2015 as the cut-off date for the update exercise.
35 Further he deposed that the second respondent is required under the law upon completion of the update exercise to display the National Voters

5 Register for 21 days and the purpose of the display is to enable anybody to raise any objection or complaints relating to omissions from the National Voters Register. The second respondent appointed the period commencing 2nd of July 2015 up to 11th August 2015 for the display of the National Voters Register and was available for and did address objections, or omissions of
10 particulars in the register during the exercise. It follows that the first petitioner ought to have raised his objection or complaint during the update and display exercise in accordance with the law. Secondly, the right of the Petitioner was to appeal against the decision of the EC according to the law.

15 I have carefully considered the facts and the issue that emerges is clearly twofold. The first petitioner is concerned about the duty of the EC to compile and update the register. Secondly, the first petitioner is concerned about the use of the National ID data bank by the petitioner in a manner that excluded his own registration that had been made prior to the National ID Project exercise where persons were registered afresh. On the other hand,
20 the respondent is concerned about defending its right to update the register using the National ID databank. The respondent's contention is that this right is founded in the law. Secondly, the respondent raises procedural issues namely that the questions of omission from the national register were addressed through a process of display of the voters register at an
25 appointed date and the address by the EC of any omissions or objections. Further, upon the first petitioner lodging a complaint with the EC, and upon his complaint being rejected on the ground that he was not registered as a voter, he ought to have appealed as prescribed by the law.

30 Before proceeding further, I would like to make reference to the letter of the Chairperson Electoral Commission dated 20th April, 2015 on the subject of **"Progress of General Update of the National Voters Register, 2015"** and particularly paragraph B thereof which provides as follows:

B. Retiring the National Voters Register used During 2010 – 2011 General Elections.

35 Further to the Commission's Press Release dated 1st April, 2015, the Commission hereby makes the following classifications related to the General Update of the National Voters Register for purposes of the 2015 – 2016 General Elections.

- 5 i. The Electoral Commission is in the process of compiling a National Voters Register for purposes of the 2015 – 2016 General Elections, and for this purpose, extracted the data containing the particulars of registered and verified Ugandan citizens from the National Identification Register.
- 10 ii. The extracted data of the successfully verified Ugandan citizens is being displayed for public scrutiny at the respective update centres in each Parish/Ward alongside the general update exercise due to close on 30th April, 2015, having commenced on 7th April, 2015. There will be no extension of this period for the said exercise.
- 15 iii. The purpose of the general update exercise is to register eligible Ugandan citizens of 18 years and above; who are not yet registered as voters, as well as those who were not registered for purposes of issuance with a National Identity Card.
- 20 iv. All persons who registered for purposes of issuance with a National Identity Card and were successfully verified as Ugandan citizens and indicated their preferred voting location will not be required to register again during this update exercise.
- 25 v. All persons who registered for purposes of issuance with a National Identity Card are advised to check and confirm that their particulars appear at the respective update centres in the Parishes/Wards where they indicated their preferred polling stations for purposes of voting.
- 30 vi. All persons who were registered for purposes of the elections prior to the 2010/2011 General Elections and consequent update exercises conducted for purposes of by-elections, and did not register during the enrolment exercise for purposes of issuance with the National Identification Card, are required to register for purposes of voting, during the ongoing update exercise which commenced on 7 April 2015 and ends on 20th April, 2015.
- 35 vii. The Electoral Commission is updating the National Voters Register for purposes of the 2015/2016 General Elections, compiled from the extracted data of verified citizens and updated during the National
- 40

5 Update of the National Voters Register during the period 7th April, 2015 to 30th April, 2015.

10 viii. Consequently, effective 31st of March 2015, the Commission retired the 2011 National Voters Register (as updated) and accordingly, it will not be used for purposes of elections and/or referenda in 2016 and beyond."

15 It is evident from the above quoted press release that the EC was in the process of "compiling" a National voters register for the 2015 – 2016 General Elections. Secondly, the EC intended to extract data containing the particulars of registered and verified Ugandan citizens from the National Identification Register. This was expected to display the extracted data. From the affidavit of the first petitioner, it is clear that when the data was displayed, his name was not on the national register of voters however the first petitioner was taken ill and was unable to lodge any complaints or
20 objections. The issue resurfaced again when he went for nomination using his previous registration and code numbers as a registered voter in previous elections. The third point to be considered is the fact that the EC stated that effective 31st of March 2015, the Commission retired the 2011 National Voters Register (as updated). The act of retiring the voters register is being challenged.
25

What can be discerned from the above facts is that the name of the first petitioner and his details as a registered voter were omitted in the updated register after the exercise referred to in the press statement of the EC. The subsequent facts which ensued after the omission are consequences of
30 not updating the register by including the name of the first petitioner and any other Ugandan citizen on the basis of not having participated in the exercise referred to in the press release. In that exercise, the EC extracted data containing particulars registered and verified Ugandan citizens from the National Identification Register. It follows that if a person had not a registered for a National ID during a separate exercise, the person's name
35 would not be reflected in the National Identification Register. I have further considered the contention of the Attorney General that the law enabled the

5 EC to rely on the register. I would quickly refer to the law cited in the affidavit of the Principal State Attorney Josephine Kiyingi in which she cited section 65 (2) of the Registration of Persons Act, 2015 which stipulates *inter alia* as follows:

65. Use of information in the register

10 (1) The information in the register shall be used for –

(a) ...

(2) The Electoral Commission may use the information contained in the register compile, maintain, revise and update the voters register.

15 (3) For the purposes of this section, a ministry, department or agency of Government may access and use the information contained in the register.

Clearly, Section 65 (2) (*supra*) confers on the Commission discretionary powers whether to use the information contained in the register to compile, maintain and revise as well as update the voters register. It does not bar the EC from using other sources such as its old register to compile, maintain, revise and update the voters register. Further, this discretionary power can be contrasted with the mandatory use of the national identification card provided for under section 66 of the Registration of Persons Act, 2015 which provides that:

66. Mandatory use of national identification cards.

25 (1) A ministry, department or agency of government or any other institution providing a public service shall require the person accessing the service to produce a national identification number on national identification card for alien's identification number or alien's identification card.

30 (2) For the avoidance of doubt, a ministry, department or agency of government or any other institution providing the following services shall require a person to produce a national identification number on national identification card or alien's identification number or alien's identification card –

(a) employment;

(b) identification of voters; ...

5 Clearly the cited law does not make it mandatory for the EC to use the national identification project data in the register to compile, maintain, revise and updated the voters register. The only mandatory use involved is the use of national identification card to identify voters. In any case, this does not disclose a question or issue as to interpretation of the Constitution.

10 Clearly therefore, the law enables the EC to use the material data. This data can only be used to update the register and the administrative convenience for the use of the data does not absolve the EC from maintaining its existing database. It is purely a question of proper execution of its duties for the EC to ensure that the National ID project data supplemented its existing data.

15 It would in the best interest, enable it compile a new voters register using its existing voters register coupled with the national ID project data to supplement and revise the old data to come up with a new data bank.

* Obviously, the first petitioner having been a member of Parliament before cannot be considered for any conceivable reason not to be a registered

20 voter irrespective of the data. The data project is an aid and not a master of the Electoral Commission. It is surely no excuse at all to omit the name of the first petitioner and the omission if any should have been considered an error if he was able to produce his voters card.

Without much ado, it is plain that the EC failed in its duty for whatever

25 reason to maintain its data bank in which the first petitioner was clearly a registered voter. It cannot purport to have maintained its data bank of registered voters and for that reason it was erroneous for the EC to retire its data bank as this contravened its mandate to maintain a voters register under article 61 of the Constitution. The duty of the EC is clearly stipulated

30 by article 61 (1) (e) of the Constitution which provides that:

61. Functions of the Electoral Commission.

The Electoral Commission shall have the following functions—

(a) to ensure that regular, free and fair elections are held;

(b) to organise, conduct and supervise elections and referenda in accordance with this Constitution;

35

- 5 (c) to demarcate constituencies in accordance with the provisions of this Constitution;
- (d) to ascertain, publish and declare in writing under its seal the results of the elections and referenda;
- (e) to compile, maintain, revise and update the voters register;
- 10 (f) to hear and determine election complaints arising before and during polling;
- (g) to formulate and implement civic educational programmes relating to elections; and
- (h) to perform such other functions as may be prescribed by Parliament by law.

15 The function to compile, maintain, revise and update the voters register has been written in a logical order under article 61 (1) (e) of the Constitution. Compilation of names of voters is a continuous process in which new names are entered into the register. Maintenance of the register, refers to maintenance of existing data that has already been entered into the register. Revision of the register, is not only about modernising it, it

20 concerns the necessity on the basis of new and any emerging data to check and correct any errors and for any other valid reason to revise and update the register. Last but not least, to update the register has to be a continuous process in which persons attaining the age of 18 years on a monthly basis or on a yearly basis are entered on the register and persons who could have

25 died are removed from the register or any person who is no longer eligible to vote should be deregistered. The mega National ID project was a convenience to identify persons who are citizens and who fulfil the criteria to be issued with a national ID. This did not disqualify any registered voter who might have omitted to participate in the National ID project exercise. It

30 was within the discretionary powers of the EC to determine whether the first petitioner was a duly registered voter. In any case, it was a simple matter of verifying his particulars and ensuring that his name is registered as well as advising him or her to have his or her name entered in the national ID data bank for future elections. For that reason, retiring any

35 voters register is inconsistent with article 61 (1) (e) of the Constitution. In

5 any case the word “retiring” may only mean getting rid of the paper but
maintaining the information which was in the old paper or data bank in a
new register. It cannot mean commencing a new databank. This is because
the Electoral Commission is required to maintain the register. Was there a
need to register voters afresh? That is the crux of the dispute. Article 61 (1)
10 (e) of the Constitution envisages compiling of the register, which as stated
above, is a continuous process in which new names may be entered. What
has been compiled has to be maintained and revisions and updating of the
register will depend on occurrences that may lead to new registration or
deregistration. It is of crucial importance that persons who are not eligible
15 to vote such as the deceased are removed from the active list of the voters’
register which is to be kept current so that the information is not used
criminally in elections. In the case of the first petitioner and any other
eligible voter, there was no basis for their names to be removed from the
list of voters except as an administrative error in compilation of data which
20 ought to be rectified immediately it is brought to the attention of the
Electoral Commission. It is not a constitutional or sufficient reason to
contend that the names of a registered voter at the material time was not
on the national ID data bank.

I would accept the submissions of the petitioners that to do so, would mean
25 that the duty of compiling data for purposes of voters names and particulars
were shifted to another authority and this would be inconsistent with article
61 (1) (e) of the Constitution. For the same reason, Parliament in its wisdom
in enacting section 65 (2) of the Registration of Persons Act, 2015, only give
discretionary powers to Electoral Commission to use the information
30 contained in the register to compile, maintain, revise and update the voters
register. By enacting section 66 (2) (b) making it mandatory in the
identification of voters to use a national ID, this did not shift the mandate of
compiling, maintaining, revising and updating the voters register to another
authority under the Ministry of internal affairs or any other Ministry of
35 government. It was the primary duty of the Electoral Commission. Last but
not least, the issue before this court is about the duty of the EC and not
about the mandatory use of national IDs for the identification of voters. The

5 existence, compilation, maintenance and revision as well as updating of the voters' register has nothing to do with the national ID project though the national ID project is an aid for the exercise and fulfilment of the functions of the Electoral Commission.

10 I have further considered the contention of the second respondent that it was the duty of the first petitioner and any other person whose name was omitted pursuant to use of the national ID project data, to register as a voter. Article 17 of the Constitution which stipulates the duties of a citizen states as follows:

17. Duties of a citizen.

15 (1) It is the duty of every citizen of Uganda—

(a) to respect the national anthem, flag, coat of arms and currency;

(b) to respect the rights and freedoms of others;

(c) to protect children and vulnerable persons against any form of abuse, harassment or ill-treatment;

20 (d) to protect and preserve public property;

(e) to defend Uganda and to render national service when necessary;

(f) to cooperate with lawful agencies in the maintenance of law and order;

(g) to pay taxes;

(h) to register for electoral and other lawful purposes;

25 (i) to combat corruption and misuse or wastage of public property; and

(j) to create and protect a clean and healthy environment.

It is a question of fact which is not controversial that the first petitioner had been registered for the electoral process. He was issued with a voters' identification card by the Electoral Commission. He was in the register compiled by the EC as a registered voter. The EC was mandated to maintain his name on the register. The introduction of the national identification project was not sufficient to shift the burden of compiling the voters register

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5 on another authority. That duty remained on the Electoral Commission. It was up to the Electoral Commission to carry out a collaborative effort so as to use that data to carry out its mandate under article 61 (1) (e) of the Constitution. That being the case, having issued a voters' identification card to the first petitioner and any other person and having registered such
10 persons as registered voters, the information in the national ID project could be used to compile, revise and update an existing voters register which is being maintained by the Electoral Commission. Any advantages of digitalisation introduced by the National Identification Project did not shift the burden to another authority. The above findings substantially resolves
15 the petition.

The petitioners sought the resolution of the following issues namely:

1. Whether the second respondent act of not recognising the first petitioner and any other person who possesses voters cards and voter's identification numbers issued by the second respondent as
20 registered voters and as such eligible to participate in the electoral processes of Uganda as they so wish is inconsistent with and contravenes article 28 (1), 42, 44, 59 (1) and (3) and 61 (e) of the Constitution of the Republic of Uganda.

In light of the determinations above, I would answer the issue as follows:
25 the act of the second respondent of not recognising the first petitioner as a registered voter contravened article 61 (1) (e) of the Constitution because the act of the second respondent reveals that it did not maintain the register but substituted the register with the national identification project data. The national ID project data ought to have been used to update the data and not
30 to substitute it.

In terms of article 28 (1) of the Constitution, the article is not applicable to the circumstances of the petition in that article 28 of the Constitution is about the right to a fair hearing and particularly article 28 (1) deals with a fair hearing in the determination of Civil Rights and obligations or any
35 criminal charge before an independent and impartial court or tribunal

5 established by law. The failure to call any person whose names were omitted may have infringed their rights under article 42 which provides for the right to a just and fair treatment in administrative decisions. I would find that the act of omission of the names of the first petitioner and any other person could not have contravened articles 28 (1) of the Constitution.

10 With regard to article 42, I would allow the ground and find that the act of the respondent of retiring the register of voters without complying with the requirements to maintain the register and only update or revise it as and when required, contravened the rights of the first petitioner to just and fair treatment in administrative decisions. It should be noted that the First
15 Petitioner had a voters identification card and number issued by the second Respondent but the second Respondent disregarded it. The use of the national ID data to compile by substitution of the register was unconstitutional as held above. The data could only have been used to improve on the data bank of the second respondent and not to substitute it.
20 Voter identification cannot be pegged to national identification cards because circumstances may arise that disqualify a voter with a national ID. The qualifications for voting have to be assessed on the merits by the Electoral Commission. Identification of a voter using a national ID is just a method of enforcing compliance with the law that only a registered voter
25 can exercise the right to vote. A registered voter can be identified with a national ID.

However, the right to vote under article 59 (1) of every citizen of Uganda of 18 years of age or above is enforceable and the requirement for registration for the electoral process is bolstered by article 17 (1) (h) of the Constitution
30 and not by the law on identification of voters. Article 17 (1) makes it a duty on the citizen to register for electoral and other lawful purposes. The first petitioner was a registered voter and therefore complied with the purpose and intent of the Constitution to register for the electoral processes. He could not be disenfranchised because he did not participate in another
35 registration process for one reason or another since the EC had the data which it had to maintain showing that he is a registered voter. The right to

5 vote under article 59 is a fundamental right that is given force by article 1 of
the Constitution which stipulates that all power belongs to the people who
shall exercise their sovereignty in accordance with the Constitution. Article
59 is not enshrined under the Bill of Rights but enshrines a right of the
10 citizen of or above the age of 18 years to vote. Article 1 (4) of the Constitution
stipulates that the people shall express their will and consent on who shall
govern them and how they shall be governed, through regular, free and fair
elections of their representatives or through referenda. Because article 1
(4) gives the principles of the sovereignty of the will of the people, article
59 is the means by which the people express their will through regular, free
15 and fair elections. Having registered the first petitioner who pursuant to the
registration participated in several other previous elections, it was strange
if not outright unfair to deny him the right to vote on the ground that he is
not a registered voter. It was not the right basis to deny him the right to
participate as a candidate which is only based on the qualifications of being
20 a registered voter in terms of article 80 (1) (b) of the Constitution.

2. Whether the second respondents act of unlawfully removing the
petitioner from the voters' register is inconsistent with and in
contravention of Articles 28 (1), 42, 44, 59 (1) and (3) of the Constitution
of the Republic of Uganda.

25 Having answered issue number 1 in the affirmative, issue number 2 is also
answered in the affirmative.

3. Whether the second respondents act of declining to reinstate the first
petitioner on the voters register is inconsistent with and in
contravention of article 59 (1) and (3) of the Constitution of the
30 Republic of Uganda.

The acts of the second respondent which contravened the Constitution is
the act not to maintain its register. The act of declining to reinstate the first
petitioner on the voters' register was a dereliction of duty on the part of the
second respondent because it is supposed to have maintained the register.
35 The excuse that the first petitioner is not a registered voter does not hold

5 water. There is overwhelming evidence that the first petitioner was a registered voter and participated in previous elections as an elected representative of the people. I would answer issue number 3 in the affirmative.

10 4. Whether the second respondents act of declining to nominate the first petitioner for election as a member of Parliament or municipality for purposes of 26 parliamentary elections contravenes and is inconsistent with article 80 (1) of the Constitution of the Republic of Uganda.

15 The act of declining to nominate the first petitioner for election as a member of Parliament was a consequence of the failure of the second respondent to maintain the register so as to maintain his name on the register. The issue is superfluous because the act of not nominating the first petitioner was based on the register which had not been maintained. I would decline to answer issue number 4 because it is superfluous. The matter before the
20 court is whether the failure to maintain the register and the act of retiring the register was unconstitutional.

25 5. Whether the second respondents act of purporting to retire the voters register used for the 2011 general elections is inconsistent with and in contravention of articles 61 (a) and (e) of the Constitution of the Republic of Uganda 1985 (as amended)?

I have carefully considered the above issue and have already resolved it save for the issue of article 61 (a) of the Constitution which stipulates that the Commission shall ensure that regular, free and fair elections are held.

30 The question of whether the Commission ensured regular, free and fair elections cannot be determined on the basis of the issue of whether retiring the voters register was unconstitutional. It may be said that an unknown number of voters were disenfranchised. Obviously, the scale of the number of persons whose names were omitted (if many) is unknown in statistical terms or in terms of percentage. At best, the petitioners established that
35 the first Petitioner was not treated fairly through the omission of the first

5 and any other person could not have contravened articles 28 (1) of the
Constitution.

10 4. The act of the second respondent of retiring the voters register
without complying with the requirements to maintain on the register
validly registered voters and to only update or revise the voters
register as may be necessary contravened the rights of the first
petitioner to just and fair treatment in administrative decisions
enshrined in Article 42 of the Constitution.

15 5. The second respondent's act of declining to reinstate the first
petitioner on the voter's register is inconsistent with and contravened
article 59 (1) and (3) and 80 (1) (b) of the Constitution by infringing the
right of the first Petitioner to participate as a candidate in the 2016
general elections.

20 6. I decline to issue a declaration that the second respondents act of
retiring the voters register used for the 2011 general elections
contravened Article 61 (a) of the Constitution of the Republic of Uganda
1995 as there is no evidence of any scale of omissions of registered
25 voters compromising the conduct of free and fair elections.

30 7. The Electoral Commission has a right to use any national data bank
for purposes of fulfilling its mandate under article 61 (1) (e) of the
Constitution.

8. The first petitioner is awarded the costs of this petition.

Dated at Kampala the 27th day of April 2021



Christopher Madrama

35 **Justice of Court of Appeal/Constitutional Court**

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 004 OF 2016

1. NOBERT MAO }
2. CHAPTER FOUR } ::::::::::::::::::::::::::: **PETITIONERS**

VERSUS

1. ATTORNEY GENERAL |
2. ELECTORAL COMMISSION | ::::::::::::::::::::::::::: **RESPONDENTS**

CORAM:

HON. MR. JUSTICE RICHARD BUTEERA, DCJ

HON. MR. JUSTICE KENNETH KAKURU, JCC

HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE, JCC

HON. MR. JUSTICE CHRISTOPHER MADRAMA, JCC

HON. LADY JUSTICE IRENE ESTHER MULYAGONJA, JCC

JUDGMENT OF RICHARD BUTEERA, DCJ

I have had the benefit of reading in draft the Judgment of my learned brother Madrama JCC. The relevant facts giving rise to the proceedings are fully set out in the Judgment of my learned brother. I will not repeat them.

I have also read in draft the Judgments of Justice Kakuru JCC, Justice Bamugemereire JCC and Justice Mulyagonja JCC.

I respectfully do not agree with my learned brothers and the Lady Justices that the action of the 2nd respondent of not recognising the 1st Petitioner as a registered voter contravened **Article 61 (1) (e) of the Constitution** by failure to maintain its then existing register.

I will proceed to give my reasons.

The issue was:-

Whether the 2nd respondent's act of purporting to retire the Voters Register used for the 2011 General Elections is inconsistent with and in contravention of **Articles 61 (a) and (c) of the Constitution of the Republic of Uganda 1995** (as amended).

The Electoral Commission updated the Voters Register in preparation for the 2015 – 2016 General Elections. It is this exercise that forms the critical background of this Petition.

The Chairperson of the Electoral Commission issued a press statement in a letter reproduced in the Judgment of my learned brother Justice Madrama but I will reproduce it here for ease of reference.

The letter of the Chairperson Electoral Commission is dated 20th April, 2015 on the subject of **“Progress of General Update of the National Voters Register, 2015”** and particularly paragraph B thereof which provides as follows:

“B. Retiring the National Voters Register used during 2010 – 2011 General Elections.

Further to the Commission's Press Release dated first April, 2015, the Commission hereby makes the following classifications related to the General update of the National Voters Register for purposes of the 2015 – 2016 General Elections.

- i. The Electoral Commission is in the process of compiling a National Voters Register for purposes of the 2015 – 2016 General Elections and for this purpose, extracted the data containing the particulars of registered and verified Ugandan citizens from the National Identification Register.
- ii. The extracted data of the successfully verified Ugandan citizens is being displayed for public scrutiny at the respective update centres in each Parish/ Ward alongside the general update exercise due to close on 30th April, 2015 having commenced on 7th April, 2015. There will be no extension of this period for the said exercise.

- iii. The purpose of the general update exercise is to register eligible Ugandan citizens of 18 years and above; who are not yet registered as voters, as well as those who were not registered for purposes of issuance with a National Identity Card.
- iv. All persons who registered for purposes of issuance with a National Identity Card and were successfully verified as Ugandan citizens and indicated their preferred voting location will not be required to register again during this update exercise.
- v. All persons who registered for purposes of issuance with a National Identity Card are advised to check and confirm that their particulars appear at the respective update centres in the Parishes/Wards where they indicated their preferred polling stations for purposes of voting.
- vi. All persons who were registered for purposes of the elections prior to the 2010/2011 General Elections and consequent update exercises conducted for purposes of by-elections, and did not register during the enrolment exercise for purposes of issuance with the National Identification Card, are required to register for purposes of voting during the ongoing update exercise which commenced on 7th April 2015 and ends on 20th April, 2015.
- vii. The Electoral Commission is updating the National Voters Register for purposes of the 2015/2016 General Elections, compiled from the extracted data of verified citizens and updated during the National update of the National Voters Register during the period 7th April, 2015 to 30th April, 2015.
- viii. Consequently, effective 31st of March 2015, the Commission retired the 2011 National Voters Register (as updated) and accordingly, it will not be used for purposes of elections and/ or referenda in 2016 and beyond.” (Underlining is mine).

It is stated in Paragraph one of the press release, see the underlined, that the Electoral Commission extracted the data containing the particulars of registered Ugandan Citizen from the National Identification register for the purpose of compiling a National Voters Register for purposes of the 2015 – 2016 General Elections.

According to Paragraph 2, the extracted data of the successfully verified Ugandan Citizens was to be displayed for public scrutiny at the respective data centres in each Parish / Ward in the exercise that commenced on 7th April 2015 and closed on 30th April 2015.

Paragraph 3 of the press release explains that the purpose of the general update was to register eligible Ugandan citizen of 18 years and above who are not yet registered as voters as well as those who were not yet registered for the issuance of the National Identity Card.

Different activities are stated in Paragraph 4, 5, 6 and 7 for the purpose of effecting the general update exercise of the Register.

In Paragraph VIII the Commission stated: “Consequently.....” which means as a consequence of the activities in the earlier paragraphs or as a result of those activities, the Commission retired the 2011 National Voters Register and it would not be used in the 2016 referenda.

I find it appropriate to study the press release of the Chairperson of the Electoral Commission as a whole. Its purpose is explained. It was to update the register. Different activities were set out to achieve that purpose. The process took effect. The purpose and effect of the exercise should be examined in the understanding that the Electoral Commission conducted an exercise in the fulfilment of its mandate.

In Paragraph one of the Chairperson’s press release it’s stated that they extracted data from the National Voters Register. The extracted data was displayed from 7th April to 30th April 2015. People were called upon to check and if they were not on the Voters Register they would be registered.

The 1st Petitioner responded to the updating exercise. He reported to his polling station in Gulu during the Voter Register exercise display but the election officials were absent. He travelled to Kampala but was sick upon arrival and was taken ill and hospitalised. He went back in July 2015. The exercise had a deadline of 30th April 2015. In the conduct of a nationwide programme such as the updating of the National Register having deadline is only a work method that enables the institution to measure its performance over a set timeline. It is not irregular, illegal or unconstitutional to fix a deadline for the activity. By the time the 1st appellant recovered and re-started the process of putting back his name on the register it was July 2015.

My understanding is that if the 1st Petitioner had not fallen sick, taken ill and was hospitalised probably the omission of his name on the register would have been corrected and we would most probably not be having this Petition.

Article 61 (1) (e) of the Constitution states one of the functions of the Electoral Commission to be “to compile, maintain, revise and update the Voters Register”.

The Commission had the mandate to update the Voters Register. They chose a method of doing the update which method is explained in the Chairperson’s press release that is quoted above.

A different method of work is actually proposed in the Judgment of my brother Justice Madrama which stated:

“Why did it not only “maintain” the existing register and update it with occurrences in the status of registered voters that would take them out of the register or addition of new voters to the register based on an increasing population or other relevant factors such as acquisition of citizenship rights by a former alien.” (The underlining is mine).

The exercise that the Electoral Commission engaged in would enable the Commission register people who become 18 years. The exercise was also for the purpose of removing from the Register persons who died, persons who may have been on the Register illegally for example those that may be non citizen or persons who are no longer eligible to vote and should be deregistered.

Using the method that the Commission adopted those who were dead were removed from the register and so were those who got on the Register illegally.

The ones who were removed from the Register by error as was the case for the 1st appellant had opportunity to raise complaints and they would be re-instated.

If the method proposed in the Judgment of my brother Justice Madrama was the one used then all the people on the Register would all be maintained. The ones who died or got on the Register illegally would remain registered. This would result into an error that would not be easy to correct as the dead and those on the Register illegally would not volunteer and come forward to complain.

The Electoral Commission mode of operation in updating the Register should not be condemned simply because we would probably have preferred a different mode of operation.

I agree with my learned brother Justice Madrama in respect of his holding when he held in his Judgment:- “I decline to issue a declaration that the second respondents act of retiring the voters register used for the 2011 general elections contravened **Article 61 (a) of the Constitution of the Republic of Uganda 1995** as there is no evidence of any scale of omissions of registered voters compromising the conduct of free and fair elections.”

I also agree with my learned brother Justice Kakuru when he held in his Judgment that the National Voters Register was not retired. It was updated.

I would hold that the Electoral Commission conducted an update of the Register. The word “retiring” the register was used but the whole process and the activities were only a process of updating the Register. The Commission did not simply take data from the National Identification Register. It used the extracted data to update and come up with an updated Register. This was within its mandate under **Article 61(1) (e) of the Constitution**. When the updating exercise is looked at as a whole, the use of the word “retiring” which is not in **Article 61 (1) (e)** should not be over emphasised. The provisions of **Article 126 (2) (e) of the Constitution** that substantive justice shall be administered without undue regard to technicalities should be considered. Any other word other than “retiring” could have been used. What has to be considered is the exercise as a whole. Its purpose and effect was to produce an updated Voters Register and that was achieved through a process that the Electoral Commission conducted within its mandate. I would hold that Electoral Commission updated the Registered and the process of updating the Registrar did not contravene the **Article 61 (1) (e) of the Constitution**.

The 1st respondent was a registered voter who had participated in previous elections. His name was removed from the register by an administrative error. He is aggrieved by the denial of his right to participate in elections as a result. This is a grievance for which he should seek redress. Does the fact that he was aggrieved require a Constitutional interpretation?

For the legal principles that provide a guide in answering the question posed above, I would refer to **Constitutional Appeal No. 1 of 1997, Attorney General Versus Major General David Tinyefuza**, where Justice Kanyeihamba held:-

“I do believe that the jurisdiction of the Constitutional Court as derived from Article 137 (3) is concurrent with the jurisdiction of those other Courts which may apply and enforce the articles enumerated above, but there is an important distinction that I see, and that is, that for the

Constitutional Court to claim and exercise the concurrent jurisdiction, the validity of that claim and the exercise of the jurisdiction must be derived from either a petition or reference to have the Constitution or one of its provisions interpreted or construed by the Constitutional Court. In other words, the concurrent original jurisdiction of the Court of Appeal sitting as a Constitutional Court can only arise and be exercised if the petition also raises questions as to the interpretation or construction of the Constitution as the primary objective or objectives of the petition. To hold otherwise might lead to injustice and, in some situations, manifest absurdity.

Take the case of a pupil who comes late in a primary school. The teacher imposes a punishment upon the pupil who is required to clean the classroom after school hours. Can it have been the intention of the framers of the Constitution that as an alternative to the pupil's right to complain and seek redress from the head teacher or the school board of governors. The pupil would be entitled to petition the Constitutional Court under Article 37 (3) (b) on the grounds that his or her rights under Article 25 (3) have been violated in that he or she has been compelled to do "forced labour".

Wambuzi, CJ in Constitutional Appeal No. 2 of 1998, Ismail Serugo Versus Kampala City Council and Attorney General held:-

"In my view for the Constitutional Court to have jurisdiction the petition must show, on the face of it, that interpretation of a provision of the Constitution is required. It is not enough to allege merely that a Constitutional provision has been violated.

If therefore any rights have been violated as claimed, these are enforceable under Article 50 of the Constitution by another competent Court. The article provides in so far as is relevant.

"(1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation....."

In this Petition the 1st appellant is alleging that his rights were violated. He should have sought his rights to be enforced in a competent Court. I do not find that there

is an issue for Constitutional interpretation and do not therefore find that this Court has jurisdiction.

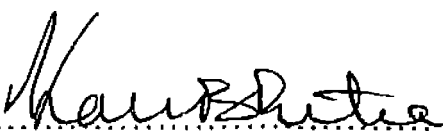
I would strike out the Petition.

I would also order each party to bear its own costs.

The majority view and therefore the decision of this Court is that the Petition succeeds. The Petition is hereby allowed.

The orders proposed in the Judgment of my learned brother Justice Madrama are the orders adopted and issued by this Court.

The 1st Petitioner is awarded costs of this Petition.

.....

Richard Buteera
DEPUTY CHIEF JUSTICE

27-04-2021

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THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO.004 OF 2016

1. NORBERT MAO

2. CHAPTER FOUR PETITIONERS

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VERSUS

1. ATTORNEY GENERAL

2. THE ELECTORAL COMMISSION RESPONDENTS

CORAM: Hon. Mr. Justice Richard Buteera, DCJ

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Hon. Mr. Justice Kenneth Kakuru, JA/JCC

Hon. Lady Justice Catherine Bamugemereire B.K, JA/JCC.

Hon. Mr. Justice Christopher Madrama Izama, JA/JCC

Hon. Lady Justice Irene Esther Mulyagonja, JA/JCC

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JUDGMENT OF JUSTICE KENNETH KAKURU, JA/ JCC

I have had the benefit of reading in draft the Judgment of my learned brother Madrama JCC. I agree with him that, this petition has merit and ought to succeed.

I would only wish to express my opinion on a few issues.

25 The question for determination in this petition is mainly whether the Electoral Commission the 2nd respondent could retire a voter's register and compile a new one the basis of information held and managed by another government agency.

The functions of the Electoral Commission are set out in Article 61 of the Constitution as follows:-

5 61. *Functions of the Electoral Commission.*

The Electoral Commission shall have the following functions—

(a) to ensure that regular, free and fair elections are held;

(b) to organise, conduct and supervise elections and referenda in accordance with this Constitution;

10 *(c) to demarcate constituencies in accordance with the provisions of this Constitution;*

(d) to ascertain, publish and declare in writing under its seal the results of the elections and referenda;

15 *(e) to compile, maintain, revise and update the voters register; (Emphasis added).*

(f) to hear and determine election complaints arising before and during polling;

(g) to formulate and implement civic educational programmes relating to elections; and

20 *(h) to perform such other functions as may be prescribed by Parliament by law.*

The history of the current electoral register was a subject of a legal debate in *Col. (RTD) Dr. Kiiza Besigye vs Yoweri Kaguta Museveni and Electoral Commission, Supreme Court Petition No. 1 of 2001*. In that petition, it was the petitioner's case that, the electoral commission had conducted the 2001 election in the absence of the
25 voters register and therefore the election was a sham. Further that, in the absence of the voters register it was impossible to determine the exact number of registered voters and therefore the ballots cast.

5 In reply thereto Mr. Kasujja, the Chairperson of Electoral Commission, deponed an affidavit in respect thereof. The relevant excerpts are reproduced in the Judgment Oder JSC at page 223 of his judgment as follows:-

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“18. That I know that a National Voters’ Register exists since 1983, when a national voters’ Register was first prepared for the purposes of the constituent assembly elections.

19. That since then the national voters’ register has been maintained up-dated to date.

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20. That before the 1996 presidential elections the national voters’ register was cleared and updated and another up-dating and clearing exercise was carried out before the referendum.

21. That for the 2001 presidential elections, the update of the register was done at village level from 11th January 2001, to 22nd January 2001.

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22. That the said update of the national register was carried out by update officers identified by parish councils, supervised by the parish chiefs and during the said update tribunals were established to handle complaints.

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23. That the said update exercise involved three components-registration of fresh applicants-registration of transferred voters and clearing of existing register by deleting dead people’s names , non-qualified voters and non-citizens.

24. That returns of the said up-date exercise were received from all Districts and entered into computers at the 2nd respondent’s headquarters.

5 25. That in February, 2001 the national voters' register was printed and displayed at polling stations in the form of voters rolls, in four components i.e. previously registered voters, the newly registered voters, the transferred voters and voters recommended for deletion for ease of scrutinizing the register.

10 From the above excerpt it is clear that, by the coming into force of the 1995 Constitution, there was in existence a National voters register. Article 61 of the Constitution commanded the Electoral Commission to maintain it, revise it and update it. This dictate is re-echoed in Section 18 of the Electoral Commission Act, which stipulates as follows:-

15 Section 18 thereof stipulates as follows:-

18. National voters' register and voters rolls.

(1) *The commission shall compile, maintain and update, on a continuing basis, a national voters' register, in this Act referred to as the voters register, which shall include the names of all persons entitled to*
20 *vote in any national or local government election. (Emphasis added).*

(2) *The commission shall maintain as part of the voters register a voters roll for each constituency under this Act.*

(3) *The commission shall maintain as part of the voters roll for each constituency a voters roll for each polling station within the constituency*
25 *as prescribed by law*

The Electoral Commission in my humble view had no power to retire the national voters register. Since the process of compiling the register had already been

5 achieved by 2001, it followed that, henceforth the Electoral Commission could only maintain and update that same register on a continuing basis. It could not retire it.

I must add that, a register is a living document that is continuously growing in nature and form but cannot cease to exist.

10 By purporting to retire a National voters' register the Electoral Commission effectively shelved it. It ceased to exist and was no longer in use. It was deleted from Electoral Commission's data base as an electronic document.

The Commission in so doing contravened Article 61(e) of the Constitution and Section 18 of the Electoral Commission Act. I find so because, act of retiring the register implied that, it ceased to be '*continuing document*' if I can use such strange
15 term. The continuing nature of the electoral register is fundamental to the whole electoral process to which the register is the pivot.

This continuing nature of the voters register is clearly set out in the Electoral Commission Act. In this regard Section 19(7) and 8) of the Electoral Commission Act stipulate:-

20 *7) When updating the voters register, the commission shall update it to a date appointed by statutory instrument in accordance with subsection (8) as the date on which the updating shall end.*
(8) Where elections are to be held by the commission, the statutory instrument referred to in subsection (7) appointing the date on
25 *which updating shall end shall be made—*
(a) in the case of all general elections, by the commission;
(b) in the case of a by-election for election to Parliament, constituency members of Parliament, district women representatives or representatives of special interest groups, by
30 *the Minister; and*
(c) in the case of a by-election to local government councils or committees, by the commission.

5 The above provision of the law in my view underscores the legal requirement of maintaining the register on a continuous basis. There are elections at all levels at all times. There are bye-elections that pop up any time in between the general elections. Therefore, the law provided for a continuous update of the voters register. Persons who turn 18 years have a constitutional right and duty to register and vote.
10 They do not have to wait until the next general election to do so.

I therefore agree with Madrama JCC that, the Electoral Commission had no legal authority to retire a voters' register.

I would go on to find that, the process of maintaining a voters' register is inseparable, from the acts of organizing, conducting and supervising elections or
15 referendum. It is one process. This is so because every election is organised on the basis that there are known qualified registered voters whose particulars are set out in a voters register.

The process of nomination, voting, tallying of votes and declaration results in an election are all premised on a valid voters register.

20 The disputes that arise from the election process especially the number of votes obtained by a candidate are premised on the voters register. In a presidential election, a successful candidate is required to obtain at least 50 percent of the votes cast. The votes cast can only be determined on the basis of the number of registered voters who cast their votes. Ultimately the voters register has to be the foundation
25 of all the results.

By retiring a voters' register and in instead using data from the National Identity Card Project the Electoral Commission abandoned its duty under Article 61 of the Constitution. It ceded its independency and therefore acted unconstitutionally.

5 I would go ahead to find that, the retiring of the voters register by the Electoral Commission is null and void as it had no legal authority to do.

The Electoral Commission should simply have updated the existing register and using information from the National Identity Card project. The voters register must be maintained independent of the National Identity card project, although the
10 Electoral Commission and Identify Card project may cooperate and share information.

The act of the Electoral Commission pending itself on the National Identity card project was inconsistent with Article 61 of the Constitution, in that it surrendered its independence to another authority.

15 The Electoral Commission must have total and absolute control of the voters register. This is its mandate and it alone can exercise it under Article 62 of the Constitution. It failed to do so.

My holding is that the National Voters register was not retired. It was only updated from the National Identity card project.

20 Therefore the person whose names were on the voters register prior to 2010/2011 general election must also appear on the current register. I suppose there exists technology to do so. To hold otherwise would be to disfranchise an unknown number of Ugandans eligible to vote. There are Ugandans such as the 1st petitioner whose names were on the 'retired' register and had participated as voters and
25 candidate in previous elections.

Lastly let me state that, registers by their very nature cannot be retired. The register of births and deaths, the Register of titles, the registration of companies, the role of Advocates and so on cannot by their very nature be retired. They can only be updated.

5 Technology will continue to evolve. But it cannot be that every time new technology comes in place, we have to reinvent the wheel.

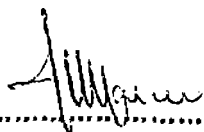
I would allow this petition on all grounds.

I would make the following orders and declarations.

- 10 1) The act of the 1st respondent purporting to retire the voters register on effective 31st March 2015 contravened Article 61 of the Constitution and was *ultra vires* Section 18 and 19 of the Electoral Commission Act Cap 140.
- 15 2) The voters register in place was used in 2000/2001 general election is the legal register of voters and the subsequent use by the Electoral Commission of the data from the National Identity card project was only part of the update.
- 3) The Electoral Commission is hereby directed to ensure that the names of all persons who were on the voters register and are still eligible to vote before 31st March 2015 be returned on to the National voters Register during the regular update process.
- 20 4) The 1st petitioner be awarded costs of this petition.

Save as set out in this Judgment I agree with the orders and declarations proposed by Madrama JCC.

Dated at Kampala this 27th day of April 2021.

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Kenneth Kakuru

JUSTICE OF APPEAL/CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA
In the Constitutional Court of Uganda at Kampala
Constitutional Petition No. 004 of 2016

1. Nobert Mao}
2. Chapter Four}Petitioners

Versus

1. Attorney General}
2. Electoral Commission}Respondents

CORAM:

HON. MR. JUSTICE RICHARD BUTEERA, DCJ

HON. MR. JUSTICE KENNETH KAKURU, JCC

HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE, JCC

HON. MR. JUSTICE CHRISTOPHER MADRAMA, JCC

HON. LADY JUSTICE IRENE ESTHER MULYAGONJA, JCC

JUDGMENT OF JUSTICE CATHERINE BAMUGEMEREIRE

I have read in draft the Judgment of my learned brother Madrama JCC. I am in agreement with his decision, declaration and orders.



27-04-2021

Catherine Bamugemereire
Justice of the Constitutional Court