

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01-CV-EP-0002/2006

KYABOOGO KAKIIZA FREDPETITIONER

VERSUS

1. TINKAMANYIRE GEORGE }

2. THE ELECTORAL COMMISSION }.....RESPONDENTS

BEFORE: THE HON. MR. JUSTICE RUGADYA ATWOKI

JUDGEMENT

The petitioner brought this petition against the 1st respondent and the 2nd respondent in respect of the election of the chairperson of Hoima district local government council.

The petitioner challenged the academic qualifications of the 1st respondent, for nomination as a candidate for district chairperson. He wrote to the 2nd respondent a complaint on 20th January 2006, contesting the academic qualifications of the 1st respondent.

The 2nd respondent after due inquiries wrote back to the lawyers of the petitioner in their letter dated 16th February 2006, stating that the 1st respondent presented at the time of nomination a certificate from the National Council for Higher Education showing that he was possessed of qualifications equivalent to ‘A’ level standard of education.

The 2nd respondent accordingly declared the 1st respondent as duly qualified to stand as a candidate for election as district chairperson. The petitioner was dissatisfied with the decision of the Electoral Commission the 2nd respondent herein and appealed to this court against that decision in this petition. It is common knowledge that the elections took place and the 1st respondent was duly elected as the Chairperson of Hoima district local government council.

Mr. Abbas Bukenya represented the petitioner, while Mr. Ham Mugenyi represented the 1st respondent. Ms Christine Kaahwa represented the 2nd respondent. The petition was brought under S.15 of the Electoral Commission Act, which provides as in part follows;

‘(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.

(2) An appeal shall lie to the High Court against the decision of the commission confirming or rejecting the existence of an irregularity.

(3) The appeal shall be made by way of a petition, supported by affidavits of evidence, which shall clearly specify the declaration that the High Court is being requested to make.

(4) On hearing a petition under subsection (2), the High Court may make such order as it thinks fit, and its decision shall be final.

(5) The High Court shall proceed and determine an appeal under this section as expeditiously as possible and may, for that purpose, suspend any other matter pending before it.

(6) The Chief justice shall, in consultation with the Attorney general, make rules for regulating the procedure in respect of any appeals under this section and may, for that purpose, adopt any procedure prescribed by any enactment, subject to such modifications as the Chief justice may specify.’

The Chief Justice has since made rules in conformity with the above provision, Statutory Instrument 141-1, The Parliamentary Elections (Appeals to the High Court from Commission) Rules. The rules were made under S.93 of the Parliamentary Elections Act.

Elections for district chairpersons are governed by and conducted under the Local Government Act. These rules above were applied to elections under the Local Government Act, by virtue of S.172 of the Local Government Act. That provision reads thus;

‘ For any issue not provided for under this Part of the Act, the Presidential Elections Act and the Parliamentary Elections Act in force shall apply to the elections of the local councils with such modifications as may be deemed necessary *by the Electoral Commission.*’ (Emphasis mine).

I am not aware that the Electoral Commission has since utilised the above provisions of S. 172 of the Local Government Act, and ‘deemed necessary’ to, and modified the application of the above laws and by necessary implication the rules made there under, to the elections of local councils.

In the absence of any indication to the contrary from the Electoral Commission, I will presume that there has not been any such modification, and therefore the Presidential Elections Act and the Parliamentary Elections Act and the subsidiary legislation made under those laws apply to the local council elections without any modification.

The petition was brought under S.15 of the Electoral Commission Act. The rules which govern petitions under that section are the Parliamentary Elections (Appeals to High Court from Commission) Rules, S.I. 141-1. I have decided that these rules apply to elections under the Local Government Act, including this petition. I will hereinafter refer to these rules simply as ‘the Rules S. I. 141-1’.

Under the Rules, S.I. 141-1, rule 12 thereof provides that,

‘ (12) Subject to these rules, the practice and procedure in respect of a petition shall be regulated, as nearly as may be, in accordance with the provisions of the Civil Procedure Act and the Rules made under it relating to the trial of a suit in the High Court.’

Under rule 15 of the Parliamentary Elections (Election Petitions) Rules, evidence in election petitions is by way of affidavit evidence. The burden of proof is on the petitioner, and the standard of proof is on a balance of probabilities. See Col. (Rtd.) Dr. Besigye Kizza V. Museveni Kaguta Yoweri & Ano. Election Petition No. 1 of 2001.

Section 15 (3) of the Electoral Commission Act provides that the appeal to the High Court be by way of petition supported by affidavit evidence. That means that the response thereto must also be supported by affidavit evidence. That was the only mode of evidence which I dealt with in this petition. It was the only evidence adduced in any event.

The petition was supported by the affidavit of the petitioner dated 3rd March 2006. The affidavit had annexed to it several documents, which I will in the course of this judgement make reference to. The 1st respondent responded with a reply to the petition supported by an affidavit in rebuttal dated 16th March 2006. The 2nd respondent replied likewise with an answer supported by an affidavit deposed by its Chairperson dated 20th March 2006. The petitioner swore an affidavit in rejoinder dated 5th April 2006.

Before going into the merits of the petition, I will consider the matter of the presentation of this petition to court. Sub rule (1) of rule 5 of the Rules S.I. 141-1, provides as follows;

‘(1) Presentation of the petition shall be made by the petitioner by leaving it in person, by or through his or her advocate, if any, at the office of the registrar within five days after the decision of the commission complained of in the petition.’

According to paragraph 3 of the affidavit in support of the petition, on 30th January 2006, the petitioner petitioned the 2nd respondent contesting the academic qualifications of the 1st respondent, annexure ‘A’ to the affidavit. The 2nd respondent replied that the 1st respondent was duly qualified to stand for the district Chairperson elections, annexure ‘B’ to the affidavit. That letter from the 2nd respondent is dated 16th February 2006. That is the decision of the Electoral Commission, from which this appeal arises.

The court record indicates that the petition was filed in court on 3rd March 2006, 15 days after the decision of the 2nd respondent complained of. That contravened rule 5(1) of the Rules S.I. 141-1, which, in mandatory terms directs the presentation of the petition to the registrar to be done within 5 days after the decision of the Electoral Commission complained of. There was no application to extend time of filing the petition. The petition was therefore filed out of time, and would for that reason alone be dismissed.

Notwithstanding the above, I will deal with the merits of the petition, for what this is worth. There was only one issue for determination by court. It was whether the 1st respondent was qualified to be nominated as a candidate for LCV Chairperson. The office of LCV Chairperson is the same as District Chairperson. In this judgement, I will use the latter nomenclature.

Section 101 of the Local Government Act (herein after referred to in the abbreviated form of LGA), vests in the Electoral Commission the duty to organise, conduct and supervise elections of local councils. Section 111 thereof provides for the election of the district Chairperson. It sets out in subsection (3) the qualifications thereof in mandatory terms. Paragraph (e) of subsection (3) provides that the person must, 'have completed a minimum education of advanced level standard or its equivalent.'

Sub section (3A) (LGA) states inter alia that a person who claims to hold a qualification, which is equivalent to advanced level standard of education, must establish this fact to the Electoral Commission at least two months before nomination day.

Section 3(B) (LGA) provides as follows;

(3B) A person required to establish his or her qualification under subsection (3A) shall do so by the production of a certificate issued to him or her by the National Council for Higher Education in consultation with the Uganda National Examinations Board.'

According to paragraph 5 of the affidavit in support of the petition, the 1st respondent presented to the 2nd respondent on nomination day a Grade III teachers certificate awarded to him by Makerere University, together with or accompanied by the certificate from the National Council for Higher Education (NCHE), annexures 'C' and 'D' to the affidavit.

The petitioner alleged in paragraph 14 of his affidavit that the 1st respondent was in possession of two certificates from Makerere University in respect of the same award, certificate No. 84-030-82, and certificate No. 84-30-82.

He averred in paragraph 9 thereof that according to the letter from the Principal of the college, annexure 'F' to the affidavit, the 1st respondent sat or re sat for the examinations in Duhaga Teachers Primary School, now relocated and renamed Bulera Core Primary Teachers College, under index No. 84-30-82.

I may add that the said letter is to the effect that according to the records available in the college, the 1st respondent passed the exams and is a fully qualified Grade III teacher. The letter is dated 28th November 2005.

The petitioner sought to prove that the 1st respondent therefore had academic papers which were forgeries, as he could not have obtained two certificates for the same qualification from the same institution. The evidence in this regard is to be discerned from the various annexures to his affidavit in support of the petition. Annexure 'E' is a letter from Kyambogo University. It is dated 27th January 2005. It is addressed to, 'The Proprietor, Tumwesige, Baingana & Co. Advocates. The letter is signed by some person signing for the Academic Registrar Dr. A.A. Cula. The subject matter is 'Grade III Teachers Certificate For Tinkamanyire George.' The letter states that the certificate in possession of the above subject is not authentic.

Two reasons are given by the author of that letter, 1st because the records did not have the names of Tinkamanyire George as a candidate for the 1986 and 1987 exams. 2nd the certificate was purportedly issued by Makerere University when in 1987, the role of conducting exams for that category of people had devolved to Kyambogo University.

The other evidence to prove that the 1st respondent did not have the requisite academic qualifications, and impugning his grade III certificate as not being authentic was from a list purportedly from the Permanent Secretary Ministry of Education, annexure 'I' to petitioners affidavit. That was the list of candidates who sat for the Grade III teachers exams in the years 1984 to 1987. The name of the 1st respondent does not appear in that list.

It was submitted that therefore the 1st respondent could not have sat or re sat exams for that course as he claimed, meaning that the certificate he tendered for his nomination was a forgery.

I will start with the letter from Kyambogo University which stated that the certificate in possession of the 1st respondent was not authentic. The Academic Registrar of Kyambogo University Dr. A.A.Cula in a letter under his own signature dated 2nd February 2005 wrote a 'To whom it may concern' letter in which he stated categorically that the person Tinkamanyire George is a Grade III teacher, trained at Duhaga Teachers Training College, under index No. 84-30-82. That he was awarded a certificate by Makerere University, and that the authenticity of such certificate should be verified from Makerere University. Dr. A.A.Cula ended by stating that any earlier communication from Kyambogo University on this matter should be disregarded.

That letter was annexure 'B' to the affidavit in reply by the 1st respondent. The petitioner in his affidavit attached annexure 'G', a letter from the Academic Registrar, Makerere University Amos Olal-Odur under his own hand and signature dated 28th December 2005 stating in no uncertain terms that Tinkamanyire George re sat and passed his examinations in 1986 and was awarded a Grade III Teachers certificate under index No. 84-30-82.

That letter was addressed to the Executive Director, National Council for Higher Education (NCHE). That would put paid to the complaint about the authenticity of the certificate in possession of the 1st respondent. This is even more so when viewed in addition to the letter from the Principal of Duhaga Teachers College dated 28th November 2005. Incidentally this was brought as annexure 'F' to the affidavit of the petitioner himself. The Principal stated that from the records available in the college, Tinkamanyire George passed his exams in 1986 and was awarded the grade III Teachers certificate, and that he was registered as a teacher by the Ministry of Education.

Annexure 'C' to the affidavit of the 1st respondent in reply to the petition was a certificate of registration from the Ministry of Education, certifying that Tinkamanyire George, 'having completed satisfactorily a teacher training course approved by the Ministry has been registered as a Grade III Trained Teacher with effect from 1st May 1986' under registration No. III/86/4202.

There was no dispute that this certificate of registration was authentic, nor was there a dispute about the authenticity of the letter from the Principal, annexure 'F' of the petitioners affidavit.

The letter of the Academic Registrar Kyambogo University annexure 'B' to the affidavit of the 1st respondent was obviously the more authentic than the rather dubious looking one, annexure 'E' of the affidavit in support of the petition. It was addressed to 'The Proprietor' of a firm of Advocates. Some unknown person signed it, and as if to try and give it some measure of authenticity, it had a date stamp on the signature, yet it was on the University headed paper, from the Office of the Academic Registrar. The date stamp did not give authenticity to the document, it created suspicion about its authenticity.

The petitioner sought to rely on a list of candidates supplied by the Ministry of Education, annexure 'I' to his affidavit. In his affidavit in rejoinder the petitioner annexed a letter from the petitioner's lawyers dated 10th February 2006 addressed to the Commissioner for Teacher Education in the Ministry of Education. The letter informed the addressee how the petitioner had lodged a complaint with the 2nd respondent against the 1st respondent regarding the 1st respondent's academic qualifications. The response of the 2nd respondent was attached.

The letter was seeking the list of candidates for Grade III Teachers Certificate for the years 1986 and 1987. That letter enclosed the purported certificate for 1987, plus the response from the Electoral Commission.

That response from the 2nd respondent was the letter appealed from dated 16th February 2006, the subject of this petition. That letter was annexed to the petition as annexure 'B', and also annexed to the affidavit in reply by the Chairperson of the 2nd respondent as annexure 'R2D'. That letter was dated 16th February 2006, *six days after* the lawyers for the petitioner had written to the Commissioner for Teacher education demanding for the lists, and allegedly enclosing the response from the 2nd respondent.

The all important question then is, where did the lawyers of the petitioner get the letter of response to the complaint, which they enclosed in theirs to the Commissioner for Teacher education, considering that it was not yet written?

What did that mean in relation to the affidavit in rejoinder, which contained an obvious falsehood, that the annexure could have enclosed a letter which was not yet written at the time the annexure was sent. The statement about enclosing the response from the Electoral Commission appears twice in that short three paragraph letter. That letter annexure 'B' to the affidavit in rejoinder tells a lie on its face.

A document annexed to the affidavit forms part of the affidavit. It forms part of the affidavit evidence sought to be relied upon by the deponent. An affidavit is serious document; it is evidence on oath. Where a lie is detected and proven in an affidavit, this invalidates the affidavit. In *Bitaitana & 4 others V. Kananura* [1977] HCB 34, it was held that inconsistencies in an affidavit cannot be ignored however minor, since a sworn affidavit is not a document to be treated lightly. If it contains an obvious falsehood, then it naturally becomes suspect. The affidavit in rejoinder could not therefore be relied on.

It is little wonder that the document which was allegedly sought and obtained from the Ministry of Education, annexure 'I' to the affidavit in support of the petition was equally, or may be even more dubious. It was such a poor photocopy, that it did not require the eyes of an expert to see that some sheets were super imposed on others during the process of photocopying. Some names or lists were apparently covered during the same process. There was nothing to show its origin, and if it had been in response to the impugned annexure 'B' in the affidavit in rejoinder, there would have been a covering letter. None was tendered, possibly none could be obtained from the same Ministry, which issued the 1st respondent with the certificate of registration as a qualified Grade III teacher, under registration No. III/86/4202, annexure 'C' to the affidavit of the 1st respondent.

The petitioner made serious allegations that the documents filed by the 1st respondent were not authentic. My own analysis clearly shows that some of the documents tendered by the petitioner were certainly lacking in authenticity. The list in annexure 'I' is one such example. One wonders why the petitioner sought the list of candidates from the Ministry of education, when he was aware of the examining body. He could have sought clarification from Makerere University, but then maybe he couldn't, considering that Makerere University confirmed vide annexure R2C of the affidavit of the Chairperson of the 2nd respondent and annexure 'G' of the petitioners

affidavit, that the 1st respondent sat the exams, passed them and was awarded the Grade III Teachers Certificate.

Alternatively, the petitioner could have sought the list from the college itself, but did not, and maybe because the college Principal also wrote confirming that the 1st respondent was, according to the records available in the college, a fully qualified Grade III teacher.

According to the affidavit of the Chairperson of the 2nd respondent, the 1st respondent presented to the Commission on nomination a certificate issued by the NCHE annexure 'D1' among the group annexure 'R2C', also annexed to the affidavit of the petitioner as annexure 'D'. This was in compliance with the provisions of S. 111(3B) of the LGA.

From that affidavit, when the 2nd respondent received the complaint, annexure 'A' to the petition, they wrote to the relevant bodies for clarification of the academic qualifications of the 1st respondent, and also informed him accordingly, annexure 'R2a'. The institutions from which this clarification was sought included the NCHE, The Academic Registrars Makerere University and Kyambogo University, and The Chairperson of Principals of T.T.C.'s in Uganda.

The NCHE responded by their letter, annexure 'R2C' dated 1st March 2006 that the 1st respondent was in possession of;

1. Uganda Certificate of Education, UNEB, 1980
2. Grade III Teachers Certificate, Makerere University, 1986.

The letter added that these documents had been verified by UNEB, and on the basis of that verification, NCHE issued him with the certificate of completion of formal education of advanced level standard or its equivalent. The NCHE also attached a letter of further verification from the Academic Registrar Makerere University. These were all annexed as group annexure 'R2C' to the affidavit of the chairperson of the 2nd respondent.

If the 1st respondent was able to forge all the above documents, or to manipulate all the officials concerned to vouch for the authenticity of his documents, he must a genius whom the district of Hoima would no doubt need to utilise in the right direction.

There were some other arguments advanced like the complaint that the certificate from the NCHE had only a single signature yet the law creating it requires that documents issued by the NCHE be authenticated by the signatures of two officials. The 1st respondent was not questioning the authenticity of the certificate. If the petitioner so queried the authenticity of that document, he ought to have sought clarification from NCHE. He did not and so has no one but himself to blame.

It was further argued that the answer to the petition by the Chairperson of the 2nd respondent indicated that the 1st respondent presented a certificate of index number 84-030-82. The affidavit of the same Chairperson which is sworn evidence, and upon which he could have been cross examined, if the petitioner had so wished, but did not, had an annexure 'R2C' which included the letter from the Academic Registrar Makerere University. This gave the index number of the 1st respondent as 84-30-82. This was the index number under which the certificate was awarded. All records tendered by the respondents had only this number.

Rules S.I. 141-1 in rule 7 enjoins the Electoral Commission upon receipt of a petition to file an affidavit in reply thereto. Sub rule (3) of the same rule 7 provides that all documents intended to be relied upon by the Commission must be annexed to the affidavit. Annexure 'R2C' were group documents annexed to the affidavit of the Chairperson of the 2nd respondent, in compliance with the above rule. That was the evidence the 2nd respondent relied on, and the only evidence the court necessarily considered. Where the petitioner therefore got the alternative document is not clear. If this was from what was termed the answer to the petition by the 2nd respondent, then that was not evidence in this petition, as it was not annexed to the affidavit.

Section 101 of the Evidence Act provides that whoever desires court to give judgement as to any right or liability dependent on the existence of the facts which he asserts, he must prove that those facts exist. The petitioner asserted that the 1st respondent was not possessed of the

academic qualifications to stand as District chairperson. The burden was on him to prove that assertion. All that he could come up with were dubious documents, whose authenticity was in serious doubt, and others, which contained obvious lies. The onus was on him, but he failed to discharge the same.

It was clear from the documents availed to the 2nd respondent that the 1st respondent was in possession of the requisite academic qualifications for standing for the election of the district chairperson.

In the circumstances, for the above reasons and for the reason I gave earlier that this petition was filed out of time, I find that this petition was lacking in merit and it is dismissed with costs to the respondents.

RUGADYA ATWOKI

JUDGE

04/05/2006.