



The brief facts are that the Petitioner was nominated by the respondent as a candidate for election of Councillor L.C. V. Kampala District on 8/11/2010. One Kasule petitioned the respondent to have the Petitioner's nomination cancelled allegedly for non compliance with the law on nomination and resignation. It was alleged that the Petitioner did not resign from Makerere University Building Unit which is an integral part of Makerere University, a public body. The respondent consequently cancelled her nomination. She learnt about the cancellation of her nomination on 7/1/2011 when her advocates went to offices of the respondent and were served a letter dated 15/12/2010 addressed to Kasule, cancelling her nomination.

The petition is supported by an affidavit in support of the Petitioner and another one in rejoinder. The respondent filed an affidavit in reply stating that the shareholders of Makerere University Building Unit were Makerere University Council and the University Secretary, hence Makerere University Building Unit was a public body. The petitioner is aggrieved and dissatisfied with respondent's decision on ground it is illegal, arbitrary, misconceived and devoid of merit. She strongly contends that her resignation was neither a requirement nor was the law breached. The law did not require her to resign as she is an employee of Makerere University Building Unit (MUBU), a private company with limited liability. She contends there was total compliance with electoral laws and no justification for cancellation.

The relevant paragraphs of the Petitioner's affidavit are 2, 3, 4, 5, 6, 7, and 8.

The Petitioner was represented by Mr. Mungoma while the respondent was represented by Abubaker Kayondo.

At the commencement of the hearing, the parties agreed to the following facts:

- 1) Makerere University Building Unit is a private limited liability company.
- 2) The Petitioner is employed by the said company as its director.
- 3) The subscribers to the said company are Makerere University Council and the University Secretary.
- 4) One Kasule James petitioned the respondent to have the petitioner disqualified on the ground that she had not resigned from the company that allegedly forms an integral part of Makerere University.
- 5) On 17/12/2010 the respondent informed the said Kasule that the candidature of the Petitioner had been cancelled.

The following issues were agreed upon:

- 1) Whether or not the Petitioner should have resigned from the Makerere University Building Unit before her nomination as L.C. V Councillor.

## 2) Remedies available to the parties.

In support of the petition, Mr. Mungoma relied on Sections 1, and 116 (1) and (5) of the Local Government Act and submitted that the petitioner was employed by a private company incorporated under S. 3 (2) (a) of the Company's Act.

Cap. 110, and S. 15 (2) of the same Act states:

***“From the date of incorporation mentioned in Certificate of Incorporation the subscribers to the Memorandum and Articles of Association together with others as may become members of the company shall be a body corporate by the name contained in the memorandum capable of exercising all functions of an incorporated company empowered to hold land and having perpetual succession and a common seal”.***

Counsel further submitted that the petitioner, who was initially an employee of Makerere University as an estimator or quantity surveyor, had transferred her services to Makerere University Building Unit Ltd, which paid her salary. Since she is employed by a private company, the requirement by S. 116 (5) did not apply to her. The respondent, therefore, acted illegally to cancel her nomination. He prayed that the decision of the respondent be set aside and her disqualification declared illegal and irregular. He further prayed that court orders that the Petitioner continues with her campaigns and the Electoral Commission's order be set aside with costs.

In reply, Mr. Kayondo submitted that the respondent disqualified the petitioner based on the evidence presented by herself at the hearing of the complaint lodged by one Kasule James on 15/12/2010, at which the Petitioner was present with the complainant. The evidence was from Makerere University Directorate of Human Resources, indicating that she was employed in Estates Department of Makerere University, a department of a public body. The letter was annexed to the affidavit in reply as Annexure C in which the author was, on behalf of the University Administration, congratulating the Petitioner upon that appointment. There is no way the respondent could conclude otherwise but that this person was employed under a public body.

Counsel further submitted that S. 116 (5) required the Petitioner to resign which she did not. She is employed by way of assignment to the Building Unit. Further, the shareholding of the company is held 50% by Makerere University Council, 50% is held by University Secretary.

Counsel contended that the use of the cover of Makerere University Building Unit being a private limited company is intended to act as a sham for the Petitioner to hide the public office she is holding. She intends to hold a political office together with the public office which the spirit of S. 116 (5) intended to prevent. Counsel concluded that the Petition lacked merit and should be dismissed with costs.

I have considered the pleadings, the submissions of learned Counsel for both sides and the law relied on. It is not disputed that the Petitioner did not resign her post of Director, Makerere University Building Unit, before contesting for Woman Councillor L.C. V, Kawempe South.

The issue is whether the Petitioner is a public officer and hence under obligation to resign that office before being nominated to compete for election to an elective office.

S. 116 (5):

*Under multiparty political system, a public officer, a person employed in any government department or agency of government, employee of local council or an employee of a body in which Government has a controlling interest who wishes to stand for office shall resign her office at least 30 days, before nomination day in accordance with procedure of the service/employment to which he or she belongs.*

So does the Petitioner fall in any of the above categories?

S.1 of the Local Government Act states:

*“Public officer means any person holding or acting in any public office”. “Public Service” means service in any civil capacity of the Government or a local Government.*  
*“Government” means the Government of Uganda.*

It is clear that the Petitioner is neither a public officer as she does not hold office in a civil capacity of the Government, or of a local government. The respondent's arguments classify the petitioner as a person who works for a public body because she works for Makerere University Building Unit which is wholly owned by Makerere University, a public body. It appears that Section 165 (5), by stating an employee of a body in which Government has a controlling interest, would not be interpreted to extend to a body in which Makerere University has a controlling interest. That is if Makerere University can be stated to have a controlling interest in Makerere University Building Unit.

It is the court's view that "Makerere University" and "Government of Uganda" are two different entities. The above being so, can Makerere University, a public body, be stated to own Makerere University Building Unit? It is not in dispute that the shareholders of MUBU Ltd are Makerere University Council and the University Secretary. Be the above as it may, the position regarding corporate entities was settled long ago mainly through judicial decisions. LCB Gower on "The principles of Modern Company law" states, page 68:

*"The fundamental attribute of corporate personality from which indeed all other consequences flow is that the corporation is a legal entity distinct from its members. Hence it is capable of enjoying rights and of being subject to duties which are not the same as those enjoyed or borne by its members."*

Further, in the celebrated case of *Salomon Vs Salomon & Co. [1897] AC 22 (HL)*, Lord Halsbury succinctly put it;

*“Either the limited company was a legal entity or it was not. If it was, the business belonged to it and not to Mr. Salomon.”*

Or, as Lord Macnaghten put it;

*“The company is at law a different person altogether from the subscribers .....; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers, as members liable, in any shape or form, except to the extent and in the manner provided by the Act.”*

Although at times, the corporate veil can be lifted to reveal who is behind the company, the court finds that this is not a case which would call for the lifting of the corporate veil. The veil is usually judicially lifted where the company in question was formed as a device, or a sham to avoid meeting legal obligations. It has not been suggested by any one that this company was formed with any dubious intentions.



The Petitioner, when asked by court revealed that even the salaries of MUBU employees don't form part of Makerere University payroll. They are paid by directly MUBU.

In conclusion and basing on my findings above and on the authorities cited, I am unable to agree that because Makerere University Council and the University Secretary subscribed to the Memorandum and Articles of Association of Makerere University Building Unit, therefore MUBU belonged to Makerere University. It is a separate legal entity.

I therefore find that the Petitioner did not fall under the categories envisaged under S. 116 (5) of the Local Government Act and was not expected to resign before being nominated to stand for the office she is vying for. The Petitioner was wrongly denominated. The decision of the respondent denominating the petitioner is, therefore, set aside and the petitioner's nomination reinstated. She is free to continue with her campaigns. The Petition succeeds with costs.

**Elizabeth Musoke**

**JUDGE**

**16/02/2011**

