

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**IN THE MATTER OF THE ELECTORAL COMMISSION ACT CAP. 140**

**AND**

**THE LOCAL GOVERNMENT ACT AS AMENDED CAP. 243 AS AMENDED**

**AND**

**IN THE MATTER OF THE PARLIAMENTARY ELECTIONS (INTERIM PROVISIONS) (APPEALS TO THE HIGH COURT FROM COMMISSION) RULES**

**SI. 141 – 1**

**ELECTION CIVIL APPEAL PETITION NO. 007 OF 2011**

The Petition was brought under S. 172 of the Local Government Act Cap. 243, s. 15 (2) (3) & (5) of the Electoral Commission Act, and Rules 4 and 5 of the Parliamentary Elections (Interim Provisions) (Appeals to the High Court from the Commission) Rules SI. 141 – 1.

According to the Petition, the Petitioner did, on 9<sup>th</sup> November 2010, lodge a complaint to the 2<sup>nd</sup> respondent challenging the nomination of the 1<sup>st</sup> respondent mainly on the grounds that she was not a registered voter and therefore could not contest for a political office in Uganda. The petitioner complains that she was aggrieved by the decision of the 2<sup>nd</sup> respondent to the effect that the 1<sup>st</sup> respondent's nomination was lawful. The petitioner prayed for the following orders:

- a) A declaration that the 1<sup>st</sup> respondent is not a registered voter in Uganda and therefore not legible to stand for any political office in Uganda.
- b) An order that the 2<sup>nd</sup> respondent nullifies and quashes the nomination of the 1<sup>st</sup> respondent as a contestant for the office of District Woman Councilor, Masindi District.
- c) A declaration that the nomination of the 1<sup>st</sup> respondent as a political contestant for the 2011 Elections is null and void.
- d) Costs of this Petition Appeal.
- e) Such further orders as the nature of the Petition may require.

The Petition was supported by an affidavit in support deposed to by the petitioner that the 1<sup>st</sup> respondent was not a registered voter at the time of her nomination because at the time of nomination she had sworn a deed poll relinquishing the use of her former name Itatume Jane (which was the name appearing on the Voter's Register) and taking on the use of a new name Bigirwenkya M. Beatrice, and that by the said deed poll the 1<sup>st</sup> respondent had relinquished all her rights in the former name and could not benefit from the use of her former name.

In reply the 2<sup>nd</sup> respondent filed an affidavit dated 10/2/2011 and deposed to by Jude Mwasia to the effect that the petition was premised on non-existing facts thus, it had no merit, was incompetent, misconceived and premature before court. The 2<sup>nd</sup> respondent prayed for the dismissal of the suit which was said to have no locus, there having been no complaint to the 2<sup>nd</sup> respondent, and hence no decision to appeal from.

The 1<sup>st</sup> respondent, on her part, filed an affidavit in reply dated 9/2/2011 in which she deposed that she was duly nominated to contest for the office of Woman Councilor, Masindi District since she had registered as a voter when she was still going by the names of Itatume Jane, and by nomination time, she had sworn a deed poll dated 9/7/2010 which she had presented on nomination to the Returning officer. The 1<sup>st</sup> respondent further deposed that it was not true that she had relinquished all her rights in her former name, and further still she had remained the same person as before the change of name. In support of the 2<sup>nd</sup> respondent's contention, the 1<sup>st</sup> respondent further averred that the clarification given by the

2<sup>nd</sup> respondent at the request of the petitioner did not amount to a decision to be appealed from.

The parties filed written submissions. The Petitioner in her submissions pointed out two issues i.e.

- 1) Whether there was no complaint from which the Petition arose.
- 2) Whether the 1<sup>st</sup> respondent was lawfully nominated.

On the 1<sup>st</sup> issue it was submitted for the petitioner that she had made a formal complaint to the 2<sup>nd</sup> respondent through the Returning Officer of Masindi, the title of which read:

***“Re: COMPLAINT AGAINST BIGIRWENKYA M. BEATRICE, BUJENJE CONSTITUENCY”  
Annexure A to the Petition).***

The last paragraph of her complaint read:

***“In light of S. 15 of the Electoral Commission Act Cap. 140, I appeal to you to cancel or nullify the said nomination of Bigirwenkya M. Beatrice”.***

And according to Section 15 of the Electoral Commission Act Cap. 140:

***“Any complaint submitted in writing alleging any irregularity with any aspect of the electoral process at any state, 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 complaint was received but the 2<sup>nd</sup> respondent's registry and the Chairman, Electoral Commission respondent to it. There was therefore a complaint and a decision to appeal from.

In response to the 1<sup>st</sup> issue, the Electoral Commission (the 2<sup>nd</sup> respondent) submitted that for an appeal to lie before this court there must be a decision of the Electoral Commission, which decision had to be by consensus failing which it had to be taken by way of voting, as provided for under Section 8 of the Electoral Commission Act Cap. 140. The complaint in issue was neither addressed to the Commission, nor was the decision taken by the Commission as per Section 8 (Supra).

The 1<sup>st</sup> respondent relied on Article 61 (f) of the Constitution which mandated the Electoral Commission to hear and determine electoral complaints arising before or during polling; and Article 64 for appeals to the High Court; and S. 8 of the Electoral Commission Act at which provides for the procedure. Since the Electoral Commission was never constituted to hear the complaint, it only made a clarification which cannot be classified as a decision. Both Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents concluded that this appeal was misconceived and premature and should be dismissed.

I have considered the petition and all its annextures plus the affidavits in reply thereto, plus the submissions of learned Counsel for all sides. I have particularly read the complaint addressed to the Returning Officer Electoral Commissioner, Masindi District dated 9/11/2011, and copied to the Secretary Electoral Commission, and the Legal Department Electoral Commission. The complaint was as per the last paragraph brought under Section 15 of the Electoral Act, and she expected the response within 7 days failing which she would appeal to the High Court.

To this court, it is clear that although the complaint was addressed to the Returning Officer, Electoral Commission, and only copied to the Electoral Commission, it was clear that it was made under S. 15 of the Electoral Commission Act, and it was meant to be addressed by the Electoral Commission. It was clear from the last paragraph that the next intended stage was the appeal to the High Court. The Electoral Commission (2<sup>nd</sup> respondent) indeed is the one which responded. The Petitioner took this as the decision. There was no way she could know that the procedures pertaining to such decisions were not adhered to as per Section 8 of the Electoral Commission Act. There is no indication that the Returning Officer ever responded to the matter.

I conclude that this complaint dated 9/11/2011 was intended to be the complaint under S. 15 of the Electoral Commission Act, and since it was responded by the Chairman of the Commission who usually signs such letters communicating decisions, the Petitioner was right to take it as the decision of the 2<sup>nd</sup> respondent, hence, had the locus to appeal to the High

Court. The answer to the 1<sup>st</sup> issue is that there was a complaint to which a decision was made and communicated to the Petitioner, and from which the Petition arose.

The second issue is whether the 1<sup>st</sup> respondent was lawfully nominated. I have considered the submission for both sides, and the pleadings and an annexures thereto. I find that the 1<sup>st</sup> respondent was registered as a voter by the names of Itatume Jane. She later on in 2010 swore a deed poll by which she renounced any future use of that name and chose to be known henceforth by the name of Bigirwenkya M. Beatrice.

So, was the failure to change the name on the Register from Itatume Jane to Bigirwenkya M. Beatrice fatal?

I would think not. First of all, the swearing a deed poll would not make the 1<sup>st</sup> respondent forfeit all the rights attached to the former name of Itatume Jane. I would liken this to assuming a new name when one's academic certificates are all in that person's former names. Assuming the new name would not mean that the person who assumes the new name thereby relinquishes all rights to the academic certificates acquired in the old names, or that he/she has to go back to the various institutions to have all the certificates changed to the new name. The deed poll, when is duly registered, would suffice to show the whole world that the person going by the newly assumed name indicated in the deed poll is also the owner of the

certificates. The same would go for the voter's card which the 1<sup>st</sup> respondent acquired in her original names of Itatume Jane. She did not loose her rights to the voter's card. All she had to do was to present herself for nomination with her voter's card which is still in the old names and then submit her deed poll to show that she is now going under a new name for purposes of all acts subsequent to the deed poll, the deed poll proves that she is one and the same person on the register under the old name. Although the 1<sup>st</sup> respondent relinquished use of the name of Itatume Jane, she did not relinquish all rights acquired by her as Itatume Jane. She continues with those acquired rights only that she now has to use a different name.

Further, it has not been alleged that the voter who was known as Jane Itatume is a different person from Bigirwenkya M. Beatrice.

I therefore find that the nomination of the 1<sup>st</sup> respondent was lawful. The prayers in the petition are not granted.

The appeal is therefore dismissed with costs to the respondents.

**Elizabeth Musoke**

**JUDGE**

**21/02/2011**