

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT JINJA**  
**ELECTION PETITION NO. 0017 OF 2011**

**NABUKEERA HUSSEIN HANIFA:.....PETITIONER**

**VERSUS**

**1. KIBUULE RONALD**

**2. ELECTORAL COMMISSION:.....RESPONDENTS**

**BEFORE: THE HON. MR. JUSTICE LAMECK N. MUKASA**

**Representation:**

Mr. Ambrose Tebyasa

Mr. Geoffrey Odur Ojok

Mr. John Mary Mugisha

Mr. Ochieng Evans

Mr. Ddungu Henry

Court clerk

Mr. James Luwambo

}  
of Counsel for the Petitioner

of Counsel for the 1<sup>st</sup> Respondent

of Counsel for the 2<sup>nd</sup> Respondent

**RULING:**

At the Scheduling Conference the 1<sup>st</sup> respondent sought to rely on 20 affidavits or affirmations. That is 16 affidavits in reply and 4 affidavits in sur rejoinder.

Mr. Tebyasa, Counsel for the Petitioner objected to the admission of 18 of the Respondent's affidavits on the ground that the said affidavits did not comply with the provisions of Section 5 of the Commissioner for Oaths (Advocates) Act, Cap 5. Counsel submitted that for an affidavit to be admitted in evidence it has to specifically and strictly

conform to the provisions of the above section. He argued that the contested affidavits contravene the said provisions in that they did not disclose the name of the person before whom the oath or affirmation was taken. He submitted that the jurat lacked the identity of the person before whom the oath was administered.

All the contested affidavits, in the jurat part indicated as either sworn or affirmed:

***“ Before me: .....***

***Commissioner for oaths/Magistrate . “***

A signature is scribbled on the space where the Commissioner for Oaths/Magistrate should have signed but the corresponding name of the officer who affixed his signature is not disclosed.

On top of the signature is affixed the seal of the Chief Magistrates’ Court of Mukono. The signature of the person before whom oath was apparently taken appeared the same on 16 of the contested affidavits and the remaining two appear to be taken before another but same person.

Counsel submitted that the jurat is what makes an affidavit different from other documents. That an affidavit with a defective jurat is not an affidavit in law but merely a document like any other document. He argued that the format of the jurat contains a space where the person administering the oath is required to insert his name. He

submitted that an affidavit which lacks the mandatory disclosure of the officer administering oath is incurably defective and cannot be admitted in evidence.

Counsel cited the judgment of Hon. Justice Benjamin Odoki, CJ in Col.(Rtd) Dr. Besigye Kizza vs Museveni Yoweri Kaguta and Electoral Commission. S.C. Election Petition No. 1 of 2001 and Ateker Ejalu vs. Ramzaral Hashan Mitha , Soroti HC Misc. App. No. 7 of 2007.

Section 5 of the Commissioners for Oaths (Advocates) Act provides:

*“Every Commissioner for Oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made”*

Rule 9 of the Commissioners for Oaths Rules provides:

*“The forms of jurat and of identification of exhibits shall be those set out in the third Schedule of the these Rules”*

The form of format is:

**“Sworn/Declared before me;**

.....**this.....day of .....20.....at.....**

.....

**Commissioner for Oaths”**

The Commissioner is supposed to fill in his name, then the date and place, then his signature.

Section 6 of the Oaths Act provides similarly as section 5 above. Mr. Tebyasa further submitted that most of the contested affidavits had photocopies of Voters Cards attached to them in contravention of Rule 8 of the Commissioners for Oaths Rules. It provides:

***“All exhibits to affidavits shall be securely sealed to the affidavits under the seal of the Commissioner and shall be marked with serial letters of identification”***

The annexed photocopies were not so marked. Counsel argued that, the purpose is to clearly identify the exhibits and documents annexed with the affidavit so as to confirm that the affidavit evidence is also contained in the documents thereto annexed.

Counsel submitted that these were major defects which go to the root of the affidavits and thus rendering the affidavits incurably defective. He invited Court to strike out the affected affidavits.

On his part Mr. Mugisha, Counsel for the 1<sup>st</sup> Respondent, argued that there is no requirement under Section 5 above to give the name and title of the officer before whom an oath or affirmation is taken. He submitted that the essential requirements are to state the place and date, which was complied with in the instant case.

Counsel further argued that it was incumbent upon the petitioner to adduce evidence to prove that the person who administered the oath or affirmation was not qualified to do so. Mr. Mugisha also cited the Besigye vs. Museveni Election Petition (Supra) and took court through the respective Judgments of the five Justices in respect to the issue at hand. He also cited a number of other authorities but I will only refer to those relevant to the issue before me.

In Ateker Ejalu vs Mitha (supra) one the objections was that the affidavit in support of the application is inconsistent for offending the provisions of the Commissioners for oaths (Advocates) Act. Hon. Justice Musota made the following findings:

***“ Under S.5 thereof it is provided that every Commissioner for oaths before whom any oath or affidavit is taken or made, shall state truly in the jurat or attestation at what place and what date the oath or affidavit was taken or made. This is not stated in the supporting affidavit. The affidavit simply has a signature and the stamp of the Chief magistrate’s court of Soroti. Further to this, the affidavit refers to the annexures which are not identified and or marked as required by law. This offends Rule 9 of the Schedule to the Commission of Oaths (Advocates) Act.***

***The omissions render the entire affidavit and annexures bad in law and incompetent.....”***

His Lordship struck out the affidavit which rendered the application incompetent. The omissions in the above case were multiple. The name of the Commissioner, place and date were not given and the annexures not identified.

In the Besigye vs Museveni Petition the 1<sup>st</sup> Respondent's affidavit did not indicate the name or title of the person before whom it was made. It merely contained a signature and the seal of the High Court. It was submitted for the 1<sup>st</sup> Respondent that the signature was that of the Registrar of the High Court, Mr. Gidudu who had power to administer an affidavit by virtue of his office. Mr. Gidudu subsequently made an affidavit confirming that he is the person before whom the affidavit was sworn. Hon. Justice Odoki CJ held:

***“ ..... the Registrar's jurat fulfilled the essential requirements of the jurat namely the place and date the affidavit was made. But it should have included his name and title to strictly comply with the Form of jurat contained in the Schedule. The lack of proper form was however cured by the affidavit sworn by Mr. Gidudu. Accordingly the objection raised against the affidavit sworn by the 1<sup>st</sup> Respondent had no merit”***

I have carefully considered the holdings of the other Lordships on the issue. They are all to the effect that the essential requirement under section 5 of the Commissioners of Oaths (Advocates) Act is to state the place where and date when the oath or affirmation is taken or made. In the instant case this requirement was complied with. However Hon. Justice Odoki adds the requirement to strictly comply with the form of the jurat which also requires the inclusion of the name and title of the person before whom oath or affirmation

was taken. This is lacking in the instant case. However the above case is authority for the holding that such omission is curable.

In that case all the justices found that the omission to name the officer who had administered the oath had been cured by the subsequent affidavit sworn by Mr. Gidudu wherein he averred that the contested affidavit had been administered by him.

Also in Suggan vs. Roadmaster Cycles (U) Ltd [2002].EA 25 an affidavit was not dated. Justice Mpagi – Bahigeine JA (as she then was) held that it is trite that defects in the jurat or any irregularity in the form of the affidavit cannot be allowed to vitiate an affidavit in view of Article 126(2)(e) of the 1995 Constitution, which stipulates that substantive justice shall be administered without undue regard to technicalities. That a judge has powers to order an undated affidavit to be dated in court or that the affidavit be re-sworn before putting it on record and may penalize the offending party in costs.

In Mbayo Jacob Robert vs. EC and Talonsya Sinan CA Election Petition Appeal No. 07/06 Byamugisha JA stated:

***“ In the case of Kizza-Besigye (supra), the Supreme Court held that election petitions are very important and therefore courts should take a liberal view of the affidavits so that a petition is not defeated on technicalities”***

As regards failure to seal and mark the annexures in Egypt Air Corporation t/a Egypt Air Uganda vs. Suffish International Food Processors Ltd & Anor SCC Application No. 14 of 2000 the Justices of the Supreme Court stated:

***“We would like to point out that sealing and marking of annexures to affidavits is a legal requirement which, inter alia,***

***facilitates the easy identification of annextures and in our view  
the procedure must be adhered to”***

But due to the peculiar circumstance of the proceedings before the court the Honorable Justices reluctantly treated the omission to comply with the requirements to the Commissioner for Oaths (Advocates) Act all its Scheduled regulations as a technicality, Curable under Article 126(2)(e) of the Constitution as it was felt that the failure did not occasion any injustice.

All the above judgments are building on this Honorable Court. Mr. Mugisha at the close of his submissions, applied to this court, in the alternative, to allow the 1<sup>st</sup> Respondents to file supplementary affidavits by the Officers before whom oaths or affirmations were made to aver to their participation.

I have carefully considered the able and eloquent submissions of Counsel for both parties. I find that the defects complained of are curable and Petitions are matters of public interest which should be considered liberally. In view of the peculiar circumstances of the matter before me, where the oaths or affirmations were apparently administered by officers of this Honorable Court, as evidenced by the Seal of the Chief Magistrate’s Court Mukono affixed thereon, whose omissions should not be unjustifiably visited on the respective deponents, I hereby find that the defects complained of are curable.

I accordingly order that the 1<sup>st</sup> Respondent should file supplementary affidavits by the respective Court Officers before whom oath or affirmation was respectively made. This order must be complied with before the next hearing of this petition.



The costs occasioned to the petitioner by these preliminary objection proceedings shall be borne by the 1<sup>st</sup> Respondent in any event.

I so order.

**LAMECK N. MUKASA**  
**JUDGE**  
**30/5/2011**