

IN THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT LUWERO
IN THE MATTER OF THE PARLIAMENTARY ELECTIONS ACT, 2005
AND PARLIAMENTARY ELECTIONS RULES
AND
IN THE MATTER OF ELECTIONS FOR MEMBER OF PARLIAMENT FOR
BAMUNANIKA CONSTITUENCY
ELECTION PETITION NO. 3 OF 2021
MATABI CHRISTOPHER PETITIONER

V

1. ROBERT SSEKITOLEKO
2. ELECTORAL COMMISSION.....RESPONDENTS

BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

RULING

Introduction

1. By a petition filed on March 16, 2021, the petitioner Matabi Christopher petitioned this court in his capacity as a registered voter, for the nullification of the parliamentary elections results for Bamunanika constituency in which the first respondent Robert Ssekitoaleko polled 27,850 votes as against 24,463 polled by Dr. John Chrysostom Muyingo, making Robert Ssekitoaleko the duly elected Member of Parliament for the constituency.
2. Both parties had appeared before me on August 18, 2021 and had agreed to schedule the case among themselves so on August 30, 2021, I was expecting a signed joint scheduling memorandum. Instead, counsel Segona for the first respondent, who was appearing before me for the first time, indicated that the joint scheduling memorandum had not been concluded and that he had preliminary points of law to raise.
3. This Ruling is therefore on two preliminary points of law raised by counsel for the first respondent. The first point speaks to the competence of the petition and the second is on whether the petition discloses a cause of action. Counsel Segona for the first respondent grounded his preliminary objection in para. 2 of the answer to the petition in which the first respondent gives notice he would raise a preliminary objection to the effect that the petition is incompetent and that

it does not disclose a cause of action. In the course of his submissions, counsel for the first respondent conceded that the second leg of the objection is partly based on uncertified DR forms which speaks to questions of admissibility and evaluation of evidence during the actual trial and therefore the uncertified DR forms cannot be a ground for arguing that there is no cause of action.

4. The other leg of the preliminary objection of failure to disclose a cause of action is the omission to give particulars of the offence of bribery and omission to state that the election irregularities complained of affected the outcome of the election in a substantial manner. I shall revert to this aspect of the preliminary objection later. For now, I shall address the question of competence of the petition.

Competence of the petition

5. Relying on section 60 of the Parliamentary Elections Act 17 of 2005 (PEA), counsel for the first respondent submitted that the petition was incompetent because, the petitioner being a registered voter, had not attached a list of not less than 500 registered voters as required by section 60(2) (b) of the PEA. Counsel for the petitioner contended that it was not enough for the petitioner to provide signatures of citizens in the constituency but that these had to be registered voters and on the face of it, the list contains NIN numbers and not voter location slip numbers. Counsel further submitted that the petitioner had not availed the voters registers as proof the petitioner's supporters were registered voters in the constituency. It was the contention of counsel for the first respondent that this proof of registration status had to be submitted on presentation of the petition, which was not done and that subsequent production of the voter's register cannot validate an otherwise incompetent petition. He cited several authorities in support that I shall discuss later in the Ruling.
6. In response to this objection, counsel for the petitioner submitted that proof of registration status is a matter of evidence and this cannot be determined as a preliminary point of law. Furthermore, that the petitioner had applied to the Electoral Commission for evidence of registration status of the 500 supporters and counsel for the Electoral Commission confirmed this position.
7. Under section 60, only two categories of persons have capacity to file an election petition, namely, a candidate who loses an election or a registered voter in the constituency supported by signatures of not less than five hundred voters registered in the constituency in the prescribed manner. The current petition was filed by a registered voter Matabi Christopher who attached a list of over five hundred signatures of his supporters.

8. In Election Appeal No. 62 of 2016, **Namujju Dionizia Cissy and another v Martin Kizito Sserwanga**, the trial court had found that the required 500 signatures fell short by 31 signatures resulting in 469 signatures in support of the petition, but found these sufficient for purposes of section 60(2)(b) of the PEA, arguing that to hold otherwise would be to enslave justice to procedure. Incidentally, this is the very argument advanced by counsel Oryem for the current petitioner.
9. On appeal, the Court of Appeal held that the restriction in section 60(2)(b) is intended to restrict persons who could file election petitions so as to eliminate vexatious litigants and moreover, these had to be five hundred or more signatures, with proof they are registered voters.
- 10 In the petition before me, there are over 600 signatures as submitted by counsel for the petitioner from the bar but the snag is I do not have prima facie proof they are all registered voters from Bamunanika constituency. The only information for many of the signatures is a name, and NIN number provided in the column under the heading 'voter's No. Clearly, the petitioner knew of the importance of the voter's number but instead only NIN numbers are recorded in the column. The petitioner availed annexure A, his voter location slip that bears both the NIN and a voter number. In addition, I counted affidavits in support contained in a bundle filed on April 12, 2021 and only twenty eight (28) supporters deposed affidavits to affirm their support for the petition and provided proof of their status as registered voter.
- 11 In response to the submission of counsel for the petitioner that whether the 500 supporters are registered voters is a matter of evidence to be determined during the trial. In fact, it is a preliminary issue to be dealt with before the hearing. At this stage it is not about admissibility of evidence of registration status but whether each of the supporters have confirmed their support for the petition by affidavit, a copy of the identity card and a voter location slip prior to scheduling. Whether these are authentic is a matter of evidence during the trial. The Court of Appeal in **Namujju v Sserwanga** made this very clear when, the Hon. learned justices held, and I quote:

'By enacting section 60(2) (b) of the Parliamentary Elections Act, Parliament intended to restrict persons who could file election petitions so as to eliminate vexatious litigants and ensure that the one who comes to court is serious and his action is supported by a sizeable number of voters in the constituency. It is not only the number that has to be 500 or more voters, there must be proof that they were registered voters from the constituency. Further, the names of the voters must be shown together

with the voters' identity card numbers, the polling station, the district and the voters must sign the list.'

- 12 Therefore, this proof must be filed together with the petition and must be available when the case comes up for scheduling.
- 13 Regarding the affidavits that accompanied the petition filed on March 16, 2021, seven persons deposed affidavits and attached their voter location slips but, these deponents only attested to the grounds of the petition and even if they had appeared on the list of supporters, this would bring the total of registered voters to thirty five (35).In the absence of prima facie proof for each of the remaining 465 supporters is a registered voter in Bamunanika constituency , the petition is supported by only approximately 35 registered voters contrary to the required minimum of five hundred registered voters.
- 10 Counsel for the first respondent submitted that this proof ought to have been availed together with the petition or soon thereafter and he objected to the sur rejoinder filed by the petitioner on August 30, 2021 in which the petitioner attests to the availability of proof of registration status of his supporters.
- 11 I agree with counsel for the first respondent that the affidavit in sur rejoinder filed on August 30, 2021 that makes reference to a request to the Electoral Commission to avail certified voters register was filed outside Rule 15 of the Parliamentary Elections Rules. As held in **Election Petition Appeal No. 43 of 2016 Mutembule Yusuf v Nagwomu Moses Musamba and Electoral Commission**, a petitioner may file affidavits in rejoinder to respond to issues raised in affidavits in reply by the respondents. In this case, the petitioner failed to raise his defenses in the affidavits in rejoinder and is now belatedly pleading for time to provide proof of registration status of his supporters. Even if this affidavit in sur rejoinder were to remain on record, it stands without supporting documents because the letter to EC requesting for proof of registration status of the voters does not show when it was received by the EC while the proof of registration status of the voters is not annexed to the affidavit although it is identified in para. 6 thereof as annexure C.
- 10 The doctrine of stare decisis, binds me to follow the precedent of **Namujju Dionizia Cissy v Martin Kizito Sserwanga** that pronounced that section 60 (2) (b) is a special procedure that must be followed strictly and failure to comply cannot be taken lightly. In the absence of verification by the petitioner that all the five hundred signatures were by registered voters in Bamunanika constituency, the petitioner has no locus standi to bring this petition and it is struck out for being incompetent with costs to the first respondent.

11 Regarding the preliminary objection grounded in failure by the petitioner to provide particulars of the offence of bribery and the omission by the petitioner to state clearly that the irregularities complained of affected the results in a substantial manner, this specific preliminary objection is now moot, having struck out the petition for being incompetent.

DATED AT KAMPALA THIS 31ST DAY OF AUGUST, 2021


LADY JUSTICE HENRIETTA WOLAYO

Legal representation

Byamugisha Gabriel, Okello Oryem Alfred and Omoroi Ivan are for the Petitioner.

Counsel Merdald Lubega Segona, Kigenyi Emmanuel, Sekanjako Abubaker, Kato Absolom, Kayuki Edward are for the 1st Respondent.

Counsel Barata Enock is for the second respondent.

August 31, 2021

9 a.m

Ivan Omoloi and Okello Oryem for the petitioner

Enock Barata for the second respondent

Sekanjako, Higenyi Emmanuel and Kato Absolom for the first respondent

Court clerk: Imelda Naggayi

Court : Ruling delivered in open court.

Lady Justice Henrietta Wolayo