

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
ELECTION PETITION NO. 0007 OF 2006

SSENYONDO GERALD M.K. :: PETITIONER

VERSUS

1. KIDDU BONNY SSALI

2. ELECTORAL COMMISSION :: RESPONDENTS

BEFORE: HON. MR. JUSTICE P. K. MUGAMBA.

JUDGMENT.

On the 10th March 2006 elections for Local Council III Chairman for Lukaya Town Council were held after which the 1st Respondent, Kiddu Bonny Ssali, was declared winner of the contest, an event published in the Uganda Gazette of 11th May, 2006, pursuant to section 137 (1) of the Local Governments Act. Besides the 1st Respondent other contestants had been Ssenyondo Gerald M.K., the petitioner and Ssentongo Edward. The Petitioner disputes the results of the elections at Kamuwunga Polling Station and the manner the electoral exercise at the polling station was carried out. It is contended the defects in the exercise at the polling station were substantial and that they affected the outcome of the results in the entire Town Council in a substantial manner. For the record it should be mentioned that Kamuwunga Polling Station was one of the fourteen polling stations in Lukaya Town Council.

It is stated in paragraph 4 of the petition that the entire electoral process at Kamuwunga polling station was characterised by acts of lack of freedom and transparency, unfairness, commission of various electoral offences, illegal practices and or acts in contravention of the Electoral Commission Act, the Local Governments Act and the Uganda Constitution. It is contended that contrary to section 12 (1) (e) and (f) of the Electoral Commission Act, the second respondent failed to conduct the elections at Kamuwunga polling station fairly and/or transparently when:

- (i) The agents and/or servants of the 1st and 2nd respondents falsified and/or manipulated the election results at Kamuwunga polling station by declaring results different from

those that had been obtained immediately after vote counting at Kamuwunga Polling Station.

- (ii) Different declaration of results sheets were signed by the presiding officer for Kamuwunga polling station and copies of the different declaration of results are attached to the Petition as C1, C2, and C3.
 - (iii) The Returning Officer declared results different from those that had been obtained and filled in some of the declaration of results forms immediately after vote counting at Kamuwunga polling station.
 - (iv) The ballot boxes containing the votes cast were carried away in a motor vehicle Reg. No. UCR 137 Toyota Corolla belonging to one Mukasa a supporter and/or an agent of the 1st respondent together with other supporters of the 1st respondent leaving behind the policeman and/or security officer who had been deployed to guard the entire voting exercise at the said polling station.
-
- (b) Contrary to section 12 (1) (j) of the Electoral Commission Act Cap 140, the 2nd respondent failed to ensure compliance by the election officers with the provisions of the Electoral Commission Act and the Local Governments Act.
 - (c) Contrary to section 13 of the Electoral Commission Act, the 2nd respondent failed to act independently when the ballot box containing votes cast was carried away in a motor vehicle belonging to one of the supporters and/or agent of the 1st respondent.
 - (d) Contrary to section 166 (2) of the Local Governments Act the 2nd respondent failed and/or refused to recount the votes after a complaint had been lodged immediately
 - (e) Contrary to section 136 (4) of the Local Government Act the 2nd respondent failed and/or refused to announce the results of the voting at Kamuwunga polling station before communicating to the returning officer.

The Petitioner alleges further that the 1st Respondent either personally or through his supporters/agents committed illegal practices and offences stated to be:

- (a) In connivance with his agents and officers of the 2nd respondent he falsified and or manipulated the results and made wrong returns of elections at Kamuwunga polling station contrary to section 167 of the Local Governments Act.

The petitioner contends that the 1st respondent should be held liable for the offences and illegal practices. The petitioner prays also for the following reliefs:

- (a) ***A declaration that the 1st respondent was not validly elected as chairperson L.C. III for Lukaya Town Council.***
- (b) ***Nullification or cancellation of the election results for Kamuwunga polling station.***
- (c) ***A declaration that the petitioner is the validly elected L.C. III Chairperson for Lukaya Town Council.***
- (d) ***Costs of the Petition be recovered from the respondents.***

The petition is supported by an affidavit sworn by the petitioner himself as well as two others, each by one of his agents. The affidavits have annexures to them. In their respective replies both respondents contended there had been no wrong doing in the exercise and that the elections had been carried out properly. Affidavits to that effect accompanied the answers to the petition.

It was agreed at the scheduling conference that evidence contained in the various affidavits submitted would be relied upon in deciding this petition. Also agreed were the following issues.

1. Whether the elections held on 10th March 2006 complied with the relevant electoral laws and principles.
2. Whether such non compliance affected the results of the elections in a substantial manner.
3. What remedies are available to the parties.

It is contended by the Petitioner that the results of voting at Kamuwunga polling station were subjected to manipulation and falsification. It is his evidence the 1st respondent had obtained 95 votes, one Ssentongo had obtained 53 votes while the Petitioner himself had obtained 68 votes. This is the position illustrated in Annexure C to the petitioner's affidavit and annexure A to the affidavit of Ssemanda. It is also the evidence of the petitioner the results were later manipulated to

read as illustrated by Annexure E to the petitioner's affidavit. The latter results show the 1st respondent obtained 112 votes, one Ssentongo obtained 53 votes while the petitioner got 51 votes. There is yet another annexure which is Annexure D to the petitioner's affidavit. This is bereft of any results on the occasion. The two agents of the petitioner at Kamuwunga polling station, namely Nalukenge Mayi and Ssemanda Bashir in their respective affidavits narrate what transpired at the polling station, on the day of the elections. It was from those two agents the petitioner got what information he did regarding what happened. It was also from the two agents the petitioner says he got two different declaration of results forms (DR Forms). The testimonies of the two agents merit scrutiny.

Nalukenge Mayi swore her affidavit in support of the Petition on 24th May, 2006. She avers she was one of the two polling agents for the petitioner at Kamuwunga polling station for elections held on 10th March, 2006 for Chairperson L.C.III Lukaya Town Council. Paragraph 2 of her affidavit states that Matovu Grace William who was the presiding officer at the polling station instructed all agents for the candidates to sign declaration of results form for the polling station during voting hours. She adds in subsequent paragraphs of her affidavit:

- ‘ 3. THAT immediately after the voters had cast their votes, vote counting started and the results of the elections at the said polling station were filled in some of the declaration of results forms that had been signed by all the agents leaving others blank.
4. THAT the declaration of results form that I received was one of those that had not been filled in with the results of the election at the said polling station at Kamuwunga and I delivered the same to my candidate. Copy of the said declaration of results form is attached marked “A”.
5. THAT immediately after vote counting, the petitioner polled 68 (sixty eight) votes against 95 (ninety five) votes for the First respondent and 53 (fifty three) votes for Mr. Ssentongo Edward at the said Kamuwunga polling station.
6. THAT I was surprised to learn and or learn that results that had been declared indicated that the petitioner had polled 51 (fifty one) votes against 112 (one hundred twelve) votes for the first Respondent and 53 (fifty three) votes for Mr. Ssentongo Edward at the said polling station.

7.
.....

8. THAT I verily believe that the results for the said Kamuwunga polling station were falsified and/or manipulated by the agents of the first and second respondents by filling in the declaration of results forms results that were different from those that had been obtained immediately after vote counting.
..... ‘

The blank form referred to in paragraph 4 of Nalukenge’s affidavit is the same as Annexure D to the affidavit of the petitioner. The Petition also relies on the evidence of Ssemanda Bashir. His affidavit is dated 24th May, 2006. Paragraph 2 of the affidavit states that on the day of the elections for Chairperson of L.C.III and during voting hours they signed several declaration of results forms ‘under the instruction of the presiding officer one Mr. Matovu Grace William’. The affidavit goes on to state:

3. THAT immediately after the voters had cast their votes, vote counting started and the results of the elections at the said polling station were filled in some of the declaration of results forms.
4. THAT my candidate SSENYONDO GERALD M.K. the petitioner polled 68 (sixty eight) votes, the First respondent polled 95 (ninety five) votes and Mr. Ssentongo Edward polled 53 (fifty three) votes immediately after vote counting at Kamuwunga polling station.
5. THAT the above results were immediately entered in some of the declaration of results form in the presence of all the polling agents a copy of which I obtained and the same is attached hereto marked “A”.
6. THAT I delivered the said copy to my candidate the Petitioner.
7. THAT I was surprised to learn later that the results for Kamuwunga polling station that had been declared were different from the above stated results under paragraph 4 hereof that had been obtained by the respective candidates.

8. THAT the said results were manipulated and/or falsified to indicate that the first respondent had polled 112 (one hundred and twelve) votes, and the petitionerwith 51 (fifty one) votes and Mr. Ssentongo Edward 53 (fifty three) votes. Copy of these declaration of results form with these results different from those obtained immediately after vote counting is attached and marked "B".

9.
.....

10.
.....

11. THAT I verily believe that the said votes for Kamuwunga polling station were falsified and/or manipulated as the results that were declared by the returning officer were different from those that had been obtained immediately after vote counting at the polling station.
.....’.

I should note in passing that Annexure B referred to in the affidavit of Bashir Ssemanda is not on record. If it was one containing the results being contested there is no indication of when and where Bashir obtained it. It is not clear also when he passed on to the petitioner Annexure C1 to the petitioner’s affidavit. Was it before or after the recount? It is also not certain from Bashir’s affidavit who it was who filled in the declaration of results forms with the results apparent therein.

Indeed in paragraph 9 of the petitioners’ affidavit he deponed that his agents at Kamuwunga polling station had reported to him several electoral malpractices and illegal practices. It was reported to him for example that agents had been instructed to sign several declaration of results forms by the presiding officer before the end of vote counting and that after vote counting some declaration or results forms were not filled in. With regard to declaration of results forms section 50 of the Parliamentary Elections Act, Act 17 of 2005 should be applicable by way of S. 172 of the Local Governments Act. Section 50 (1) of Act 17 of 2005 provides that each presiding officer shall fill the necessary number of copies of the prescribed form for the declaration or results. The several relevant copies are mentioned. Section 50 (4) of the Act states that the declaration or

results form referred to in sub-section (1) shall be signed by the presiding officer and the candidates or their agents as are present and wish to do so. And the presiding officer shall there and then announce the results of the voting at that polling station before communicating them to the Returning Officer.

Matovu George William the presiding officer at Kamuwunga polling station on the occasion of the elections swore an affidavit in support of the 1st respondent's answer to the petition. At the time he swore his affidavit he had read the affidavit in support of the petition by Ssenyondo the petitioner and that by Mayi Nalukenge. In paragraph 4 of his affidavit he deponed on 1st June 2006 he stated that declaration of results forms were filled and signed after voting and counting of votes. He averred further:

5. That it is true as stated in paragraph thereof that some Declaration Forms (DR Forms) were not filled with the actual results obtained by each candidate because:
 - (a) The booklet for DR forms contained many forms in excess of the required number of copies for the 3 candidates, one to be kept at the polling station, one in the box and one for the Returning Officer to be used for tallying.
 - (b) That all candidates' agents present signed many DR Forms in excess of the required number above.
 - (c) That I gave one copy of the DR form to only one agent per candidate duly filled and signed by all agents present and 1 as the presiding officer.
 - (d) After availing each candidate's one agent with a DR Form, I found it unnecessary to continue filling the rest of the details though signed by all agents present and myself.
6. That Paragraph 4 of Nalukenge's affidavit is false because she was given one copy of the DR Form duly filled with results and signed by myself and all agents present.
7. That paragraphs 5 and 8 are false because the results I announced at the polling station were as follows:

- (a) Kiddu Bony Ssali - 112 (one hundred and twelve) votes
- (b) Ssentongo Edward - 53 (fifty three) votes.
- (c) Ssenyondo Gerald M.K – 51 (fifty one) votes.

- Total number of invalid votes - 216 (two hundred and sixteen) votes.
- Rejected (invalid) ballot papers – 4 (four)
- Total ballot paper counted - 220 (two hundred and twenty)
- Spoilt ballot papers - 0 (Zero)
- Total ballot papers issued to the polling station - 650 (Six hundred fifty)

8. That the results shown in paragraph 6 of Nalukenge’s affidavit are the true results obtained by the respective candidates which I announced and filled in all the necessary DR Forms that were duly signed by all agents and I, in the presence of many residents of the area who attended the counting of votes at the polling station.

9.

10.

11.

13.

14. That paragraphs 8 and 10 thereof are false. No results of Kamuwunga were falsified as manipulated as alleged.

15. That in reply to paragraph 7 of Ssenyondo Gerald’s affidavit the contents thereof are false because:

- (a) The petitioner did not poll 68 votes, the true votes polled by candidates are those stated in paragraph 10 of his affidavit.
- (b) A duly signed and filled DR Form was only given to one agent of the Petitioner.
- (c) Though I duly signed Annextures “C” and “D” to the affidavit of Ssenyondo Gerald M.K., and substantially filled some parts, those forms were not duly completed with votes polled by each candidate because enough DR Forms had already been completed, and these were mere excess forms.

(d) I did not fill Annextures “C” and “D” with votes polled by each candidate one agent per candidate had already obtained a complete copy of the DR Forms.

(e) The two Semi-filled forms (C & D) were kept by one of the lady agents as I did not go on and fill them since they were not necessary.

(f) The writings:

“95 NINETY FIVE”

“53 FIFTY THREE”

“68 SIXTY EIGHT”

appearing after the names KIDDU BONNY SSALI, SSENTONGO EDWARD and SSENYONDO GERALD M.K. respectively in Annexture “C” to the Petitioner’s affidavit are false and a forgery and were not written by me.

16.

17. That paragraphs 9, 10 and 11 are false, no malpractice took place at Kamuwunga polling station or anywhere else as per my earlier explanation/account of events given above.
.....’.

Besides the evidence of George William Matovu, the presiding officer, there is some other evidence that runs counter to that given on behalf of the petitioner regarding candidates’ respective results obtained at Kamuwunga polling station and the saga of the DR forms. In his affidavit in support of the answer to the petition the 1st respondent avers that the actual results he received from his agent are those confirmed by the presiding officer at Kamuwunga polling station. He got 112 votes against 53 for Ssentongo Edward and 51 for the petitioner, he averred. It is also his evidence he was never given results where he had got 95 votes against the petitioner’s 68 votes. Molisi Kulabirawo was polling agent for the 1st respondent at Kamuwunga polling station during the elections. In his affidavit sworn on 1st June 2006 in support of the 1st respondent’s answer to the petition he acknowledges the affidavit of the petitioner and the one of Nalukenge to have been read to him. He states that contrary to what was deponed by Nalukenge the declaration forms were filled and signed after voting and counting of votes. He adds that contrary to what Nalukenge deponed in paragraph 4 of her affidavit, she was given one copy of the DR Form duly filled with results and signed by all agents present together with the presiding officer. It is the evidence of Kulabiraawo that the results announced by the presiding officer showed the 1st respondent obtained 112 votes, Ssentongo Edward obtained 53 votes and the

petitioner got 51 votes. It is his evidence that he gave the DR form duly completed with the results above to the campaigner of his candidate at 10 p.m. on the night of 10th March 2006. Copy of the DR form is attached to his affidavit as 'Annexure R1 - A'. According to Kulabirawo's evidence it is not true the petitioner obtained the alleged 68 votes as the votes he obtained are those already mentioned in the affidavit. It is Kulabirawo's evidence a duly signed and filled DR form was given to Nalukenge Mayi and not to Ssemanda Bashir. It is his further evidence that the DR forms signed on the occasion were so many that it was found unnecessary to fill results into all of them. In the event, he deponed, only one agent for each candidate was given a DR form duly filled with results of voting at the polling station. Furthermore Kulabirawo avers that Annexures C and D to the affidavit of Ssenyondo in support of the petition were not duly filled with the results of the elections at the polling station because filling them with results was found unnecessary by the presiding officer and that is how Nalukenge had kept them. Another affidavit in support of the 1st respondent's answer to the petition is that of Doreen Namukasa who deponed that during the elections for Chairperson L.C. III Lukaya Town Council she was at Kamuwunga polling station as agent for Edward Ssentongo, one of the candidates. She swore her affidavit in order to reply to the affidavits of Ssenyondo and Nalukenge. Her evidence concerning votes obtained by each candidate at the polling station is similar to that of the 1st respondent, that of the presiding officer George William Matovu and that of Molisi Kulabirawo. She avers that it is not true to say the petitioner got 68 votes at Kamuwunga polling station and adds that a duly signed and filled DR form was given to Nalukenge. She adds no such form was given to Ssemanda Bashir. Regarding annexures C and D to the affidavit of Ssenyondo her evidence does not differ with that of George William Matovu the presiding officer and that of Molisi Kulabirawo. It is her evidence one agent of each of the three candidates was given a DR form which was fully filled with results and signed. She deponed that she was one of the agents to who such a copy was given. She gave it to her candidate the following day.

The second respondent's answer to the petition is supported by two affidavits, one is sworn by Sam Rwakoojo, Secretary to the 2nd respondent and the other is deponed by Joseph Mukwaya, the Returning Officer. In both affidavits the results at Kamuwunga polling station are stated to be 112 votes for Kiddu Bonny Ssali, 53 votes for Ssentongo Edward and 51 votes for Ssenyondo Gerald M.K. Both affidavits certify the elections were properly carried out.

The evidence in support of the petition disputing the results at Kamuwunga polling station and what transpired there has been rebutted by evidence accompanying the respondents' answers to the

petition. I note the evidence from the respondents has not been controverted. Consequently it is my finding that the petitioner concedes to the evidence advanced by the respondents regarding the results at the polling station as being true.

The petition further alleges that there was no recount of votes by the 2nd respondent after a complaint had been lodged. This would be contrary to section 166 of the Local Governments Act. Paragraph 12 of the affidavit in support of the petition is to the effect that a complaint was lodged with the 2nd respondent on 10th March, 2006 and vote recount was sought. Evidence available however does not say at what exact stage or time the complaint was lodged and a request for a recount made. Nevertheless the following day the 2nd respondent wrote annexure G to the petitioners' affidavit in support of the petition. In it the 2nd respondent appointed the 13th March 2006 as the date of the recount and Ssaza Lukiiko hall as the venue for the exercise. According to the Petitioner the exercise to recount the votes did not come to pass. This is not the recollection of the 1st respondent who in paragraph 14 of his affidavit depones that there was a recount on 13th March 2006 which the Petitioner himself attended. Then there is paragraph 9 of the affidavit of Joseph Mukwaya the Returning Officer which states:

“9. That paragraphs 8 and 10 thereof are false. No results of Kamuwunga were falsified or manipulated as alleged, because a recount was done by myself in the presence of the District Police Commander, the Petitioner and the 1st Respondent among others; and the votes in the box were found intact with a DR Form which had the same information as was/is on Annex. “R1 – A” above’.

I should observe that the above evidence of recount, both by the 1st respondent and the Returning officer is not rebutted. Perhaps an affidavit in rejoinder or evidence of the District Police Commander might have gone some way to salvage the Petitioner's assertion that there was no recount. In the circumstances I am persuaded to believe there was a recount which confirmed the vote result to be as stated on behalf of the respondents and not as alleged on behalf of the Petitioner. On the evidence the tally at Kamuwunga polling station on 10th March 2006 itself cannot be faulted.

It is further urged by the petitioner that the 2nd respondent did not conduct the elections independently. Ferrying of the ballot box from Kamuwunga polling station by the presiding officer in a car belonging to a supporter of the 1st Respondent is cited as an instance. It is pointed

out that on the occasion the security officer detailed to guard election material including the ballot box was left behind. In the process, it is argued, there was non-compliance with electoral laws. The affidavit sworn by Nalukenge Mayi, already related to, which was sworn on 24th May, 2006 reads in part:

7. *THAT after the voting exercise the ballot box containing the votes cast was driven away in a white motor vehicle Registration No. 137 UCR Toyota Corolla belonging to one Mukasa a supporter of the first Respondent together with the presiding officer one Matovu Grace William, one Makya Ronald and one unidentified woman leaving behind the security officer/police man who had been deployed to guard the entire voting exercise’.*

Pertinent to the above is the affidavit sworn by Ssemanda Bashir on 24th May, 2006 which states in part:

9. *THAT after the vote counting, the ballot box containing the votes cast was taken and/or driven away in a white motor vehicle registration No. UCR 137 Toyota Corolla belonging to one Mukasa one of the supporter of the first Respondent.*

10. *THAT the ballot box was taken in the same car by the presiding officer Matovu Grace William, and the supporters of the First Respondent to wit Mukasa, Makya Ronald, an unidentified lady leaving behind the security officer who had been deployed to guard the voting exercise.*

.....’.

George William Matovu, the presiding officer at Kamuwunga polling station swore an affidavit in support of the 1st Respondents’ answer to the petition. In the affidavit dated 1st June 2006 Matovu stated in part:

10. *That it is true that while taking back the materials and results, I used one Mukasa’s vehicle whose registration No. I do not have in my memory, and it is a taxi in Lukaya Town council.*

11. *That I merely used this vehicle as any means of transport and I was not aware that the owner supported any of the candidates at the election.*

12. *That I do not recall other persons I found in the vehicle since I was a sharing passenger who did hire the vehicle single handedly.*

13. *That the averment that the Policeman (Polling Constable) was left behind is not true because the polling constable was following me on a motor cycle behind the taxi up to the Town Council Offices of Lukaya.*

.....’

Reading the above extract one cannot help but conclude that the Police Constable travelled apart from the presiding officer and the ballot box. Nevertheless I am at sea as to what capital the petitioner has made from that. For one it is not shown that Mukasa was a supporter of the 1st respondent or that if he was the presiding officer knew him to be one. There is no evidence the other passengers were supporters of the 1st respondent or that the presiding officer knew them in that capacity. Furthermore there is no evidence the presiding officer travelled in the vehicle in issue for purposes other than commutation. No evidence of wrong doing is advanced to have occurred in the course of the transportation. In particular no evidence of manipulation or falsification is shown to have occurred then. The security officer has not been shown to have complained at all. Indeed the evidence contained in paragraphs 10, 11, 12 and 13 of George William Matovu’s affidavit has not been rebutted. I take it to have been conceded.

My answer to the first issue is that the elections held at Kamuwunga polling station on 10th March, 2006 taken as a whole, did comply with the relevant electoral laws and principles. One cannot however help but recall the seemingly endless number of disparate declaration of results forms that were in circulation. This came about because on the occasion the forms unfortunately were distributed to various candidates’ agents for signature prior to the entry on them of the ultimate results. The agents did sign prematurely as did the presiding officer. Matters were not helped when the presiding officer did not collect the excess forms in which he had not filled the tally results. Had he done so there would not have been the various annexures to the Petition all claiming to be the actual results. Thankfully there is evidence to show the results officially declared were the actual results as gathered from available testimony. I do not find electoral laws and principles were breached in the event.

The second issue is whether non – compliance affected the results of the elections in a substantial manner. I have found no evidence of non – compliance on the part of any of the respondents and as such elections could in no way be effected substantially or otherwise.

In the result I dismiss this petition with costs.

P.K. MUGAMBA

JUDGE

11TH September, 2006