



This petition was brought under Article 61(1)(f) of the constitution of the Republic of Uganda 1995, Section 111 and 172 of the Local Government Act, Cap 234, Section 15 of the Electoral Commission Act and the Parliamentary Elections (Appeals to the High Court from Commission Rules Section 141-1).

Labeja Bob Williams hereinafter referred to as the Petitioner brought this petition against the independent Election Commission hereinafter be referred to as the Respondent.

The grounds of the petition are contained in the petition dated 7/12/2015 and the petitioner's affidavit in support dated the same date. The petitioner was represented by Mr. Julius Galisonga from Galisonga and Company Advocates, while the respondent was represented by Mr. Wetaka Patrick from the Respondent's legal department.

#### Background of the petition

This is an appeal from the decision of the Respondent dated 2/12/2015 where upon hearing the petitioner and considering a report of its returning officer, took a decision upholding the decision of the Returning Officer rejecting and or declining to nominate the petitioner as a candidate for the election as chairman/person LCV Kitgum District Local Government.

The petitioner contends that he has academic qualifications higher than Advanced level Education being a diploma in Community Based Rural Development issued by Business skills Trust Institute on 12/11/2004 and did not need to have his Academic qualification equated by the National Council of Higher Education as decided by the Returning Officer and the Respondent. The petitioner contended that on 18<sup>th</sup>/11/2015, he presented his nomination papers to the Respondent's Returning Officer for Kitgum together with his Academic documents inclusive of

Diploma in Community Based Rural Development issued by Business Skills Trust Institution on 12/11/2004.

That contrary to the provisions of the Law inclusive of Section 111(3)(d) of the Local Government Act Cap. 234, the Respondent's Returning Officer for Kitgum District rejected the nomination papers of the petitioner on account of lack of academic qualifications and or failure to equate his academic qualifications through the National Council for the Higher Education.

That on November 23<sup>rd</sup> 2015, the petitioner personally and through the Secretary General of his political party , the National Resistance Movement appealed to the Respondent against the decision of the Returning Officer, which decision as mentioned earlier was upheld hence this appeal. The petitioner prays that this honorable Court grants the following reliefs.

1. A declaration that the decision of the Respondent upholding the decision of the Returning Officer is irregular, unfair and unjust.
2. A declaration that an irregularity was wrongly confirmed by the Respondent to exist regarding the nomination of the petitioner.
3. Consequential orders directing the respondent to nominate the petitioner as to nominate the petitioner as the National Resistance Movement Candidate for the election as chairperson LCV Kitgum District Local Government.
4. Costs of the petition.

The Respondent on the other hand in response to the petition contends the respondent shall at the hearing raise Preliminary objections to the effect that the election petition appeal from which this application emanates is bad in Law, incompetent and a classic abuse of Court process and Law

for seeking validation of an appeal negligently filed out time set by the Law and not meeting the requirements of the Law under which it was brought.

That the petitioner did appeal against the decision of the returning officer which was heard and detained. The Respondent further contended in its response that the petitioner failed to produce the requisite academic qualifications and other necessary nomination requirements to the Respondents Returning Officer for Kitgum Electoral District within the gazzetted time and period for nomination.

The answer to the petitioner was supported by the affidavit of Mwassa Jude an employee of the Respondent. The affidavits both in support and against the petition rejected more or less to the same averments in to petition and answer to the petition.

Bothe Counsel for made oral submissions in support of their cases. I will not reproduce them here since they are on record. I will however refer to them when necessary.

The petition was filed on 21/12/2015 after the time within which to file had expired. An application for leave to extend time was filed and the Respondent conceded. The Court allowed the parties/advocates to discuss the case on the way forward and returned in the afternoon, of 29/1/2016 that they were ready to proceed and we proceeded.

Counsel for the petitioner submitted that the actions of the Returning officer of Kitgum District was illegal in that he did not have powers to reject the nomination papers of the petitioner when they were presented to him,

That it was also illegal for the Returning Officer to require the petitioner to present verification of his academic documents.

The requirement to contest for Local Council LCV is laid out in section 111 of the Local Government Act, CAP, 234 and he particularly relied on Section 111(3) D of the Local Government Act Supra which states; “ For the avoidance of doubt, if a candidate has an advanced Level of Certificate obtained in Uganda, or qualification higher than the prescribed qualification obtained in Uganda, or obtained from the former University of East Africa or any of its Constituent Colleges, then there shall be no need for the verification of his or her qualifications by the National Council for Higher Education”.

The petitioner presented his academic papers on 18/11/2015 within the prescribed time including his Diploma in Community Based Rural Development but the Respondent declined to nominate him as candidate and **ovelared** him to have that Diploma equated by the National Council for Higher Education. He submitted that a Diploma is a qualification Higher than even advanced level Certificate. He submitted that conduct was illegal and contrary to Section 111 (3)(d) of the Local Government Act.

He went on to submit that the returning officer does not have powers to reject nomination in the sense that once papers are presented, before him, the only choice he has is to nominate the candidate. The refusal to nominate the petitioner triggered off the chain of events which prompted the petitioner to travel to Kampala but by the time he returned, the exercise was closed, He arrived at 8:00 pm the following day.

He prayed for the reliefs to be granted since there was no evidence contraverting the evidence the petitioner has that the Returning Officer refused to nominate the candidate and ordered him to have the academic papers verified which did not require verification. In reply, Counsel for Respondent submitted basically on two issues;

1. That the petition was incompetent because it did not comply will Rule 5(3)(a) and (b) of the parliamentary Elections(Appeals to the High Court from Commission) Rules and Rule 5(4) empowers the Registrar to reject such petitioners which d not comply with the requirements. He relied on the holding in the case of Election petition No.0017/2011 Otim Nape George William.....petitioner Versus

1. Ebil Fred
2. Electoral Commission .....Respondents

Where Justice Musita held that “This rule is intended to regulate presentation of petitions and prevention of abuse of Court process to the prejudice of paper administration of justice. As rightly submitted by learned Counsel for the Respondents, when the petition was presented, shs 100,000 was paid as fees contrary to rule 5(3) of the rules. Although the learned Registrar purported to receive the petitioner, that reception did not amount to legal receipt as envisaged under the Law. He ought to have rejected the petition under Rule 5(4) for non compliance with Rule 5(3) of the Rules”

He went on to state that “The mandatory requirement of Rule 5(3) is not a technicality which can be dispensed with by Court under Article 126(2)(e) of the Constitution but an essential step. If it

is not done, as required, then the petition is rendered incompetent”. He ruled that the petition was incompetent for not having complied with the mandatory provisions of the law.

In the alternative, he submitted that the petitioner failed to produce the academic requirement and that the nomination exercise is carried out between 9:00 am and 5:00 pm. The petition arrived in Kitgum at 2:00pm and therefore failed to appear before the Returning officer at the time he was allowed to appear.

He prayed for the reliefs not to be granted because the Electoral process is a sequence where one activity leads to another and the process does not move forward and backward. That the nomination period has been concluded and ordering for his nomination would make the process move forward and backward. He relied on the case of Ngoma Ngime Versus Winnie Byanyima.

In response, Counsel for the petitioner in summary contended that mistakes made in the electoral process can be resolved at any stage. Suggesting that a party which is aggrieved has no remedy is very absurd. On the evidence of payment provided for under the rules, he submitted the moneys required were duly paid and evidence is in Court record. He however added he verify.

From the above submissions, the trial of this petition took a unique course. The Advocates who were advised to sort themselves out before hearing the petition came ready to proceed without framing any issues or agreeing on anything.

Four main issues arise from the above submissions and pleadings before court.

1. What is the effect of nonpayment of statutory fees on presenting the petition?
2. Whether the returning officer has the powers to refuse to nominate a candidate.

3. Whether the Petitioner is qualified to be nominated as a candidate for LCV chairperson Kitgum
4. Whether the petitioner is entitled to the reliefs sought.

Let me resolve them in their chronological order but starting with the second one.

It is the contention of the Petitioner through his Counsel that the returning officer of the Respondent has no power to refuse to nominate a candidate.

Returning officers play a critical role in the election process as public officials. They are responsible for the competent administration of the electoral process from their electoral district in a completely non partisan manner.

The electoral process starts with members of the public picking interest in the electoral posts and picking nomination papers or forms which have to be filled and returned in accordance with the electoral laws.

The Electoral Commission Act defines a Returning Officer as a person appointed under any law relating to any elections to be in charge of an electoral district for the purposes of any such elections or for the purpose of the registration of voters within the District.

In the instant case, the Returning officer was responsible for presiding over the nomination exercise. The nomination of candidates for LVC chairpersons is partly governed under the Parliamentary Elections Act. S.11 to 13 of the Act provides for the procedure for the nomination of candidates, factors which do not invalidate nomination.



The returning officer is in charge of the nomination exercise and where the nomination exercise reveals that the person is not qualified or has not fulfilled some of the statutory requirements prescribed under the electoral laws the Returning officer may be refuse to nominate a candidate and make a report.

For instance under S. 13 (c) of the PEA, “ A person shall not be regarded as duly nominated for a constituency (District LCV Chairperson) and the nomination paper of any person shall be regarded void if the person seeking nomination was not qualified for election under section 4 of the Act (S.111 (3) of the Local Government Act Cap. 243).

Under S.111 (3) (a) of the Local Government Act which is directly applicable in this case, it provides “For the purposes of subsection 3 (e) any of the following persons wishing to stand for elections as a district chairperson, shall establish his or her qualification with the Electoral Commission as a person holding a minimum qualification of advanced level or its equivalent at least two months before nomination day in the case of a general elections and two weeks in the case of a by-election.

The impart of the above section is to verify the minimum qualification of Advanced level standard or its equivalent.

Any additional academic qualification is not the basis for nomination.

The Returning officer uses the above established qualification to either accept or refuse the candidate from nomination. Establishment of qualification is by way of certification by National Council for Higher Education or Uganda National Examination Board, bodies that are charged within maintaining high quality academic standards.

In case, the Returning officer is in doubt, he has every right to refuse the nomination of the candidate.

I therefore do not agree with Counsel for the petitioner that the Returning officer has no powers to refuse to nominate a candidate. He exercised his statutory powers and therefore never acted ultra vires.

What remains to be resolved is whether the petitioner is qualified to be nominated as LCV chairperson for Kitgum District which is the second issue. The burden of proof in this petition rested squarely on the petitioner. S. 101 of the evidence Act provides that whenever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that these facts exist.

Section 102 of the Evidence Act further explains that “The burden of proof in a short or proceedings lies on that person who would fail if no evidence at all were given on either side”.

The Petitioner stated under paragraph 3 of his affidavit that “On 18<sup>th</sup> November I presented my nomination papers to the Respondents Returning Officer for Kitgum, together with my academic documents inclusive of a Diploma in Community Based Rural Development issued by Business Skills Trust Institute on 12/11/2004. A copy of my Diploma Certificate is attached and marked A hereto.

Paragraph 4 “That contrary to the provisions of the law inclusive of section 111 (3) (d) of the Local Government Act Cap. 234, the Respondent Returning Officer for Kitgum District rejected my nomination papers and declined to nominate me as a candidate upon a claim of lack of

academic qualifications and or failure to equate my academic qualifications through the National Council for Higher Education”.

The Petitioner attached a photocopy of the Diploma issued on 12.11.2004 which was not certified by UNEB or National Council for Higher Education of Uganda, as Annexure A, A letter he wrote to the chairperson.

National Independent Electoral Commission as annexure B, a letter from Justine Kasule Lumumba, Secretary General of NRM, dated 23/11/2015 as annexure C and a letter from Eng. Dr. Badru M. Kiggundu chairman/person Electoral Commission dated 2/12/2015.

He did not attach a certified copy of his nomination form, certified copy of his academic documents to enable this court scrutinize them and satisfy itself that the Returning officer was either justified or not justified to reject the nomination paper of the petitioner

All the petitioner needed was the minimum requirement of Advanced level certificate or standard or its equivalent, not the Diploma.

But if he is the holder of the Diploma, he had the burden to prove the following: 1. That he was qualified to acquire that Diploma, in Uganda, before one acquires a Diploma, one must be a holder of a certificate in a given discipline, or holder of Advanced Certificate of Education issued by UNEB or its equivalent as graded by the National Council for Higher Education and UNEB.

The objects of the universities and other Tertiary Institutions Amendment Act 2001, which was among others to establish and develop a system governing Institutions of higher education in

order to equate qualifications of the same or similar causes offered by different institutions of higher education while at the same time respecting the autonomy and academic freedoms of institutions and widen the accessibility of high qualification to students wishing to pursue higher education courses by (a) regulating and guiding the establishment and management of these institutions.

(b) Equating the same profession or other qualifications as well as the award of degrees, diplomas, certificates by the different institutions.

The Act established the National Counsel for Higher Education under section 4 with its statutory functions under section 5.

2. The petitioner had to prove that the Diploma he attached was issued by an institution duly registered and gazette to offer higher education leading to the award of Diplomas.

Under S.115 of the universities and other tertiary institutions Act Supra, the NCHE issues certificates of classification and registration and by legal notice publishes the certificate in the Gazette and therefore recognize the Tertiary Institution and the certificates, diplomas and other academic awards granted by the institution as a comparable and equivalent merit with those other institutions in Uganda.

S.123 of the Act, provides for Institutional standards. The National Council by Regulation sets the institutional standards by setting minimum entry requirements, number and duration of programmes for the different awards.

In short, admission and assessment to such tertiary institutions is on merit.

The petitioner other than attaching a piece of paper with the inscription of the words Diploma form Business skills Trust Institute does not show any evidence that his Diploma was obtained from an institute recognized under the Universities and other Tertiary Institutions Amendment Act 2001 particularly by the National Council of Higher Education. His reliance on S.111 (3) (d) of the Local Government Act that his Diploma did not need verification is misconceived. The section does not make certification, that is to say validating the authenticity of the document illegal.

The petitioner therefore had the obligation to have his documents certified i.e. endorsed authoritatively as having met certain requirements by either UNEB or NCHE.

This court does not know whether he presented certified documents or not since he has not given it the opportunity to investigate exhaustively in the allegation. Once an academic document is certified by UNEB or NCHE, it is not necessary to have it verified.

I have gone in details because qualification of the candidate for elective posts under the Local Government Act and parliamentary Elections Act is very crucial.

I am not insinuating anything but it is not uncommon to have people present forged academic documents, hence the need to have them certified by the issuing authorities or institutions.

There is no way this court can order for the nomination of the petitioner as NRM flag bearer for LVC chairperson Kitgum District when his academic qualification is clouded with suspicion on the face of it. The Respondent cannot be faulted for the decision they made upholding the returning officers decision.

The second issue is therefore resolved in the negative. Consequently the 3<sup>rd</sup> issue is also answered in the negative. The petitioner is not entitled to any of the reliefs sought.

This case presented an issue on the effect of nonpayment of the statutory fees and security for costs. I should have started with it but opted to handle it last not for academic purposes but because it is a sad reality.

The parliamentary election (Appeals to the High Court from Commission) Rules S1 141-1 applies to the conduct of election petitions under S.15 of the Act which petitions are in respect of the nomination process.

Rule 5 (3) provides “The Petitioner or his/her advocate shall at the time of prescribing the petition (a) pay a fee of one hundred thousand shillings and (b) make a deposit of one hundred and fifty thousand shillings as security for costs.

A similar provision is under Rule 5 (3) of the Parliamentary Election (Election Petition) Rules which provide that “The Petitioner or advocate of the petitioner shall at the time of presenting the petition, pay a fee of 150,000/=.

Under both Rules sub rule 4, the Rules provide: If sub rule 3 of this rule is not complied with, the petitioner shall not be accepted”

The petitioner in this case did not pay the statutory fees upon presentation of the petition Counsel for the Respondent raised the issue of non payment of fees and relying on the ruling of Justice Stephen Musota in the Otim Nape case supra prayed that the petition be struck out for being incompetent.

Counsel for the petitioner was taken aback and was quick to add that he is yet to verify payment of fees. It is the duty of Counsel to make sure that the requisite statutory fees are paid because the litigants may not know what makes a petition incompetent.

The general Rule under Rule 6 of S1 41-2 on court fees, fines and deposits fees must be paid on filing. The bottom line is that fees must be paid for documents to be valid. Where fees here not been paid and the proviso under the same rule has not been complied with, the documents are automatically invalid and no consent can validate such documents. In the instant case, the parties conceded to allowing the petition to be filed out of time. The petition which had been earlier on filed without payment of fees was in my opinion erroneously filed. The right date of filing should have been 29/1/2016 after the application for leave to petition out of time was allowed.

S.97 of the CPA gives this court the power to make up deficiency of court fees. Armed with S.98 of the CPA and S.33 of the Judicature Act. I comfortably ignored the submission of Counsel on non payment of fees. I exercised my discretion to allow payment of fees after the file was closed for writing the Ruling.

In my opinion, payment of fees on the day the application for leave extend time within which the petition was to be filed the respondent at all since to it allowed the petition to be filed. Another school of thought is that the framers of the 1995 placed a burden on the courts of Judicature that was not therefore. In Article 126, judicial power is derived from the people and shall be exercised by the courts established under the constitution in the name of the people and in conformity with the law, and values, norms and aspirations of the people.

In adjudicating cases both of civil and criminal nature, the courts shall subject to the law, apply the following principles (e) substantive justice shall be administered without undue regard to technicalities” administration of justice without undue regard to technicalities was understood to mean the rules of procedure were hand maidens of justice. That is to say that Rules of procedure are supposed to help the courts expedite court business in an orderly manner but are not supposed to be iron dad obstacles to all causes of action in all circumstances. S. 17 of the Parliamentary Elections Act also provides that “Subject to these Rules, the practice and procedure in respect of a petition shall be regulated as nearly as may be in accordance with the civil procedure Act and the Rules made under the Act relating to the trial of a suit in the High Court with such modifications as the court may consider necessary in the interest of justice and expeditious of the proceedings.

In view of the above, I am of the opinion that allowing payment of the statutory fees in this case after the petition had been heard but before delivering the ruling would serve the interest of justice.

The facts in this case are distinguishable from the Otim Nape case supra where partial fees were paid. In this case, fees could not be paid until after the application for leave to extend time within which to file a petition was concluded.

The learned Assistant Registrar erred in law and in fact to receive a petition which was not legally allowed to be filed before leave was granted. He went ahead and registered it erroneously.

It is my hope that such errors will not be repeated.



Even if Article 126 of the constitution is to be applied, it is not a magic ward for all types of defaulting litigants and cannot be used to cure all the irregularities and illegalities which appear to be of a technical nature. Every case must be weighed on its own merits and facts and justice allowed to be seen to be done.

The case always has two parties. The proposing and the rules of procedure is widely believed to have a recourse under Article 126 of the constitution, S. 98 of the Civil Procedure Act and S.33 of the Judicature Act, one of the parties may be certainly offended or aggrieved in one way or the other, which in my opinion is unfair.

Even if Article 126 of the Constitution is to be applied, it is not a magic ward for all types of defaulting litigants and cannot be used to cure all the irregularities and illegalities which appear to be of a technical nature. Every case must be weighed on its own merits and facts and justice allowed to be seen to be done. The case always has two parties. The proposing and opposing side. Whereas flouting the rules of procedure is widely believed to have a recourse under Article 126 of the Constitution, S. 98 of the Civil Procedure Act and S.33 of the Judicature, Act, one of the parties may be certainly offended or aggrieved in one way or the other, which in my opinion is unfair.

To avoid rendering the rules of procedure which offer a good guide to all parties including court, superfluous, Article 126 of the constitution should be applied in the rarest of circumstances where flouting of the rules of procedure was inevitable.

The rate at which advocates who are officers of court are flouting the Rules and resorting to the above sections of the law which allow the judicial officers to exercise discretion is incalculable or

mind boggling. This kind of conduct needs to be curtailed in order to return the scope and purpose of the rules which is to secure the just, speedy and in expensive determination both civil and criminal matters.

Needless to mention, the Rules should be construed, administered and applied by the court and the parties to the actions to avoid haphazardness and allow a chronological sequence of events in a file to follow rules in respect of payment of the requisite fees, or filing pleadings outside time causes unnecessarily delays and increases the workload in the already overloaded courts.

The consequences may be dire in terms of costs.

This case presented exceptional circumstances; otherwise, I would have struck it out on the ground of not paying the statutory fees.

In the result, this petition is dismissed for reasons already stated above. On the issue of costs, costs follow the event. This court can however for good cause decline to award costs to the winning party.

The Respondent in this case had the opportunity to challenge the application for leave to extend time within which to petition. Such applications are allowed when there is really a prima facie case on the face of the record.

In my view, the respondent did not even make any effort to oppose the application.

In the result, I am not awarding costs to the respondent. Each party should bear own costs.

I so order.

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**Hon. Lady Justice Margaret Mutonyi**

**Judge**

**1/2/2016**

Ruling delivered in the presence of Conrad Oroya holding brief for Julius Galisongo:

Petitioner is present

Oroya: the respondent's counsel absent and there is no representative for respondent .

Matter is for ruling and we are ready to receive it

Court: Ruling is ready to be delivered.

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**Hon. Lady Justice Margaret Mutonyi**

**Judge**

Read and delivered.

Agnes Abalo for clerk.

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**Hon. Lady Justice Margaret Mutonyi**

**Judge**