

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
ELECTION PETITION NO. 0006 OF 2016

KOMAKECH CHARLES TOO-ODERAPETITIONER

1. OTTO EDWARD MAKMOT alias EDWARD OTTO}

2. ELECTORAL COMMISSION }RESPONDENTS

JUDGMENT

BEFORE HON. JUSTICE DAVID MATOVU

This election petition was initially filed in the Civil Division of the High Court in Kampala as Election Petition No. 18 of 2016. It was later transferred to the High Court in Gulu and reassigned a new number as Election Petition No.0006 of 2016.

In this petition Komakech Charles Too- Odera (hereinafter referred to as the Petitioner) challenges the election of Otto Edward Makmot alias Edward Otto (hereinafter referred to as the 1st Respondent) as the directly elected member of Parliament for Agago County Constituency, having been declared the winner of the elections held on the 18th February 2016 by the Electoral Commission (hereinafter referred to as the 2nd Respondent).

This petition is supported by the affidavit of the Petitioner filed in this court on 4th April 2016 which was admitted in evidence as Exhibit P1. The main ground of this petition is that the Petitioner uses a Canadian Passport in the names of Edward Otto and not Edward Otto Makmot. It was contended that since the 1st Respondent was not a citizen of Uganda, the 2nd Respondent should not have nominated him as a candidate for the position of directly elected Member of Parliament for Agago County Constituency.

In his answer to the petition, supported by the affidavit of the 1st Respondent marked Exhibit R1, it was contended that the 1st Respondent holds dual citizenship as a citizen of Uganda by descent/

birth and a Canadian citizen by registration. The 1st Respondent attached his Voter location slip in the names of Otto Edward Makmot which was marked as Exhibit R1(a). He further attached photocopies of his Canadian Passport in the names of Edward Makmot Otto and Otto Edward and they were marked as Exhibit R1(b) and R1(c). He finally attached a Ugandan passport in the names of Otto Edward Makmot issued by the Uganda Government office in Washington on 8th November 2006 as passport No. B0560124 which was marked as Exhibit R1(d).

The 2nd Respondent relied on the affidavit of Rashid Kasakya the Returning Officer of the 2nd Respondent of Agago District in the elections conducted on 18th February 2016. This affidavit was admitted in evidence and marked Exhibit RR1. In his affidavit, Mr. Rashid Kasakya contended that the 1st Respondent presented proof that he was a Ugandan and as indicated in his voter location slip, he was voter No.64774377. He further stated that in the election for the directly elected member of parliament for Agago Constituency the 1st Respondent obtained 14,281 (fourteen thousand two hundred eighty one) votes as compared to 2,959 (two thousand nine hundred fifty nine) votes obtained by the Petitioner.

At the scheduling conference held on 19th May 2016, the Petitioner was represented by Mr. Abed Nasser Mudiobole while Mr. Peter Mulongo held brief for Mr. Robert Bantu Counsel for the 1st Respondent and at the same time he represented the 2nd Respondent. Mr. Peter Mulongo informed this court that his brief with regard to the 1st Respondent permitted him to proceed with the scheduling conference.

Both Counsel presented their respective cases and the following were the agreed facts:

- 1. That the Petitioner and the 1st Respondent were candidates for the directly elected Member of Parliament for Agago Constituency.**
- 2. The 2nd Respondent organized elections which took place on the 18th day of February 2016.**
- 3. That the 2nd Respondent conducted nominations for the directly elected Member of Parliament for Agago Constituency on 2nd and 3rd December 2015.**
- 4. That the 1st Respondent was born in Uganda and his parents are both Ugandans.**
- 5. That the 1st Respondent holds both Canadian and Ugandan passport.**

6. **That the 1st Respondent was declared winner of the Agago Member of Parliament with 14,281 votes as compared to the Petitioners 2,959 votes and indeed the 1st Respondent was put in the gazette.**

The following were the agreed issues for determination by this court:-

1. **Whether the 1st Respondent qualified to be nominated as Member of Parliament for Agago County Constituency.**
2. **What remedies are available to the parties in this case?**

During the scheduling conference both Counsel informed this court that they did not intend to cross examine any of the deponents of the affidavits admitted in evidence and agreed to file written submissions.

It is vital to remind oneself of the burden of proof in such matters. The burden of proof in election petitions like in other civil matters lies on the Petitioner to prove the allegations levelled against the opposite party. See **S.101 of the Evidence Act**. However unlike in ordinary civil suits, the standard of proof is slightly higher. It is to the satisfaction of court. This is because of the importance of the electoral process. It concerns the freedoms and liberties of the citizenry in a fundamental way – See Supreme Court Election Petition No. 1 /2001 Col (RTD) Dr. K. Besigye v. Museveni Yoweri Kaguta & Electoral Commission.

Therefore in the instant petition, the Petitioner had to prove to the satisfaction of court that the 1st Respondent did not qualify to be nominated as a candidate for Member of Parliament for Agago county Constituency.

There was a preliminary objection raised by counsel for the Petitioner to the effect that the 1st Respondent was nominated basing on a voter identification slip No. 647744377 which according to him rendered the affidavit to be false since those slips were issued about two weeks to the polling date of 18th February 2016. However Counsel did not

avail court with the exact date when the Voter Identification slip was issued to the 1st Respondent.

Court takes judicial notice of the fact that voter Identification slips were issued to all citizens of Uganda who were registered at the time of February 2016 elections and were accordingly entitled to National Identity cards. Therefore by having a voter identification slip, the 1st Respondent is entitled to a National Identity card which is only given to citizens of Uganda. The objection raised by Counsel for the Petitioner is therefore hereby overruled.

Issue 1

Whether the 1st Respondent was qualified to be nominated as a candidate for Member of Parliament for Agago County Constituency.

In their submissions Counsel agree as to the qualifications for one to stand as a Member of Parliament as contained in Article 80 of the Constitution of the Republic of Uganda and S. 4(1) of the Parliamentary Elections Act (PEA).

Article 80(1) provides as follows:-

(1) A person is qualified to be a member of parliament if that person

- a) Is a citizen of Uganda**
- b) Is a registered voter**
- c) Has completed a minimum formal education of Advanced level standard or its equivalent which shall be established in a manner and at a time prescribed by parliament by law.**

For clarity S.4 of the PEA also provides that

(1) A person is qualified to be a member of parliament if that person

- a) Is a citizen of Uganda**
- b) Is a registered voter and**

c) Has completed a minimum formal education of Advanced level standard or its equivalent.

The Petitioner does not challenge the fact that the 1st Respondent is a registered voter and that he has the requisite academic qualifications. The only challenge he raises in this case is as to his citizenship.

Counsel for the Petitioner contends that by the 1st Respondent obtaining Canadian passport on 24th September 2001, which is Passport No. WP013187 and another one on 10th July 2013 he voluntarily surrendered his Ugandan citizenship. Counsel argued that the 1st Respondent ought to have applied for a certificate of dual citizenship from the Uganda Government.

Counsel for the 1st Respondent in his submissions in reply argued that Article 15 of the 1995 Constitution of the Republic of Uganda as amended provides for a citizen of Uganda to hold dual citizenship.

Perhaps it is important to set out the relevant law.

Article 15 (1) of the Constitution provides as follows:-

(1) A citizen of Uganda of eighteen years and above who voluntarily acquires the citizenship of a country other than Uganda may retain the citizenship of Uganda subject to this Constitution and any law enacted by parliament.

Then Article 15(6) provides:-

(6) Parliament shall by law prescribe the circumstances under which

(a) A citizen of Uganda who acquires the citizenship of another country may retain the citizenship of Uganda.

The Uganda Citizenship and Immigration Control (Amendment) Act 2009 S.19 provides as follows:-

(1) A citizen of Uganda of eighteen years and above who voluntarily acquires the citizenship of a country other than Uganda may retain the citizenship of Uganda subject to the Constitution, this Act and any law enacted by parliament.

Therefore it is not automatic that one ceases to be a Ugandan upon acquiring citizenship of another country. The 1st Respondent clearly stated that he has never surrendered his Ugandan citizenship.

In paragraph 13 of his affidavit, the Petitioner alleges that he inspected the register of people issued with certificates of dual citizenship in Uganda and found that the 1st Respondent was not one of them. However he did not provide copy of this register or at least correspondence from the relevant office to this effect. For this reason court cannot believe this averment.

Court is convinced that the 1st Respondent is a Ugandan citizen by descent, registered as a citizen under No. CM78111104716 and eligible to stand for the position of Member of Parliament for Agago County Constituency.

The 1st Respondent in this case has a valid Ugandan passport No. B0560124 expiring on 8th November 2016, he is even registered as a Ugandan national under No. CM78111104716.

The voters of Agago county Constituency overwhelmingly voted for the 1st Respondent, the son of Mr. Aldo Otto and Mrs. Veronica Adong Otto of Lalal East village, Lalal parish, Adilang Subcounty , Agago county in Agago District who for all intents and purposes is a Ugandan by descent.

To use the words of their Lordships in **Supreme Court Election Petition No.1 of 2016 Amama Mbabazi Vs. Yoweri Kaguta Museveni & 2 others**

“On the one hand, the court must avoid upholding an illegitimate election result and on the other, it must avoid annulling an election result that reflects the free will of the majority of the electorate the majority whose rights are inherent in Article 1(4) of the Constitution”

The people of Agago County Constituency overwhelmingly voted the 1st Respondent as their Member of Parliament and court finds him to have been validly elected.

In the final result this petition fails and it is hereby dismissed with costs.

Dated at Gulu this **08th** day of **June, 2016**

DAVID MATOVU

JUDGE.