

petition was not served on the applicant within 7 days from presentation as required by law; and finally that the petition be dismissed with costs.

An affidavit accompanying the Notice of Motion sworn by the applicant particularises the grounds but, in sum, avers that petition No 2 of 2016 was filed on the 21st of March 2016 but not served on the applicant within the 7 days required by the law. She deposes farther that the respondent had filed a notice to withdraw the petition but that said notice is of no consequence because the petition was incompetent.

That at the time of filing the application on the 21st of March 2016 the election results had not been published in the Uganda Gazette as is a prerequisite to lodging a petition under the law. In the result she prays that the petition is a nullity.

One Twinomugisha Daniel filed an affidavit in reply on behalf of the respondent. He is an advocate with Bwengye and Company Advocates and avers that the Notice of Presentation of petition was sealed by this Court on the 23rd of March 2016 and served on the applicants Advocates the same day although they declined to acknowledge service until the 1st of April 2016. That the late date of acceptance of the petition was a ploy intended to frustrate the petition as can be seen from the filing of this application. He deposes that this Court should not gratify the applicant for such conduct by dismissing the instant application.

He affirms farther that that there was no reason to wait for the results of the election to be published in the gazette because the applicant had already been announced as winner by the Electoral Commission and she was not prejudiced in any way. He states that as the petition raises pertinent issues of law it should not be dismissed on a mere technicality.

It was the submission of Mr Kandebe Ntambirweki for the applicant that there had been no publication of results in the gazette at the time that this petition was filed on the 21st of March 2016. Accordingly the petition is incompetent as the law clearly stipulates that an election petition can only be filed within 30 days of the day on which they the Electoral commission gazettes the results. Counsel contends that statutory provisions must be complied with and the current petition is incompetent for failing to comply with the statute. The High Court of Mbale decision in **Hon Sabila Herbert Kale Vs Maket Latif MA no 124 of 2010** was cited where the respondent had sought for orders of Court to stop the applicant from contesting in the upcoming elections because he had been convicted of the crime of corruption. The Court held that the petition was premature as it would appear that for someone to challenge the

nomination of a candidate, it must be after a process conducted by the Electoral commission. The court dismissed the application.

The respondents strongly oppose the application arguing it is frivolous and intended to misdirect the Court. It is submitted that there clearly was an election held and the respondent was declared the winner by The Election Commission. The gazette according to Counsel is only a formal expression of the results. It is also contended that there is no evidence that S.60 (3) was not complied with because there was no evidence adduced of when the gazette notice was published.

The petition in this matter was filed on the 21st of March 2016. The contention is that by that date there had been no gazette notice issued by the 2nd respondent publishing the election poll results. Counsel for the respondent on the other hand argues that there was no evidence before this Court as to when the gazette notice was actually published. That the applicants adduced no evidence of the gazette to prove that it was published after the 21st of March 2016.

It is my finding that the results were published on the 23rd of March 2016. I have taken judicial notice of the publication of the notice by the Electoral Commission, publishing the results of the elections held on the 18th of February 2016, in the Uganda Gazette. Under S.56 (e) of **the Evidence Act**, the names of the persons filling any public office in Uganda whose appointment to that office, is notified in the Gazette, may be taken Judicial Notice of by a Court. Members of Parliament are public officers and their appointment and election is published in the Uganda gazette.

I shall now turn to the question of the competence of this petition.

Part X of **the Parliamentary Elections Act (PEA)** provides for and regulates the management and conduct of Election petitions arising from Parliamentary elections.

S. 60(3) of the Act specifies the manner in which a challenge to a parliamentary election may be commenced and states,

‘Every Election petition shall be filed within 30 days after the day the day on which the result of the election is published by the commission in the Gazette’

The wording of the section 60 (3) of the Act is clear and unambiguous. It is a strict mandatory requirement that a petition shall be filed within 30 days of the results being gazetted. Publication in the gazette is therefore the trigger to the process and before such

publication is made no petition can be competently sustained. A petition filed before time is a nullity. Since publication is the basis of lodging the action, a petition filed before such publication is **incompetent**, it is like someone putting something on nothing. It cannot remain there. It will collapse.

In this case, the petitioner filed her petition on the 21st day of March 2016. As I found earlier the gazette publishing the results of the Sembabule Woman MP elections, held on the 18th of February 2016, was issued on the 23rd of March 2016. By the 21st of March 2016 the results had not been published. A petition challenging the Election of the Sembabule Woman MP Election result could not be competently filed before the gazette date as it would be premature, null and void.

I see no reason to canvass the other grounds as the whole application stands determined at this point. I find and hold that Election Petition No 02 of 2016 is premature and therefore incompetent.

In the result I allow this application with costs.

Dated at Masaka this25th day of May 2016

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Michael Elubu
Judge