THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE

HCT-04-CV-CA-0078-2016
(ARISING FROM ELECTION PETITION NO. 007 of 2016)

MAGOMU HUSSEIN KAHANDI:::::::::::::::::::::::::::::: APPELLANT

VERSUS

1. **THE ELECTORAL COMMISSION**
2. **MUMEYA SULAI::RESPONDENTS**

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

This is an appeal from the judgment and orders of His Worship **Kintu Simon Zirintusa** Chief Magistrate Mbale of the 24th August 2016.

Appellant raised 4 grounds of appeal.

The grounds arose from the fact that appellant and 2nd Respondent participated in directly elected Councilor elections of Bukonde Sub-county held on 24th day of February 2016, in which 2nd Respondent emerged victorious having polled 1789 votes against appellant's 1538 votes. Being aggrieved by the nomination and subsequent election of 2nd Respondent appellant filed Election Petition 007/2016 challenging the election on grounds that the Respondent was not qualified and was disqualified from participating in the election by the Local Government Act and Anti Corruption Act.

All parties filed written submissions on appeal.

The duty of a first appellate court was well stated in ***Fr. Narsensio Begumisa and 3 Others v. Eric Kibebaga SCCA No. 17 of 2002*** (unreported) as follows:

> "*The legal obligation on the 1st appellant court to reappraise evidence is found on common law rather than rules of procedure. It is a well settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses*."

It was submitted for the appellants on appeal that the 2nd Respondent was at the time of his nomination by 1st Respondent disqualified from being a Local Government Councilor under Section 46 of the Anti Corruption Act 2008. This was because on the 28th February 2013 the 2nd Respondent was charged with the offence of Embezzlement c/s 19 of the Anti Corruption Act 2009, and pleaded guilty to the charge and was fined and he paid the fine of shs. 1,000,000/=. These facts are not contested. Though all these facts and evidence were placed before the learned trial Magistrate, at the end of trial in his judgment he held that the provisions of section 46 of the Anti Corruption Act and Section 19 of same Act, were not applicable, because the elections were held under the Local Governments Act and that public officer in the Anti Corruption Act did not cover the 2nd Respondent. He found for the Respondent; hence this appeal.

The 1st Respondent in Reply raised a preliminary objection that the appeal is incompetent as no order or decree was extracted.
In the alternative they maintained their arguments as in the lower court that the 2nd Respondent was not a public officer within the meaning of Section 46 and section 19 of the Anti Corruption Act.

I have carefully followed the arguments and find as follows:-

1. Competency of the Appeal

The requirement to file a decree or order of court is a procedural requirement provided for under section 220(1) MCA. Appeals lie from the decrees and orders of Grade I or Chief Magistrate to the High Court.

Since the enactment of the 1995 Constitution courts have taken a liberal approach to defaulting litigants, who fail to extract decrees or orders but have filed appeals based on judgments of the lower court.

This is in the spirit of ensuring that substantive justice is meted out to all parties as per Article 126 (2) (e) of the Constitution.

In the case of ***Henry Kasambwa v. Yakobo Rutarehamba HCCA 10/98*** it was held that:

> "*as long as you have a judgment, you may not need to extract a decree on appeal. That case moved away from the prior strict position where courts had held that the failure was fatal as a decree or order was a mandatory requirement*." (Per ***Ext. Mary Namatovu & Anor. V. Noel Grace Shalita S (1992-93) HCB, and Yoana Yakuze v. Victoria Nababembe HCCA 10 of 1989***.

The above position is supported by the opinion contained in the Uganda Civil Justice Bench Book (1st Edn) page 370, where it is stated that:

> "*In regard to appeals to the High Court extracting a decree is good practice but not mandatory requirement*."

Guided by the above principles, and the desire to ensure substantive justice to the parties, I will dispense with the practice necessitating the filing of an order/decree before an appeal, since all other steps were done by having a Notice of appeal, memorandum of appeal, judgment and record of appeal all duly prepared and served in time. (See ***Re Christine Namatovu Tebajukira (1992-93) HCB***)-

"*the administration of justice requires that the substance of disputes should be investigated and decided on their merits, and errors and lapses should not necessarily debor a litigant from the pursuit of his rights*."

I overrule the preliminary objection.

2. Whether the 2nd Respondent was at the time of nomination and election qualified for election.

a) Impact of section 46 of the Anti Corruption Act on the 2nd Respondent.

I need to point out from the onset that I do not agree with the arguments herein that define the "public office" envisaged under section 46 of the Anti Corruption Act, as different from that described in the Local Government Act. I agree with the position of the High Court espoused in the case of ***Oundo Sowedi & Anor. V. Ouma Adea Consolidated Petitions No. 18 & 19 of 2016***, where **J. Bashaija**, found the Section of mandatory sunction by the use of "shall." The definition of a "public body" therein includes a District council. I also find for a fact that the Constitution in Article 257 (2) defines public service as excluding members of any 'council'.

In the case ***Dr. Amutuhaire Willington & ors. V. KCCA & Ors Ms App. 92/2016 / Msc. App.66/2016 (consolidated)*** The High Court held that the court should only resort to purposive interpretation of statutes where their meaning is not easily discernable from the Act.

Court referred to ***SA de Smith, Judicial Review of Administrative Act (3rd Edn- London 7 Sons Ltd-1973) at page 86***, where he states that:

"*Two broad approaches to problems of interpretation have been allowed by the courts. The first is a teleological means of approach and the second is formally analytical. The former is based on the principal that a court should endeavour to give effect to the policy of a statute and to the intentions of those who made it, this principle is expressed in the mischief rule enunciated in Heydon's case. The later is based on the principle that a court's duty is to ascertain the true meaning of the words used by the Parliament, and that the policy of the Act and the intentions of Parliament*

are irrelevant except in so far as they have been expressed in the words so used, this principle is expressed in the literal rule and its multi-farious sub rules."

I however wish to state here that the Anti Corruption Act, 2000 was enacted as;

"*An Act to provide for the effectual prevention of corruption in both the public and the private sector….*"

The Act has a mandate to eradicate Corruption by punishing and deterring culprits from furthering their vice. The Act goes a mile further and defines its parameters of operation. It gives a definition to "a public body" under section 1 (d) as including a district administration, a district council, and any committee of a district council, local council, any committee of any such council."

The above definition brings on board the District Local Government, and its other elective and non elective offices and officers into the broad definition above. This includes those sitting and serving or opting for office under a district council.

The import of that definition is to ensure that it is inclusive and hence needs no resort to further reinterpretation. When that section is considered alongside section 46 of the Act which provides for disqualification, we read:

"*A person who is convicted of an offence under section 2, 3, 4, 19, 25, shall be disqualified from holding a public office for a period of ten years from his/her conviction.*"

Which public office was being referred to? To answer that question, one must first naturally seek an answer from the Act itself. The Act does not define public office, but defines the public body. In ordinary English one asks, the officers who operate in a "public body" would at best be referred to as holding a public body's mandate to operate its "offices" and would be at best be understood as such.

The guide to the court is always to try to understand the underlying intentions for which a particular legal provision was formulated. The Uganda Supreme Court in the case of ***AG. V. Major Gen. David Tinyefunza Const. Appeal 1 of 1997***, from the judgment of **Oder JSC,** citing ***Crates on Statute Law (6th Edn) on page 66***, it stated as follows:

> "*The cardinal rule for construction of Acts of Parliament is that they should be construed according to the situation expressed in the Acts themselves. The tribunal that has to construe an Act of a Legislature, or indeed any other document has to determine the intentions as expressed by the words used. And in order to understand these words it is natural to inquire what is the subject matter with respect to which they are used and the object in view*."

The court, further referred to the passage in ***Barnes v. Jarvice (1953) 1 WLR 649***, where **Lord Goodard CJ** said:

> "*A certain amount of common sense must be applied in constructing statutes. The object of the Act has to be considered*."

I will be guided by the above principles in approaching the legal interpretation of the matter before me. I note and take judicial notice of the fact that the governing law under which the section for interpretation falls is the Anti Corruption Act.

I agree that some other laws define the public office narrowly to mean a Government Civil Service office but in my view the Regime of the Anti Corruption Law is user specific, and Action/result oriented.

I would therefore adopt a purposive interpretation of the word "public" and refer to the definition accorded to it in the concise Oxford Dictionary;

> *A purposive interpretation according to the Concise Oxford Dictionary for the word "public" means "that which concerns the people as a whole" Or*

"something done by or for people as a whole" something which has common community usage.

Any office which affects the general public in the sense of a "common benefit" is according to that definition a public office for which the Act is deemed to regulate as long as it is government related. The Anti Corruption Act defines its own offences, procedures and sunctions. It would therefore defeat the intention of the legislature (which is to punish and deter corruption) if the Act is given a restrictive interpretation as adopted by the Respondents. This would give licence to culprits targeted by this Act to go Scot-free, and go ahead to access offices for which the law intended to specifically prohibit.

Given the above analysis, I do not find it necessary to seek for interpretation of the clear provisions of Section 46 of the Act from outside the natural meaning of the Act itself. The interpretation suggested by the learned trial Magistrate, in my view ignored the High Court decision of **Adea** (supra) which considered and decided a similar matter which is on all fours with the case before me.

A lower court cannot overrule a High Court decision as the learned trial Magistrate attempted to do in his judgment. It is the practice that lower courts are bound by Higher court decisions.

There was no justification for the learned trial Magistrate to ignore the ruling/judgment of the High Court and adopt the course of definitions suggested.

I do find that the arguments by appellants are logical and they are on all fours with the cited cases including **Ouma Adea** (supra).

I find that by the time of nomination and election, the 2nd Respondent was not qualified to stand. His subsequent nomination and election was illegal as he was disqualified on account of the prior conviction under section 19 and 46 of the Anti Corruption Act.

The appeal succeeds on all grounds and is accordingly granted with the following orders.

1. The Judgment and orders of the learned trial Magistrate are set aside.

2. The 2nd Respondent's election is nullified.
3. The Appellant is declared the duly elected councilor having obtained the next highest votes.
4. Costs to appellant here and below.

Henry I. Kawesa

JUDGE

15.12.2016