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

HCT-04-CV-CA-0077-2016
(ARISING FROM ELECTION PETITION NO. 006 of 2016)

WAKALAWO SAM PAUL :::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

1. **THE ELECTORAL COMMISSION**
2. **MULIRO WANGA KARIM::::::::::::::::::::::::::::::::RESPONDENTS**

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

This is an appeal from the judgment and orders of **His Worship Kintu S. Zirintusa**; the Chief Magistrate of Mbale of 11th July 2016.

The appellant participated in the directly elected councilor elections for Busano Sub-county held on the 24th of February 2016.
2nd Respondent emerged victorious with 1624 votes; against appellant's 1615 votes. Appellant filed Election Petition No. 006 of 2016 against the Respondents challenging the validity of the nomination and subsequent election of the 2nd Respondent on grounds that the 2nd Respondent was not qualified for participating in the election by virtue of the Local Government Act Cap. 243 and Anti Corruption Act 2009.

The appellant raised four grounds of appeal which he argued together.

As a first appellate court, this court has a duty to reappraise all the evidence afresh and make its own conclusions thereon bearing in mind that it never saw, heard and observed the witnesses (principle was emphasized in ***Kifamunte Henry v. Uganda S/C Cr. A. 10 of 1997***)

I have gone through the lower court pleadings, submissions and judgment of the court. I have also gone through the submissions on appeal. I do appreciate the fact that in the lower court the appellant's contention was that prior to the 2nd Respondent's being nominated, he had been

charged and convicted of the offence of embezzlement contrary to section 19 of the Anti Corruption Act 2009. The 2nd Respondent paid a fine of Ug. X 1,000,000/=. Given the above, it was an issue before court whether in those circumstances at the time of his election, the 2nd Respondent was qualified for election.

In the lower court, the learned trial Magistrate found that the 2nd Respondent was qualified to be nominated.

The arguments which were raised by appellants before the lower court and responded to by the Respondents are the same arguments raised in this appeal.

Basically the appellants argued that the offence of embezzlement under section 19 of the Anti Corruption Act 2009 is among the offences that would disqualify one from holding a public office for a continued period of 10 years from date of conviction. In their view section 46 of the Anti Corruption Act needs no further interpretation than its ordinary, literal meaning and disqualification was its natural consequence.

On the other hand the respondent in submissions raised two grounds of opposition to the appeal.

First, they argued that it was incompetently brought before court, as no decree was extracted.

Secondly it was the Respondent's argument that the reference to Local Government Act in management of Local Council elections is exhaustive. They argued that the office of directly elected councilor is not a public office envisaged under the section 46 of the Anti Corruption Act. They referred to Article 257 (1) Constitution which defines public office as an office in the Public Service in a civil capacity of the Government or of a local government. They referred court to the case of ***Darlington Sakwa & Anor. V. Electoral Commission & 44 Ors Const. Petition 8 of 2006***, where Ministers were held not to be government employees.

Without repeating all arguments as they appear on record, I now move to answer the issues as here below.

1. **Whether the provisions of the Anti Corruption Act are applicable to a person standing as a Councillor under the local Government Act.**

In his judgment the learned trial Magistrate, argued that the Anti Corruption Act makes reference to Article 182 (2) of the Constitution, and section 139 (d) of the Local Government Act. He also read into the said provisions section 116 of the Local Government Act and concluded that this Act was exhaustive. He found that the 2nd Respondent was not covered by the Anti Corruption Act.

Resolution

1. Competency of the Appeal

The arguments on the need to file a decree alongside a memorandum of appeal has been held not to be fatal but necessary.

According to the **Uganda Civil Justice Bench Book (1st Edn) at page 370**, it was observed that:

> "*In regard to appeals to the High Court extraction of a decree is good practice and not a mandatory requirement……*"

I have found that a Notice of appeal was filed on 17th August 2016, a letter calling for the record filed on 24. August. 2016, a memorandum of appeal filed on 17. August. 2016.

According to the case of ***Henry Kasambwa v. Yakobo Rutarihamba HCCA 10/1998***, it was held that as long as you have a judgment you may not need to extract a decree to appeal.

The above position however is at variance with the position espoused in the case of the Executrix of the Estate of the late ***Christine Mary Namatovu & Anor. Vrs. Noel Grace Shalita Stanzi (1992-93) HCB*** and ***Yoana Yakuze v. Victoria Nakabembe H/C CA 10 of 1989***, which found the failure to extract a decree as a formal defect that would render the appeal incompetent.

However these cases were all before the enactment of the 1995 Constitution which enjoins courts to ensure administration of substantive justice under Article 126 (2) (e) thereof.

The above Article, was a re-statement of earlier court holdings which emphasized the fact that litigants once before court should be given a chance to be heard; without undue regard to technical hiccups of the law. See ***Iron and Steelwares Ltd v. C.W. Matyr & Co. (1956) 23 EACA Pg. 75*** where the East Africa Court of Appeal held that:

> "*Procedural rules are intended to serve as hand maidens of Justice not to defeat it*."

And later on ***In Re Christina Namatovu Tebajukira (1992-93) HCB 85***, where the Supreme Court ruled that;

> "*The Administration of Justice should normally require that the substance of disputes should be investigated and decided on their merits and that errors and lapses should not necessarily debar a litigant from the pursuit of his rights*."

I am convinced that the failure to extract a decree by the appellant in this case, though unexplained should not stand in the way of the substantive determination of the very important questions of law raised in this appeal. On the strength of those authorities I will dispense with the requirement for the decree, and order that since there is a valid judgment and lower court proceedings, duly certified, this court will allow the appellant's case to proceed.

I accordingly overruled that objection.

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

a) Impact of Section 46 of the Anti Corruption Act-2009, on the Respondent (2nd).

With due respect to the arguments raised by both Respondents, I do not agree with their contention that the Anti Corruption Act, does not govern or affect and apply to elections held under the local Government Act, because the Local Government Act is all inclusive.

The argument is flawed. Laws are enacted and given an objective and operational standard within which to operate. Accordingly the Anti Corruption Act is presented as "*An Act to provide for the effectual prevention of Corruption in both the public and the private sector,…..*"

The Act provides for the offence of Embezzlement under section 19 thereof. The 2nd Respondent pleaded guilty to the offence of embezzlement and paid a fine of 1,000,000/= (One Millions only).

The section provides that once convicted, the offender is "liable to a term of imprisonment not exceeding 14 years or a fine not exceeding 330 currency" points or both."

Section 46 of the Anti Corruption Act provides that:

> "*A person who is convicted of an offence under Section 2, 3, 4,…. 19-75 shall be disqualified from holding a public office for a period of ten years from his/her conviction*."

From the section, we ask ourselves which "public office" was being referred to? To answer that question, one must first naturally seek an answer from the Act itself. It was argued by the Respondents that since the Anti Corruption Act does not define a public office, then a definition must be assigned to it arising out of the Constitution of Uganda and the Local Government Act. Appellants on the other hand argued that since the Act defines a "*public body*" to include a district council, then no resort was necessary to seek for a separate definition for "*public office*."

My view is that the rules of statutory interpretation dictate that statutes should be interpreted first with a view to give them their ordinary meaning. It is only where there is difficulty in interpretation that courts resort to either purposive, liberal, or constructive interpretation.
In this case however I do not see any need to move out of the literal interpretation of the word "Public office" within the context of the subject matter under consideration. In ordinary use of English, according to the concise Oxford Dictionary "public" concerns the people as a whole; it is done by, or for representing the people…" The definition of public in ordinary meaning is to mean something which has common community usage. The public office then means any office to which the element of people is envisaged. The office which serves the people as a whole. The facts show that the office under issue is of a Councilor at a sub-county. It is an office that serves the people and falls within the defined bodies referred to as " a public body" under the Act. This court in ***Dr. Amutahaire & Ors v. KCCA & Ors. (MSA 92/2016) HCCLA*** discussed the rules which govern statutory interpretation, and noted the following approaches:

According to ***JA De Smith Judicial Review of Administrative Action (3rd Edn- London & Sons Ltd- 1973) at page 86***, he states that:

> "*Two broad approaches to problems of interpretation have been followed 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 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 latter 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 expect in so far as they have been expressed in the words so used, this principle is expressed in the literal rule and it is multi-farious sub rules*."

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 Tinyefuza Const. Appeal 1 of 1997***, from the judgment of **Oder JSC**, citing ***Crates on Statute Law (6th Edn) on page 66***, 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 there are other laws which define "*public service*" with specific reference to a government civil service office. I however notice that the Anti Corruption Act deliberately avoided a definition which would narrow the use of the said word whose intention was to extend it to all categories of office holders with a mandate to access resources in the names of the community; but misappropriate the resources then seek for reemployment, or re-election to similar officer inspite of their corrupt vices. The Law (Anti Corruption) operates an all inclusive regime. It operates clearly defined legal provisions that define its intentions; and does not need a resort elsewhere for the interpretation of its obvious provisions.

I therefore agree with the High Court decision of ***Oundo Sowedi & Anor. V. Ouma Adea (consolidated Petitions No. 18 & 19 of 2016***, where my Brother **Hon. J. Bashaija** found that the provisions of Section 46 of the Anti Corruption Act are mandatory by the use of "shall." The Judge also found that in defining the word "public body" in the Act, it includes a District Council, whose officers are elected members just like those at the sub-county council and should therefore mandatorily suffer the consequences listed under section 46 of the Act.

I with due respect find the approach of the learned trial Magistrate erroneous. He ignored the above High Court authority which is binding on him and instead attempted to overrule the Judge! I found that behavior unprofessional to say the least.

A lower court cannot overrule a High Court; though it can cite reasons for not following a particular decision basing on another superior decision or another High Court decision which distinguishes the decision the lower court is choosing not to follow. It is however wrong simply to disagree and give your own interpretation being a lower court.

On the whole the appellant has shown that the Respondent was disqualified for nomination and election at the time, on grounds of conviction under the Anti Corruption Law.

This appeal succeeds on all grounds raised.

This appeal is allowed. The lower court judgment is set aside. The consequence of this finding is that the election of the respondent as Councillor for Busano Sub-county is hereby nullified. The councilor who got the next majority of votes, as pleaded being the appellant (which was not denied by both Respondents) is hereby declared the duly elected councilor for Busano sub-county having polled a total of 1615 votes with a vote difference of 17 votes as against the other contestant named herein.

Appellant is granted costs of the appeal here and below. I so order.

Henry I. Kawesa

JUDGE

14.12.2016