

5

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
IN THE MATTER OF THE LOCAL GOVERNMENT ELECTIONS FOR CHAIRPERSON
NTUUSI TOWN COUNCIL, SEMBABULE DISTRICT
ELECTION PETITION NO.12 OF 2021

10 **BYAKATONDA GODFREY:..... PETITIONER**

VERSUS

1. KAMIHINGO EMMANUEL

2. ELECTORAL COMMISSION :.....RESPONDENTS

BEFORE: HON. JUSTICE ESTA NAMBAYO

15

JUDGEMENT

The Petitioner, Byakatonda Godfrey, brought this Petition against Kamihingo Emmanuel (the 1st Respondent) and the Electoral Commission (2nd Respondent) under the **Parliamentary Elections Act (as amended), the Parliamentary Elections (Election Petitions) Rules SI 141-2 and the Local Government Elections Act No.17**

20 **of 2005 (as amended)** seeking for Declarations and Orders of this Court that;

25

- 1. The 1st Respondent was not, at the time of his nomination and election, qualified for election as Chairperson Ntuusi Town Council in Sembabule District;**
- 2. The 1st Respondent was not validly elected as Chairperson Ntuusi Town Council, Sembabule District;**
- 3. The elections of the 1st Respondent be annulled and set aside and the Petitioner who was the only other candidate be declared the duly elected Chairperson of Ntuusi Town Council, Sembabule District.**
- 4. The Petitioner be awarded costs of this petition.**

30 The grounds of this Petition are set out in the petitioner's affidavits together with the
affidavits of Kwijuka Geoffrey, Nansiti Caroline and Mushabe Sharif but briefly are;

1. That the election for Chairperson of Ntuusi Town Council, Ssembabule District was held on the 3rd day of February, 2021 where the Petitioner and the 1st Respondent were candidates and the 2nd Respondent returned,
35 declared and published the 1st Respondent as the validly elected Chairperson of Ntuusi Town Council.
2. That the Petitioner was aggrieved by the nomination, election and declaration of the 1st Respondent as the validly elected Chairperson of Ntuusi Town Council because at the time of his nomination and subsequent
40 election, the 1st Respondent was neither resident nor registered as a voter at Ntuusi Town Council and that;
 - a. It was contrary to S.111(4)(b) of the Local Government Act as amended for the 1st Respondent who is ordinarily resident at Gantaama B, Ishara Parish, Nabitanga Sub County, Lwemiyaga
45 County to contest for Chairperson Ntuusi Town Council.
 - b. It was contrary to S.111(4)(d) of the Local Government Act as amended for the 1st Respondent who is registered at Gantaama B Polling Station, Ishara Parish, Nabitanga Sub County, Lwemiyaga County to contest for Chairperson, Ntuusi Town Council.
 - 50 c. Contrary to S.19 (1) (2) and (5) of the Electoral Commission Act and S.106 of the Local Government Act as amended, on the 19th January, 2021 the 2nd Respondent issued the 1st Respondent with a voter slip showing that the 1st Respondent was registered as a resident of Kigabagaba and a voter at Kashozikamwe C.O.U Polling Station,
55 Ntuusi Town Council.

- 60 3. That on the 24th day of December, 2020, the Petitioner lodged a complaint with the 2nd Respondent challenging the validity and legality of the nomination of the 1st Respondent on ground that he was neither a resident nor registered as a voter of Ntuusi Town Council but no decision was made on the complaint or communicated to the Petitioner at all.
4. That the 2nd Respondent failed in its duty to ensure that the 1st Respondent who, at the time of his nomination and subsequent election for Chairperson of Ntuusi Town Council was not eligible and not qualified, is not elected to the said office.

65 The Respondents oppose this petition.

Background to the Petition

70 The Petitioner and the 1st Respondent were candidates for election to the office of Chairperson of Ntuusi Town Council in Ssembabule District. After the elections, the 2nd Respondent returned, published and swore the 1st Respondent as the validly elected Chairperson for Ntuusi Town Council. It is the Petitioner's contention that at the time of his election, the 1st Respondent was neither resident nor registered as a voter at Ntuusi Town Council, hence this petition.

Representation

75 Learned Counsel Hon. Theodora Ssekikubo together with Counsel Ssekanjako Abraham appeared for the Petitioner, Counsel Tusingwire Andrew was for the 1st Respondent while Counsel Baguma Honest holding brief for Counsel Angela Kanyiginya, was for the 2nd Respondent.

The following were the agreed issues for trial;

- 1. Whether the Petition is competently before this Court;**

- 80 **2. Whether the 1st Respondent was validly nominated and elected as
 Chairperson for Ntuusi Town Council; and**
- 3. What remedies are available to the parties.**

Counsel for the Petitioner submitted that the burden and standard of proof in an election Petition lies upon the Petitioner who is required to prove every allegation
85 contained in the Petition to the satisfaction of the Court and that **Section 61 (3) of the Parliamentary Elections Act, 2005** (as amended) sets out the standard of proof to be above the balance of probabilities. He referred Court to the cases of *Mukasa Anthony Harris –v- Dr. Michael Lulume Bayiga Supreme Court EPA No. 18/07 and Paul Mwiru –v- Hon. Igeme Nathan Nabeta Samson & 2 Ors EPA No.3/11.*

90 That by virtue of the provisions of **Section 172 of the Local Governments Act** as amended, the Parliamentary Elections Act, 2005 is applicable to the instant petition. I entirely agree with the submission of Counsel for the petitioner on the standard of proof required in election petitions. On the applicability of the Parliamentary Elections Act to this case under S.172 of the Local Government Act, I wish to clarify that S. 172
95 of the Local Government Act is to be applied by the Electoral Commission only and not Courts of law. The cases of *Peter Odok W'Oceng-v- Markly Vincent Okidi and 4 others, EPA No.29 of 2011* and the case of *Bandikubi Boniface Musisi & 3 Ors – v- Sserwanga William Tom & Anor, EPA No. 110 of 2016*, are very clear on this.

Issue 1: Whether the Petition is competently before this Court.

100 Counsel for the Petitioner opted to submit on this issue in rejoinder.

Submissions of Counsel for the 2nd Respondent.

In his submissions, Counsel for the 2nd Respondent raised two objections in regard to this petition that;

- 105 1. The Petition raises pre-polling complaints which should have been resolved under Article 61(1)(f) of the Constitution of the Republic of Uganda and Section 15 of the Electoral Commission Act and that;
2. The petition was filed out of time.

110 **Objection 1: The Petition raises pre-polling complaints which should have been resolved under Article 61(1)(f) of the 1995 Constitution and Section 15 of the Electoral Commission.**

Counsel relied on Article 61(1) (f) of the Constitution, Section 15 of the Electoral Commission Act and the case of *Kasirye Zzimula Fred -v- Bazigatirawo Kibuuka Francis Amooti & EC, EPA No.01/2018*, where it was held that;

115 *“From the reading of the above provisions of the law, it appears to us that the intention of the legislature in enacting Section 15 of the Electoral Commission Act was to ensure that all disputes arising prior or during nominations before voting are resolved with finality before the election date, except where the law otherwise specifically provides. Timely complaints will avoid undue expense and inconvenience to the parties inclusive of the electorate who do not have to vote where nomination is contested. Issues of nomination should be resolved before elections..... a party waived his rights to complain when he failed to bring the complaints within the stipulated period and such would be estopped from doing so after the election”.*

120

Counsel then submitted that the Petitioner’s claim that the 1st Respondent was neither ordinarily resident nor registered as a voter at Ntuusi Town Council and should not have been nominated to contest as Chairperson for Ntuusi Town Council are pre-polling complaints that the Petitioner ought to have raised under the above provisions of the law with the Electoral Commission. That failure to do so estops him from raising

125

any complaint after the election as pointed out in the *Kasirye Zzimula Fred -v- Bazigatirawo Kibuuka Francis Amooti* case (supra). Counsel argued that pre-polling complaints can only come to this Court on appeal. He relied on the cases of *Asio Jesca -v- Electoral Commission and Epillo Isaac, EP No.11/2020, Ntensibe Kibla Manoti -v- Electoral Commission EPA No. 01/2021 and Kasirye Zzimula Fred -v- Bazigatirawo Kibuuka Francis Amooti (supra).*

In re-joinder Counsel for the petitioner submitted that on the 24th December 2020, the Petitioner filed a complaint with the 2nd Respondent but his complaint was not fixed for hearing and no ruling was made on it. That all the authorities cited by Counsel for the 2nd Respondent only apply to situations where the Petitioner did not file a complaint and not in the instant case. Counsel relied on S. 61(4) of the PEA, and explained that the 3rd ground of this Petition clearly sets out the Petitioner's contention that the 1st Respondent was, at the time of his nomination neither resident nor registered as a voter at Ntuusi Town Council. That the 2nd Respondent had the opportunity to handle this matter when the complaint was filed before it but chose to abdicate from its obligation and is therefore estopped from usurping the powers of Court at this stage. Counsel emphasized that the 2nd Respondent handles pre-polling complaints and not petitions and prayed that this objection be overruled with costs to the petitioner.

Objection 2: That the Petition was filed out of time

Under this objection, Counsel for the 2nd Respondent submitted that this matter was filed out of time, he referred to *Misc. Application No. 008/2021 Byakatonda Godfrey -v- Kamihingo Emmanuel & EC* where this court found that this petition was filed out of time but extended the time within which to file this Petition and averred that it was an error apparent on the face of the record for this court to hold as such. Counsel relied on Section 138(4) of the Local Governments Act and the case of *Kyagulanyi*

155 *Ssentamu Robert -v- Yoweri MTK & 2 Others, Supreme Court Misc. Application No.1/2021*, where the Court said that;

160 *“.....steps leading to the determination of petitions are worded in mandatory terms which require strict compliance. It thus follows that in determining the petition, the court is restricted to those steps provided for under the law. There is no doubt therefore that the intention of the legislature in providing timelines in the determination of the petition is to prevent delay and ensure expeditious hearing and conclusion of election related disputes. This is to ensure the country gets back to normalcy having gone through a stressful electoral process...In addressing this question, we are persuaded by the decision of Rao and Others, (1956)1MLJ 40 where it was observed that; ‘...the general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law, and that the court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law”.*

170

Counsel further submitted that the Justices of the Supreme Court went on to state while relying on the case of *Maude -v- Lowley (1874) L.R.9C.P. 165, then Lowley (1883)48 L.T. 762* that;

175

“we are persuaded by the above decision in as far as the limitation imposed on this court by the Constitution to entertain a petition filed within the acceptable timeframe. The Court has no powers to extend that time” and further that;

180 *".....we are also aware that the role of the Supreme Court as an apex Court in
the country is to state the correct position of the law to guide the lower courts.
We are fortified by Article 132 (4) of the Constitution which provides as follows:
- 'The Supreme Court may, while treating its own previous decisions as normally
binding, depart from a previous decision when it appears to it right to do so; and
all other Courts shall be bound to follow the decisions of the Supreme Court on
185 questions of law'.*

Counsel also referred this court to the case of *Wanyoto Lydia Mutende -v- EC & Nakayenze Connie Galiwango HC Misc. Application No.179/2021*, where Court noted that;

190 *"even under Rule 19 (Supra) which provides for enlargement and abridgement of
time, it is only applicable where time is appointed by the Rules for doing any act
if in the opinion of the court there exists such special circumstances as to make
it expedient to do so. However, court would not resort to this Rule where time
appointed is set by the Act itself, such as in filing election petitions".*

195 In view of the above court findings, Counsel submitted that this Court has inherent
powers under Section 98 of the Civil Procedure Act to cure an illegality once brought
to its attention as held in the case of *Makula International Ltd. -v- His Eminence
Cardinal Nsubuga & Another Civil Appeal 1981/4 [1982] UGSC 2*. He prayed that
this Court exercises its inherent powers to review and cure the error apparent on the
face of the record.

200 In re-joinder to the above, Counsel for the petitioner submitted that this Court has
already pronounced itself on this matter. That the petition was validated, served and
the hearing was conducted. That it is irregular for Counsel to raise this issue again.
Counsel submitted that once this Court pronounced its ruling and orders, it became

205 *functus officio*. Counsel relied on the case of Goodman **Agencies Ltd –v- Attorney General and Anor (Constitutional Petition-2008/3)** which was upheld by the Supreme Court in **Attorney General –v- Goodman Agencies Ltd (Constitutional Appeal-2010/5)** and the *Botswana case of Magdeline Makinta -v- Fostina Nkwe, Court of Appeal No. 26/2001*- where Akiwumi J.A, while quoting the South African case of *Odneste Monanyana -v- The State, Criminal Appeal No.8 of 2001* (unreported) held that;

215 *“The general principle now well established in South Africa as well as Botswana is that once a Court has duly pronounced a final judgment or order it has itself no authority to correct, alter or supplement it. The reason is that it becomes thereupon functus officio, its jurisdiction in the case having been fully and finally exercised its authority over the subject matter has ceased.”*

Counsel went on to explain that although the holding arises from a criminal law judgement from a foreign jurisdiction, it embodies the correct principle of the law on the subject. He averred that moving Court to review its decision in this manner would tantamount to abuse of Court process and wastage of Court’s time. He prayed to this court to overrule both Points of law raised by the Respondents with costs to the Petitioner, so that this petition is heard on merit.

Analysis

225 Art. 61(1) (f) of the Constitution and S. 15(1) of the Electoral Commission Act mandate the Electoral Commission to hear and determine election complaints arising from the electoral process. In this case, it is the Petitioner’s claim that the 1st Respondent, at the time of his nomination, was neither resident nor registered as a voter at Ntusi Town Council. The petitioner contends that on the 24th of December, 2020, he lodged a complaint with the 2nd Respondent challenging the validity and legality of the nomination of the 1st Respondent on grounds that he was neither resident nor

230 registered as a voter at Ntuusi Town Council but the 2nd Respondent refused to
address the matter and no decision on the complaint was communicated to the
Petitioner. Counsel referred this court to paragraphs 9 and 12 of the affidavit in
support of the petition and the corresponding annexures "F" & "J". Annexure "F" is a
letter addressed to the Chairperson Electoral Commission. It is dated 24th December,
235 2020 and has the receiving stamp of the 2nd Respondent bearing the same date. This
confirms that the petitioner actually raised a complaint with the 2nd Respondent. There
is nothing on record to show that the 2nd Respondent attended to the petitioner's
complaint. This makes me believe and agree with the petitioner that the 2nd
Respondent did not attend to the petitioner's complaint as required and mandated to
240 it under Article 61(1)(f) of the Constitution and Section 15 of the Electoral Commission
Act. The 2nd Respondent failed in its duties and cannot now fault the complainant for
filing this matter before court when it failed to address the issues taken before it at
the right time. This objection is therefore overruled.

On the objection that this Petition was filed out of time, it is not in dispute that in
245 *Misc. Application No. 008/2021 Byakatonda Godfrey -v- Kamihingo Emmanuel & EC*,
this court found that this petition was filed out of time. Court then extended time
within which to file the petition and validated the petition on record. If Counsel for
the Respondents were not satisfied with this court's decision, they should have sought
leave of court to appeal against the decision. This court having pronounced itself on
250 the matter as it did, cannot reconsider and reverse its own decision without a formal
application and grounds for review, if any, presented by the Respondents. Allowing
the submission of Counsel for the Respondents as presented would amount to this
court sitting in appeal of its own decision. This objection also fails.

Basing on the above findings, I would find that this petition is competently before this
255 court and I therefore answer the 1st issue in the affirmative.

Issue No. 2: Whether the 1st Respondent was validly nominated and elected as Chairperson for Ntuusi Town Council.

This issue was argued under two grounds;

- i. That at the time of his nomination, the 1st Respondent was not ordinarily resident at Ntuusi Town Council;*
- ii. That the 1st Respondent was, at the time of his nomination, not a registered voter at Ntuusi Town Council.*

Ground i: That at the time of his nomination, the 1st Respondent was not ordinarily resident at Ntuusi Town Council

Counsel for the petitioner presented three witness namely; Kwijuka Geofrey, the LC III Chairperson of Nabitanga Sub County, Nansiti Caroline the LC I Chairperson of Gantaama 'B' and Mushabe Sharif, the Secretary for defence Ntuusi Central LC I. In his evidence, Kwijuka Geofrey testified that the 1st Respondent stays at his residential home at Kamoshe L. C. 1 which he knows very well and that they share a boundary. That the 1st Respondent's wife, Kyampaire Jolly, is the current LC I Chairperson of Kamoshe village and she is also the vice Chairperson of Kyambogo Parish which is under Nabitanga Sub County.

Nansiti Caroline, the petitioner's second witness, informed court that she held the position of Chairperson, Kamoshe LC I up to 2018 when Kamoshe LC I was subdivided into two villages. That she was in custody of all the official documents including the register for all residents where the 1st Respondent and his family are reflected as residents. The said register for all residents is annexure "C" to Ms. Nansiti's affidavit. Nansiti states that during the voting for the President and Members of Parliament on the 14th /01/2021, she did not see the 1st Respondent attend the voting but she saw members of his family. While the third witness, Mushabe, states that the 1st Respondent has never stayed at Ntuusi Central in Ntuusi Town Council but he only

owns a three roomed commercial structure in the town council, which he rents to Namara Deborah, Namara Esther and Dominic Kiganda.

285 Counsel submitted that the affidavit of Mushabe Sharif disproves the 1st Respondent's claims of residence in that area. That the 1st Respondent's nomination was void for contravening S. 111 (4) (b) of the Local Government Act and as such the subsequent election cannot stand. Counsel referred this court to the cases of **Wakayima Musoke Nsereko and Electoral Commission -v- Kasule Robert Sebunya Election Petition Appeal Nos. 50 and 102 of 2016 and Hon. Tumuramye Genensio -v- Tayebwa**
290 **Herbert Musasizi Election Petition No. 03 of 2021 and Reg. v. Barnett London Borough Council, Ex parte Shah [1983] 1 ALL ER 226 OR [1983] 2 A.C. 309 at p. 342D.**

In reply, the 1st Respondent's Counsel submitted that it was the 1st Respondent's evidence that he is a resident of Ntuusi Town Council and that he owns a residential
295 and commercial building in the area. That on the building, the 1st Respondent uses one of the rooms for accommodation where he resides with his wife, Esther Namara, while the commercial section of the building is occupied by Dr. Kiganda and Namara Deborah. Counsel explained that the 1st Respondent's evidence was corroborated by the evidence of Kobusigye Immaculate, Ruhima Frank and Miuro Fredrick who are
300 residents of Ntuusi Town Council. He argued that Section 111 (4) (b) of the Local Government Act provides that for one to contest for the seat of the Chairperson of a Local Government, he or she must be ordinarily resident in that Local Government. Counsel averred that the concept of ordinarily resident is not defined in our laws but the case of **Cohen -v- CIR [1946] 13 SATC 362 and CIR -v- Kuttel [1992] 54 SATC**
305 **298** gives the definition. That in the instant case, parties agree that the 1st Respondent owns a commercial house at Ntuusi Town Council where he operates his business and resides with a wife called Namara Esther. That the fact of owning land developed with a commercial building was uncontested and it demonstrates that there is a sufficient

310 degree in the mind of the 1st Respondent to ordinarily reside in the area. That the 1st
Respondent does not deny the fact that he has a home at Kamoshe but he also has
another home at Ntuusi Town Council. Counsel further submitted that having a home
at Kamoshe does not mean that the 1st Respondent is not ordinarily resident at Ntuusi
Town Council and that the Petitioner has not proved his case to the satisfaction of
court that the 1st Respondent is not ordinarily resident at Ntuusi Town Council. He
315 prayed that this issue be answered in the affirmative.

Analysis:

S. 111 (4) of the Local Government Act, provides that a person shall not qualify for election as Chairperson of a municipality, town, division or sub county unless that person___

320 ***(b) is ordinarily resident in the municipality, town, division or sub county.***

In *Lanyero Ketty –v- Okene Richard & Anor CA No.29 of 2018* court noted that;

325 ***"A person is deemed to be ordinarily resident at such a place where in the settled routine of his or her life, he or she regularly, normally or customarily lives. It is contrasted with special or occasional, casual residence or deviatory residence. It is determined by the degree to which a person in mind and fact settles into or maintains or centralises his or her ordinary mode of living with its accessories in social relations, interests and conveniences at or in the place in question...A person can be absent for significant periods and still be ordinarily resident so long as he or she maintains some tie or connection with the place. A person absenting
330 himself or herself temporarily from his or her place of ordinary residence cannot by reason thereof cease to be ordinarily resident there at..All that is required for a residence to be one's ordinary residence is the individual's purpose of living where he or she does. There must be a sufficient degree of continuity to enable it properly to be described as settled".*** (underlining is for my own emphasis).

335 In the instant case, it is not in dispute that the 1st Respondent owns property at Ntuusi
Town Council. Both parties agree that one of the persons occupying the property of
the 1st Respondent is Namara Esther. It is the 1st Respondent's evidence that Ms.
Namara Esther is his spouse and that he resides with her on this property, although
340 he is also married to Jolly Kyarimpa who resides at Kamoshe- Kyambogo in Nyabitanga
sub-county. Kobusigye Immaculate, Ruhima Frank and Miiro Fredrick, who all gave
evidence for the 1st Respondent stated that the 1st Respondent has a family on this
property. The petitioner did not present evidence to challenge the 1st Respondent's
claim that Namara Esther is his spouse although his Counsel tried to challenge this
claim by the 1st Respondent in cross-examination.

345 Under paragraph 3 of his affidavit in support of the amended answer to the petition,
the 1st Respondent states that he is the incumbent Chairperson/Mayor of Ntuusi Town
Council by virtue of MA No. 71 of 2018. The 1st Court declaration in MA No. 71 of
2018 states that;

'the 1st Respondent is declared as the Chairperson of Ntuusi Town Council'.

350 The Court decision was made on the 14th of November, 2018 (see annexure "A" to
the 1st Respondent's amended affidavit in answer to the petition). The 1st Respondent
referred to in this case is Kamihingo Emmanuel.

In view of the above therefore, I find that the 1st Respondent has demonstrated that
there is a sufficient degree in his mind to ordinarily reside at Ntuusi Town Council and
355 therefore, he qualifies to be ordinarily resident at Ntuusi Town Council as required
under S.111(4) (b) of the Local Government Act.

**Ground ii: That the 1st Respondent was, at the time of his nomination, not a
registered voter at Ntuusi Town Council.**

Counsel for the petitioner referred to S. 19 of the Electoral Commission Act and S.
360 111 (4) (d) of the Local Government Act and submitted that the 1st Respondent, at the
time of his nomination on the 29th September 2020, he was not a registered voter at

Ntuusi Town Council as required by law, or at all. That the Petitioner being concerned with the nomination of the 1st Respondent, he obtained and studied copies of the National Voters' Register for Gantaama B Polling Station, Ishara Parish, Nabitanga Sub County, Lwemiyaga County, which is not situate in Ntuusi Town Council. The said
365 National Voters' Register for Gantaama B Polling Station which bore the 1st Respondent's name and particulars as at 20th November 2020 was attached to the Petitioner's affidavit in rejoinder. That the Petitioner petitioned the 2nd Respondent over this anomaly but no decision was made on his complaint. Counsel referred this
370 court to annexure "F" which is a copy of the petitioner's complaint to the 2nd Respondent and explained that on the 19th January 2021, the 2nd Respondent transferred the 1st Respondent from the Voters' Register of Gantaama B polling station to Kashozikamwe C.O.U Polling station, Ntuusi Town Council. That the 1st Respondent admitted that his particulars were transferred and updated after nomination of the
375 candidates for Ntuusi Town Council after the conduct of the 1st phase of the general elections on the 14th January 2021 as shown on the voter location slip attached on the Petitioner's affidavit and the voters' register attached on the 2nd Respondent's affidavit in support of the answer to the petition. That changes on the voters' register for the 1st Respondent were only effected for the elections of the Town Council which
380 were held on the 3rd February, 2021.

Counsel argued that by virtue of the Guidelines issued by the Electoral Commission in 2019, the update and revision of the national voters' register was conducted from *21st November 2019 to 11th December 2019*, and from then no transfer could be made. That in the instant case the 2nd Respondent compromised the process by
385 transferring the 1st Respondent from Gantaama B polling station to Kashozikamwe C.O.U polling station when he had already been invalidly nominated on false information that he was a voter of Ntuusi Town Council whereas not. Counsel relied on the case of ***Lukwago & 13 Ors –v- Electoral Commission & 2 Ors (Miscellaneous***

390 **Cause-2019/431**) where Court dismissed an application seeking for extension of
timelines for updating the voters' register and the case of **Byanyima Winnie –v-
Ngoma Ngime (Civil Revision 9 of 2001) [2001] UGHC 92.**

In reply, Counsel for the 1st Respondent relied on section 111 4(d) of the Local
Governments Act and submitted that the law does not provide that one must be a
registered voter in a specific area as suggested by counsel for the petitioner in his
395 submissions. That being a registered voter is the only requirement. That at the time
of nomination the 1st Respondent was a registered voter and this was not challenged
by the Petitioner. Counsel prayed that this court finds that the Petitioner has failed to
prove that the 1st Respondent was not a registered voter at the time of nomination.

Counsel for the 2nd Respondent contended that Section 111(4) (d) of the Local
400 Governments Act as quoted by Counsel for the Petitioner at page 9 of his submission
is misleading to this Court. That the phrase "in that area" is not part of the provision
of the law. Counsel explained that at the time of nomination and subsequent Election,
the 1st Respondent was a registered voter at Ntuusi Town Council and this fact has
not been controverted by the Petitioner in his pleadings and at cross examination. He
405 prayed that this issue be resolved in the affirmative.

Analysis:

Section 111(4)(d) of the Local Governments Act requires one to be a registered voter
before being elected as Chairperson of a Municipality, Town, Division or Sub County.
It specifically provides that;

410 ***S. 111 (4) A person shall not qualify for election as Chairperson of a municipality,
town, division or sub county unless that person___***

(d) is a registered voter;

In this case, it is the petitioner's claim that the 1st Respondent was not registered as a voter at Ntuusi Town Council. The petitioner relied on the National Voter's Register, (annexure "D") and the 1st Respondent's voter locator (annexure "E") to his affidavit in support of the petition to show that the 1st Respondent was not registered as a voter at Ntuusi Town Council. Although the National Voters' Register that the Petitioner has relied on shows that the 1st Respondent is registered as a voter at Gantaama B in Ishara, Nabitanga, the same register is also titled **"NOT FOR OFFICIAL USE"** (I have bolded and underlined the words for emphasis).

On the other hand, annexure "CC" to the 1st Respondent's affidavit to his amended answer to the petition is also a National Voters' Register. It is titled **"POLLING REGISTER FOR GENERAL ELECTIONS 2021"**. Page 4 of this register shows that the 1st Respondent, Kamihingo Emmanuel was a registered voter at Kashozikamwe ward at Kashozikamwe C.O.U polling station, Ntuusi Town Council. Annexure "A" to the 1st Respondent's affidavit is a photocopy of the certified copy of his voter's information also showing that he is a registered voter at Kashozikamwe C.O.U polling station, Kashozikamwe ward in Ntuusi Town Council. The voter locator that the petitioner relies on as stated in paragraph 8 of his affidavit in support of the petition was downloaded from the internet. The right voter's locator should have been obtained from and certified by the 2nd Respondent for official and proper use by the petitioner. Annexure "G" to the petitioner's evidence is the same as annexure "A" above (a photocopy of the certified copy of the 1st Respondent's voters' information showing that the 1st Respondent is registered as a voter at Kashozikamwe C.O.U polling station in Ntuusi Town Council). The date 19th January, 2021 on this annexure is the date of certification and not the date it was issued as stated by the petitioner under paragraph 10 of his affidavit in support of the petition. In paragraph 11 of his affidavit, the petitioner states that the 1st Respondent was not registered as a voter at Kashozikamwe C.O.U polling

station by the 14th January, 2021. The petitioner has not presented any evidence to
440 confirm this claim. The copy of the register the petitioner relies on in paragraph 5 of
his affidavit in rejoinder (marked "J") is a *Polling Register for **Political Parties***.
Compared to annexure "CC" to the 1st Respondent's affidavit to his answer to the
petition which is titled "**Polling Register for General Elections 2021**", I would find
that annexure marked "J", '*titled Polling Register for Political Parties*' is not the right
445 register for the 2021 General Elections. The right register is annexure "CC" titled Polling
Register for General Elections, 2021 where the 1st Respondent is reflected as a voter
on page 4 of the register. Therefore, I find that the 1st Respondent fulfilled the
requirements of S.111(4) (d) of the Local Government Act and he was, at the time of
his nomination, a registered voter at Kashozikamwe C.O. U polling station in Ntuusi
450 Town Council. Therefore, it is my finding that the 1st Respondent was validly nominated
and elected as Chairperson for Ntuusi Town Council.

In the circumstances, I find no merit in this petition and it is hereby dismissed with
costs.

I so order.

455 **Dated, signed and delivered by mail at Masaka this 4th day of October, 2021.**

Esta Nambayo

JUDGE

4th/10/2021.