

The petitioner therefore prays for:-

- (a) a declaration that the respondent's membership of Parliament is inconsistent with Art 80(1)(c) of the Constitution;
- (b) an order that the respondent has been sitting in Parliament illegally and should lose his seat and be barred from attending any future Parliamentary proceedings; and
- (c) to order fresh elections for Kakuuto County;
He also prays that the respondent should be made to pay costs of the petition.

In answer to the Petition, the respondent deposed:

"(a) that the petitioner is not an aggrieved person and has no interest in Kakuuto County;

(b) that he satisfied the requirement of Art 80(1)(c) of the Constitution

(c) in the alternative, the respondent avers that this court has no jurisdiction to determine the petition; and in

(d) further alternative, that the petition is bad in law for not joining the Returning Officer and in that it is irregularly before the court."

Consequently the respondent prays that the petition should be struck out with costs.

In the supporting affidavit, the respondent had attempted to show that he was academically qualified to be nominated and elected as a member of Parliament, but in view of the events that turned out when the petition came up for hearing, we did not think it was necessary to detail them.

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At the hearing learned Counsel, Ben Wacha, the leader of the advocates who represented the respondent, raised four preliminary points which we considered were unassailable.

The first objection was that on the face of it the petition was brought under Article 80(1) (c) of the Constitution. It was the contention of Counsel that article 80(1) (c) neither created jurisdiction for this court, to entertain the Petition, nor gave any litigant a right of access to this court on matters concerning elections of members of Parliament. This court is a special court created by article 137 of the Constitution to deal with matters specifically mentioned under that article. Declaration under article 80(1)(c) of the Constitution is not one of them.

We thought there was merit in that objection. Article 80 of the Constitution under which the application was brought only prescribed qualifications which an intending candidate for a Parliamentary election must have. The article provides:

- "80(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 article plainly neither clothed this court with jurisdiction to investigate any matter under the article, nor gave any litigant a right of access to this court on matters concerning elections of members of Parliament.

The right of access to this court is contained in two legal Notices passed under The Judicature Act, 1996. The first one is The Interpretation of The Constitution (Procedure) Rules, 1992 (Modification) Directions 1996, Legal Notice 3 of 1996.

Rule 2 provides:

"These Directions shall apply to the Constitutional Court in exercise of its jurisdiction under clause (5) of article 137 of the Constitution, where the matter comes before the court by reference from another court."

Clause 5 of Art 137 of the Constitution contains the following provisions:-

"Where any question as to the interpretation of this Constitution arises in any proceedings in a court of law, other than a Field Court Martial, the court:

- (a) may, if it is of the opinion that the question involves a substantial question of law, and
- (b) shall, if any party to the proceeding requests it to do so, refer the question to the Constitutional Court for decision in accordance with Clause (1) of this article."

It is clear from the above provisions that legal Notice No. 3 of 1996 deals with matters referred to this court *Quo motu* by a trial Judge or on an application by a party to the proceedings before the trial court.

This matter did not come to this court following a reference from another court. It means that this court cannot entertain the petition under Legal Notice No. 3.

The second way of bringing matters before this court can be found in The Modifications To The Fundamental Rights and Freedoms (Enforcement procedure) Rules 1992, Directions, 1996, Legal Notice No. 4; Section 1 of which provides:

"These Directions may be cited as the Rules of The Constitutional Court (Petitions for Declarations under Art 137 of the Constitution) Directions, 1996."

The schedule to the Rules defined "Court" to mean
"Constitutional Court of Uganda established by article 137 of
The Constitution of 1995" and "Petition" has also been defined to
mean:

"Petition of an aggrieved party Seeking to institute proceedings for
a declaration or redress under Clause 3 of article 137 of the Constitution."
Legal Notice 4 gives an aggrieved Party direct right of access
to this court.

This petition was not brought under any of the procedural
rules for bringing matters before this court. We do not think that
failure to bring the petition under the correct article of the
Constitution through the correct procedural rule is a mere technicality.

We would like to repeat what the Supreme Court said in the
case of Utex Industries Ltd Vs Attorney General Civil Application
No. 52 of 1995 regarding how slavishly Art. 126 (2) (e) of The Constitution
has been and continues to be applied when questions about failure to
follow procedure arises in a proceeding. The Supreme had this to say:

"Regarding Art 126 (2)(e)....."

we are not persuaded that the Constituent Assembly Delegates
intended to wipe out the rules of procedure of our courts
by enacting Article 126(2)(e). Para (e) contains a caution
against undue regard to technicalities. We think that the
article appears to be a reflection of the saying that rules
of procedure are handmaids to justice - meaning that they
should be applied with due regard to the circumstances of
each case".

The above observation was repeated by the Supreme Court in Kasirye,
Byaruhanga & Co. Advocates v Uganda Development Bank,
Civil Application No. 2 of 1997 and added: "that a litigant
who relies on the provisions of article
126 (2)(e) must satisfy the court that

in the circumstances of the particular case before the court it was not desirable to pay undue regard to a relevant technicality. Article 126(2)(e) is not a magic wand in the hands of defaulting litigant".

The petitioner in this case has not been able to discharge the above burden:

The first objection accordingly succeeded.

It was contended in the second objection that the petition was time barred. The petitioner is contesting the election of respondent as a member of parliament on the grounds that the respondent did not have the minimum formal educational qualification to be a member of Parliament. Nominations for candidates for elections were held in May 1996. The elections were held in June 1996. The petition should have been filed within 30 days either after the Nominations or within 30 days after the declarations of the results of the elections. This petition was filed on the 11th April 1997, when no extension of time had been applied for and granted. Even if this Court had jurisdiction to entertain the Petition, the same would have been time barred.

We thought there was merit in the second objection. Rule 5(1) of The Parliamentary Elections (Election Petitions) Rules, 1996 requires election petitions to be filed within 30 days after the declaration of the result of the election. The results of the elections in this case were declared in June 1996. The petition ought to have been filed the latest in July 1996. This petition was filed on the 11th April 1997. It was accordingly not filed within 30 days after the results were declared.

The third and 4th objections are that this court has no jurisdiction to entertain the petition and therefore not competent to make the declarations prayed for in the petition.

We thought there was merit in the two grounds. The petitioner is contesting the election of the respondent as a member of Parliament. There are two ways for challenging the election of a member of Parliament. The first is that any person alleging an irregularity with any aspect of the electoral process, can submit a written complaint to the Interim Electoral Commission, (known for short as the Commission) under S. 15(1) of The Parliamentary Elections (Interim Provisions) Statute, 1996 (Statute No. 4), for investigation and determination. There is a right of appeal against the decision of the commission to the High Court whose decision on the matter is final (See S 15 (2) & (3) of Statute 4.)

The Second method is to petition direct to the High Court. This jurisdiction is given to the High Court by Art 86 of the Constitution. Any person aggrieved by the determination of the High Court, may appeal to the Court of Appeal under Art 86(2), whose decision is made final by S 9(3) of Statute 4.

It is clear therefore that both the Constitution and Statute No. 4 of 1996 have established courts with jurisdiction to hear and determine election petition. This court is not one of them.

We do not agree with learned Counsel for the petitioner that this court can examine the qualifications of the respondent and if it was found that he lacked the requisite qualifications, to declare that he cannot be a member of Parliament. If this court does that, it will be assuming a jurisdiction not given to it either by Parliament or any law. This court is a creature of the Constitution and cannot exercise any jurisdiction not given to it by law.

We therefore agreed that this court had no jurisdiction in the matter. The third and fourth objections were upheld.

The final objection is that the petitioner has no locus standi to bring the petition. In the petition the petitioner alleged that he brought petition in his capacity as a person having interest in Kakuuto

County. It is the contention of the respondent that, that was not enough to clothe the petitioner with authority to bring the petition.

We thought there was merit in this ground of objection also. Under S 90(2) of Statute 4 persons who can present election petition are :-

- (a) a candidate who lost an election,
- (b) a registered voter in the Constituency concerned supported by the signatures of not less than five hundred voters registered in the constituency.

The petitioner did not say that he was a losing candidate in the election in dispute. There is nothing in the petition to show that he is a registered voter in the Kakuuto County, Rakai District.

The petitioner also did not have, when he should, the support of five hundred signatories from the constituency. All these points were conceded by learned Counsel for the petitioner. Nevertheless, he submitted that locus Standi was not relevant as the petition was not an election petition.

We disagreed. In the prayer the petitioner is asking for a declaration that the respondent has been sitting in Parliament illegally and an order that he should lose his seat; and also for an order for fresh elections to be held in Kakuuto County. It is therefore an election petition. His locus standi is, as a result, relevant. The petitioner should have either been:

- (a) a candidate who lost at the election; or
- (b) a registered voter in the Kakuuto County and supported by the signatures of not less than five hundred voters registered in the Kakuuto county. Since the petitioner did not satisfy either of the above requirements, he had no locus standi to bring the petition. The fifth objection therefore succeeded.

Consequently all the objections are upheld. It was for these reasons that we struck out the petition on the 11th Dec. 1997.

Before we take leave of this case, we would like to urge advocates to take Constitutional matters to competent Courts. When matters are brought to this Court when they should not, then this Court may be constrained to penalise advocates concerned in costs personally.

Dated at Kampala this 27th day of January, 1998.

Sgd: S.T. MANYINDO
DEPUTY CHIEF JUSTICE.

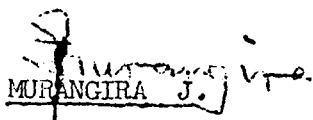
Sgd: C.M. KATO
JUSTICE OF APPEAL.

Sgd: J.P. BERKO
JUSTICE OF APPEAL.

Sgd: S.G. ENGWAU
JUSTICE OF APPEAL.

Sgd: M. KIREJU
JUSTICE OF APPEAL.

I certify that this is the true copy of the original.


MURANGIRA J.
REGISTRAR COURT OF APPEAL.