

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
ELECTION PETITION NO. 01 OF 2016
IN THE MATTER OF SECTION 15 (2) & (3) OF THE ELECTORAL COMMISSIONS ACT
CAP, 140
AND
IN THE MATTER OF THE LOCAL GOVERNMENT ACT, CAP 243
AND
IN THE MATTER OF A PETITION (BY WAY OF APPEAL) CHALLENGING THE
DECISION OF THE ELECTORAL COMMISSION CONFIRMING THE NOMINATION OF
BALABA DAVID AS MAYOR OF IGANGA MUNICIPAL COUNCIL

DHABASADHA ASUMAN.....PETITIONER

VERSUS

1. BALABA DAVID
2. THE INDEPENDENT ELECTORAL COMMISSION.....RESPONDENTS

BEFORE: - HON. LADY JUSTICE P. BASAZA WASSWA

RULING

[1] The Petitioner filed this petition by way of appeal under section 15 of the Electoral Commission Act, Cap 140 against the decision of the 2nd Respondent made on 2nd February, 2016 (hereafter referred to as "*the impugned decision*") by which the 2nd Respondent

upheld the Returning Officer's nomination of the 1st Respondent as a candidate for the Mayoral Seat (Chairperson LC IV) of Iganga Municipal Council. (Hereafter referred to as "***the contested seat***").

Background

[2] The Petitioner and the 1st Respondent are candidates for the contested seat of Iganga Municipal Council. The 1st Respondent was working as a teacher at St. John SS Buwaya in Mayuge District, a Government sponsored school. He resigned from the service of Government and was nominated on 17th November, 2015 as a candidate for the contested seat.

The Petitioner lodged a complaint dated 15th January, 2016 with the 2nd Respondent challenging the nomination of the 1st Respondent on the ground that the 1st Respondent did not resign from office in accordance with the law. Upon consideration of the Petitioner's complaint, the 2nd Respondent made ***the impugned decision*** to the effect that the nomination of the 1st Respondent complied with section 116 (5) of the Local Government Act, Cap 243 (as amended).

[3] The Petitioner's ground of appeal for his Petition to this court is that ***the impugned decision*** of the 2nd Respondent was illegal in that the 1st Respondent's nomination did not

comply with the period stipulated under the law. He contended that the 1st Respondent resigned on 31st August, 2015, seventy seven (77) days before his nomination on 17th November, 2015 contrary to the required ninety (90) days stipulated under section 4 (4) of the Parliamentary Elections Act, 2005.

[4] The 1st Respondent filed a reply to the Petitioner's Petition contending that he resigned on 22nd May, 2015 and that ***the impugned decision*** of the 2nd Respondent was correct and in accordance with the law.

[5] The 2nd Respondent contended in an affidavit in reply sworn by its legal officer; a one Hamidu Lugoloobi; that ***the impugned decision*** of the 2nd Respondent in upholding the decision of the Returning Officer in nominating the 1st Respondent was in accordance with the law.

[6] The Petitioner and the 1st Respondent filed a joint scheduling memorandum and agreed on the following issues for this Court's determination;

- a) Whether the 1st Respondent resigned within the stipulated time before his nomination?
- b) Whether the 2nd Respondent was justified to validate the nomination of the 1st Respondent?
- c) What remedies are available to the Parties?

[7] All the parties filed written submissions. The Petitioner was represented Mr. Mudioble Abed Nasser and Ms. Mutumba Bena of M/s Ambrose Tebyasa & Co. Advocates, the 1st Respondent was represented by Mr. Sseryazi Benon of M/s Sseryazi, Mugabi & Co. Advocates and the 2nd Respondent was represented by its Electoral Commission Law Chambers.

Decision of this Court:

[8] It is not in dispute that the Petitioner resigned from his teaching job with St. John SS Buwaya in Mayuge District, a Government sponsored school. What is in dispute is the effective date of resignation, and whether the effective date of resignation was within the period stipulated under the law.

I will begin by establishing the effective date of the 1st Respondent's resignation from the service of Government. Counsel for the Petitioner argued that the Ministry of Public Service having accepted the 1st Respondent's resignation effective, 31st August, 2015, time begun to run on 1st September, 2015. The 1st Respondent's Counsel argued that acceptance of the 1st Respondent's resignation was on 7th August, 2015 and even if the acceptance was effective 31st August, 2015, the 1st Respondent was nominated 77 days after his resignation. For the 2nd Respondent it was argued that the 1st Respondent indeed resigned 77 days before his nomination.

The law is clear on this point: **Section A - n, paragraphs 10 & 11 of the Uganda Public Service Standing Orders, 2010 (Standing Orders, 2010)** provide that a public Officer cannot remove himself or herself from the service by merely intimating that he or she wants to resign. A public officer must apply to Government by giving a notice of thirty (30) days, and shall not leave office until his or her application has been approved in writing indicating the date the officer may leave office. Pursuant to these **paragraphs 10 & 11**, the effective date the 1st Respondent resigned was therefore 31st August, 2015. The 1st Respondent's letter of resignation dated 22nd May 2015 was merely an application to resign, and was not effective until it was approved by the letter approving his resignation that gave him an effective date of his resignation. For all intents and purposes, before 31st August 2015 he was still an employee of Government.

Having established the date of resignation of the 1st Respondent, I will now determine whether the 1st Respondent's resignation met the requirements of the law.

From the onset I find that the law relied on by the Petitioner for his appeal is not applicable. His appeal is as such, misconceived. The Petitioner relies on section 4 (4) of the Parliamentary Elections Act, 2005 (PEA, 2005) and yet the PEA, 2005 is an Act for the provision of Parliamentary Elections and related matters. The Petitioner and the 1st Respondent are not contesting for a Parliamentary seat but for a local Council Office; the Mayoral seat, Chairperson LC IV of Iganga Municipal Council. The applicable law is the

Local Government Act, Cap 243 as amended by the Local Government (Amendment) (No. 2) Act, 2006.

Section 116 (5) of the Local Government Act (as amended) provides that:

“Under the multiparty political system, a public officer, a person employed in any Government department or agency of Government, an employee of a company in which Government has a controlling interest, who wishes to stand for elections to a local Council office shall resign his or her office at least thirty days before nomination day in accordance with the procedure of the service or employment to which he or she belongs” (Emphasis added)

The period required under the aforesaid law within which the 1st Respondent had to resign is at least thirty (30) days and not ninety (90) days under the PEA, 2005 as contended by the Petitioner.

[9] My conclusion is that the resignation of the 1st Respondent on the effective date of 31st August 2015 was well within the stipulated time of **“at least thirty (30) days before his nomination on 17th November, 2015** as a candidate for **the contested seat**. I therefore agree with the submissions of the Respondents that the impugned decision of the 2nd Respondent was in accordance with the law. .

[10] For these reasons, I uphold the 2nd Respondent's decision to validate the nomination of the 1st Respondent as candidate for the Mayoral seat, Chairperson LC IV of Iganga Municipal Council. This Petition is accordingly dismissed with costs to the 1st and 2nd Respondents.

I so order,

P. BASAZA WASSWA

JUDGE

01/03/2016