

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**IN THE MATTER OF THE PARLIAMENTARY ELECTIONS ACT 2005**  
**AND**  
**IN THE MATTER OF THE ELECTORAL COMMISSION ACT CAP 140**  
**AND**  
**IN THE MATTER OF THE PARLIAMENTARY ELECTIONS (APPEALS TO THE HIGH COURT FROM COMMISSION) RULES SI NO. 141-1**  
**ELECTION PETITION NO.03 OF 2018**

**MULINDE DEUSDEDIT----- PETITIONER**

**VERSUS**

**ELECTORALCOMMISSION-----RESPONDENT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**JUDGEMENT**

This is an appeal by way of Petition, in which the Petitioner, Mulinde Deusdedit, is challenging the decision of the respondent, the Electoral Commission, declining to nominate him as a candidate for Ibanda Municipality Constituency Member of Parliament, on grounds that he never turned up for the nomination at the gazetted venue on the 4<sup>th</sup> or 5<sup>th</sup> of June 2018.

The said decision was communicated in a letter dated 13<sup>th</sup> June 2018 communicated by the Chairman of the Respondent, Justice Byabakama Mugenyi Simon to the appellant through his lawyers M//s KTA Advocates & Solicitors.

The above decision was made as a result of the complaint by the petitioner through his lawyers-KTA Advocates & Solicitors to the commission challenging the decision of the Returning Officer made on 5<sup>th</sup> day of June 2018 declining to nominate the petitioner.

The petitioner was represented by Mr Karuhanga Justus while the respondent was represented by Mr. Wetaaka Patrick & Mr. Eric Sabiiti

There are only two issues for determination;

***Whether the respondent acted unfairly in upholding the decision of the Returning Officer not to nominate the Petitioner?***

***What remedies are available?***

The petitioner's lawyer submitted that the petitioner appeared for nomination on 5<sup>th</sup> June 2018 for Ibanda Municipality Member of parliament and presented the nomination papers and had all the requisite academic qualifications.

The Returning Officer rejected the nomination and the reason was that he was out of time as required in law. On the 6<sup>th</sup> day of June 2018, the petitioner through his lawyer's appealed against the decision to the Electoral commission.

The Electoral Commission conducted a hearing on 12<sup>th</sup> June 2018 and upheld the decision of the Returning officer and in the letter dated 13<sup>th</sup> June 2018, which the petitioner claims to have received on 18<sup>th</sup> June 2018, the Commission upheld the decision of the Returning officer and found that the petitioner never turned up for nomination at the gazetted venue on the 4<sup>th</sup> or 5<sup>th</sup> of June 2018.

Mr Karuhanga Justus submitted that the Electoral Commission did not exercise their power as provided under the law. He contended that the petitioner presented his witnesses and they were never allowed to say anything. The said witnesses confirmed that indeed the petitioner was at the nomination venue.

He further submitted that the Commission is clothed with authority under the Constitution and other laws to give anybody with qualifications an opportunity to

stand. By allowing the nomination of the petitioner, the people of Ibanda would have a wide range of candidates to choose from.

The respondent opposed the petition, and contended that the petitioner arrived at the nomination venue at 4:40pm and that at the time of his arrival he did not have the nominations papers on him. In further proof of this fact the respondent relied on the affidavit of Lugolobi Hamidu who attached a copy of the register book where all the candidates entered their names and the time of arrival.

Indeed, the register shows that a one Mulinde Deus-0772651776-Independent registered himself at 4:30pm.

Mr Wetaaka further submitted that, the complaint of the petitioner was heard by the Commission and that indeed during the hearing he admitted that he was not prepared at the time he appeared for nomination at the gazetted venue.

Section 9 of the Parliamentary Elections Act provides that the Commission shall issue a notice in the gazette appointing two days during which the nomination of the candidates are to take place.

The hour for nomination shall be from nine o'clock in the morning to five o'clock in the evening on each nomination day.

He submitted that the petitioner should have been nominated had he presented all his requirements within time. Therefore the Commission was justified in upholding the decision of the returning officer.

I have examined the communication of the decision of the respondent in this matter and indeed the words used are confusing and or misleading.

**“ The Commission noted that Mr Deudedit Mulinde did not turn up for nomination at the gazetted Venue on the 4<sup>th</sup> or 5<sup>th</sup> of June 2018.”**

The petitioner laboured to prove that he was at the venue of nomination and produced affidavits of two persons-Alone Tumwine & Deogratius C Tugume who both laboured to confirm that the petitioner was at the nomination venue. The two give different accounts of what transpired at the venue of nomination i.e at

3:45pm the petitioner arrived with Alone Tumwine and were denied access while Deogratius Tugume states that the Petitioner remained at the nomination grounds till 4:00.

The respondent's register clearly shows that the petitioner registered his name and time of arrival as 4:30pm.

The main contention is not whether the petitioner was at the venue for nomination but rather whether the petitioner was ready with the necessary requirements for nomination at the time he appeared at the venue for nomination.

According to the letter confirming the decision of the returning officer, they interpreted the petitioner's appearance without all the requirements as being a failure to turn up.

It is clear from the proceedings of the respondent held on 12<sup>th</sup> June 2018, the petitioner was not nominated on grounds that he arrived late for nominations.

In the said proceedings, which the petitioner has not contested as containing any falsehoods it was noted as follows;

- *Mulinde had to go to Bushenyi to get a Commissioner of oaths but failed to catch him.*
- *Regarding the payment of fees- the person who was sent to pay the fees in the bank delayed to come to the Nomination venue to provide evidence of payment.*
- *Mulinde was turned away from the Nomination Centre before closure of nominations. He got discouraged that he would not fulfil all the Nomination requirements in the time left.*

It therefore clear that the petitioner was not prepared for the said nomination exercise and could not present all the requirements within the short time that he appeared at the venue for nomination at 4:30pm and yet the closure of the nomination was at 5:00pm.

In as much as the petitioner was in attendance at the nomination venue he failed to produce the necessary nomination requirements. There is no way the petitioner should have been nominated when he had failed to fulfil some of the basic requirements for nomination as provided under section 11 of the Parliamentary Elections Act.

This court notes that the petitioner under section 11(3) of the Parliamentary Elections Act was supposed to accompany the nomination papers with a nomination fee of one hundred and fifty currency points in legal tender or bank draft for that amount payable to the Ugandan Administration.

The Petitioner has attached proof of payment of the said nomination fee of 3,000,000/= which is the 150 currency points. The said receipt of payment clearly shows that the said amount was paid by the said Mulinde Deus Rogers on 7<sup>th</sup> June 2018 at Stanbic Bank Uganda-Lugogo Branch. This payment was effected two days after the nomination exercise had ended on 5<sup>th</sup> June 2018.

The petitioner could not have been nominated without proof of payment of the said nomination fees as provided under the Parliamentary Elections Act.

It is the finding of this court that the petitioner was not prepared for nomination and failed to present himself within the time set for nomination of candidates. The Commission was right in upholding the decision of the Returning Officer declining to nominate the petitioner without the necessary legal requirements.

In the final result this Petition fails and is dismissed with costs.

It is so ordered

**SSEKAANA MUSA**

**JUDGE**

**11<sup>th</sup> /07/2018**