

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
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.24 OF 2020
DDEMBE SHAFFIC SSIMBWA----- PETITIONER

VERSUS

- 1. ELECTORAL COMMISSION**
- 2. KANGWAGYE STEPHEN RWAKANUMA-----RESPONDENTS**
- 3. MPEIRWE MOSES KASHAIJA**

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

This is an appeal by way of Petition, in which the Petitioner, Ddembe Shaffic Ssimbwa, is challenging the decisions of the 1st respondent, the Electoral Commission, refusing to denominating 2nd and 3rd respondent as candidates for Bukanga County Isingiro District on grounds that;

- (a) Mr Kangwagye Stephen Rwakanuma was wrongly nominated as a contestant for the position of Member of Parliament for Bukanga while the academic documents presented were for a one Kangwagye Stephen and

with no further document to verify his identity or to confirm that he is the same person.

- (b) That the 2nd respondent does not have the mandatory 10 persons supporting his nomination since one of the said persons did not sign and as such his nomination is irregular.
- (c) That the 3rd respondent did not present mandatory 10 persons to support his nomination.
- (d) That the 3rd respondent did not attach or submit academic documents in his name.
- (e) That the 3rd respondent purportedly changed names from Mpeirwe Moses to Mpeirwe Moses Kashaija in a deed poll gazetted on the 14th day of October 2020 and submitted to the returning officer for nomination on the 16th day of October 2020, without the lapse of the mandatory seven(7) days

The said decisions were contained in letters dated 22nd December, 2020 communicated by the Chairman of the Respondent, Justice Byabakama Mugenyi Simon to the complainant at his address and copied into the Returning Officer.

The decision was made and the 1st respondent made the following observations and findings;

2nd respondent

- (a) That the respondent got registered under the Registration of Person's Act, 2015 in the three names of KANGWAGYE STEPHEN RWAKANUMA; and thus the set names on his National ID.
- (b) That therefore, the Respondent could not have been required to sear a Deed Poll to become and to assume the same set of names which he had already acquired on his registration under the Registration of Person's Act.
- (c) That the said set of names do appear on his National ID, the National Voters Register as well as on his travel document to wit a passport.
- (d) That in the year 2013, the Respondent deposed and/or swore a Statutory Declaration which inter alia, was to the effect that the said set of names refer to one and the same person, himself.

- (e) That a photocopy of the National ID was duly attached on the Respondent's nomination papers as can be seen on the nomination file with the Commission.
- (f) That a perusal of the nomination file, revealed that the Respondent had duly paid the requisite nomination fees; as evidenced by URA receipt attached.

The Commission accordingly upheld the decision of the Returning Officer, Isingiro District.

3rd Respondent

- (a) That for purposes of nomination, the respondent, inter alia, attached the following documents; both Uganda Certificate of Education and Uganda Advanced Certificate of Education together with a University Degree Certificate.
- (b) That a perusal of the nomination file revealed that the Respondent had duly attached a photocopy of his National identity card to his nomination papers and
- (c) That a further perusal of the nomination file revealed that the Respondent duly paid the requisite nomination fees; as evidenced by the URA receipt attached.

The complaint had no merit and the same was dismissed.

The petitioner was represented by *Mr. Kayondo Enock* while the 1st respondent was represented by *Mr. Kugonza Enock* and the 2nd respondent was represented by *Mr. Dennis Kanaabi* and 3rd respondent was represented by *Kandeebe Ntambirweki*

The following issues were raised for courts determination.

1. *Whether the petition is competently before this court?*
2. *Whether the 1st respondent's decision to refuse to denominate the 2nd & 3rd respondent was lawful?*
3. *What remedies are available?*

Whether the petition is competently before court?

The petitioner's counsel contended that the petition is competently before the court since it arose out of the same complaint filed by the petitioner before the Electoral Commission although the decisions were separate.

The respondents' counsel submitted that the petition is incompetent for joining two decisions in one appeal and yet the same were heard and determined separately. Secondly they never paid the requisite fees or security for costs for each decision. Therefore this misjoinder of the petition is fatal and the appeal be dismissed as such. The respondent's counsel relied upon the case of ***Otim Nape George William v Ebil Fred & EC Election Petition No. 17 of 2011.***

Analysis

The petitioner joined two decisions in one petition and this court finds no problem with filing one petition since it is the same constituency-Bukanga County. However, rules are silent on whether the petitioner had a duty to pay security costs for each of the 2nd and 3rd respondent. The rules require the registrar to reject the petition on presentation of the petition which had not paid fees or deposited security for costs.

Since the petition was received in court this court shall presume that the registrar was satisfied that the security for costs paid in accordance with the rules was sufficient.

The petition is therefore competently filed in this court and I would not impose any extra obligation of filing fees or security for costs not provided for under the law.

Whether the 1st respondent's decision to refuse to denominate the 2nd & 3rd respondent was lawful?

The petitioner's counsel repeated the same arguments as set out in his complaint that the 2nd and 3rd respondent did not possess the requisite academic papers since they contained a third name. According to counsel there was an

inconsistency in the names of the 2nd and 3rd respondent and they did not have deed polls to explain the inconsistency.

The petitioner also argued that the 2nd and 3rd respondent did not have the mandatory 10 signatures of persons supporting the nomination and that a seconder could not support the nomination.

The respondents' counsel submitted that the 2nd and 3rd respondents lawfully changed their names in accordance with the existing laws and they did not need to have a deed poll as argued by the petitioner's counsel and the 3rd respondent had properly changed his names under Registration of Persons Act.

The respondents also contended that they had the requisite 10 signatures of the persons supporting the nomination as required by law. It was the respondent's contention that the law does not prohibit a second from being a person to support the nomination.

Analysis

The 2nd respondent added a name to his original names on October 2013 and the existing law did not require making of a deed poll. The old legal regime only required a deed poll for persons whose birth was registered with the Registrar of Births and Deaths.

The 2nd respondent therefore properly changed or added his family name in 2013 October of Rwakanuma and did not require a deed poll as contended by the petitioner. All his documents now reflect the same name except for the academic papers which the Statutory declaration made in 2013 explains the circumstances of the addition and the said document was duly registered with the registrar of documents. The 2nd respondent's identity has never changed as alleged by the petitioner and therefore the academic documents present at the time of nomination belong to him.

The rest of the arguments challenging the nomination like non-payment of nomination fees are equally devoid of any merit since there is a receipt issued by

URA. The petitioner's argument that they added prefix to his name on the receipt is an outrageous argument and this court rejects it and finds no merit in the same.

The 3rd respondent was equally challenged for adding a name which does not appear on his academic papers and that the deed poll used in the process was issued 2 days to nomination contrary to the Registration of persons Act. The 3rd respondent changed his names during the national registration exercise and formally added a third name of Kashaija.

The Registration of Person's Act captured all the personal data of the 3rd respondent and officially added a name which never appeared on his former academic papers. The 3rd respondent only made a deed poll in order to explain his academic papers and ensure that they conform to the Registration of person's Act. The said deed poll was never made to change the information under the Registration of Person's Act.

The petitioner's argument is very flawed and devoid of merit since it is a misapplication of the law on the facts present in this case. The Electoral commission was justified to uphold the decision of the returning officer of Isingiro district.

This court has examined the nomination papers of the 3rd respondent and it confirms that the 3rd respondent's nomination was supported by the required mandatory 10 names. I donot agree with the petitioners argument that the seconder should not form part of the 10 names of persons supporting the nomination.

Section 11(1)(c) of the Parliamentary Elections Act provides;

The names and signatures of ten persons who are registered voters in the constituency where the person seeks nomination as a candidate supporting the nomination.....

The said provision does not provide for any qualification of the type of person who may support the nomination. The argument of the petitioner that one of the 10

persons who supported the nomination was a seconder and therefore ineligible is not tenable and would be making additions to the provision of the law.

While interpreting a special statute like the Electoral laws, the court must consider the intention of legislature. The reason for this fidelity towards legislative intent is that the Statute has been enacted with specific purpose, which must be measured from the wording of the statute strictly construed.

The judge is simply not authorised to legislate law. If there is a law, Judges can certainly enforce it, but Judges cannot create a law and seek to enforce it. Like in this case, the court would be creating a law and try to enforce the same contrary to the spirit of the entire legislation.

This court finds no merit in the entire petition and all grounds fail. The decision of the 1st respondent is upheld.

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

It is so ordered

SSEKAANA MUSA

JUDGE

13TH January 2021