

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT ARUA-HOLDEN AT KAMPALA

ELECTION PETITION NO.002 OF 2020

EGAMA SAM RAXTON ADRAPI----- PETITIONER

VERSUS

1. CANDIA EMMANUEL

2. ELECTORAL COMMISSION-----RESPONDENTS

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

This is an appeal by way of Petition, in which the Petitioner, Egama Sam Raxton Adrapi, is challenging the decision of the respondent, the Electoral Commission, denominating him as a candidate for Member of Parliament Terego West Constituency as an Independent candidate, on grounds that he did not possess academic papers as required under section 4(1)(c) of the Parliamentary Elections Act, 2005.

The said decision was communicated in a letter dated 16th November 2020 communicated by the Chairman of the Respondent, Justice Byabakama Mugenyi Simon to the petitioner.

The above decision was made as a result of the complaint by a one Candia Emmanuel in a letter dated 21st October 2020 to the commission challenging the nomination of Egama Sam Raxton Adrapi with names that do not match with the names on the requisite academic documents in the names of Egama Sam Raxton.

The petitioner was represented by *Mr. Samuel Ondoma* while the 1st respondent was represented by *Mr. Abiyo Ivan* and *Mr. Kugonza Enoch* for the 2nd respondent.

There are only two major issues for determination;

- 1. Whether the petitioner was accorded a fair hearing in the determination of the complaint against him.**
- 2. Whether the 2nd respondent lawfully denominated the Petitioner from contesting in the Elections for Member of Parliament for Terego West Constituency?**
- 3. Whether there are any remedies available to the parties?**

Determination

Whether the petitioner was accorded a fair hearing in the determination of the complaint against him?

The Electoral Commission received a joint complaint by Candia Emmanuel on 23rd October 2020 challenging the nomination of the petitioner who had been nominated on 16th October 2020 as a registered voter in Terego West.

The petitioner contends that he was not given a fair hearing when the hearing commenced since he was not given an opportunity to file his defence to the complaint and he got to know the nature of the complaint against him during the hearing by the Electoral Commission on 30th October 2020 after he requested and was given a photocopy.

Secondly, he contended that he was given a short notice on 28th October 2020 at 8:30am through a phone call. According to the petitioner's counsel the right to a fair hearing enshrined in Article 28, 42 of the constitution were violated and therefore the decision should be set aside on that ground. He relied on the case of *Hon. Anifa Bagirana Kawooya vs AG & NCHC Constitutional Petition No. 42 of 2010*; *Rosemary Nalwadda v Uganda Aids Commission HCCS No. 45 of 2008* and *Bwowe Ivan & 4 Others vs Makerere University High Court Miscellaneous Application No. 252 of 2013*.

The respondents' counsel submitted that the petitioner was summoned through the means available and when he appeared he never made any objections or request to be given more time. He proceeded and presented his case and the Commission determined the matter on merits. The petitioner did not have a deed poll in support of his change of name.

Analysis

The procedure of according a fair hearing should be determined in accordance with institution and exigencies coupled with the peculiar circumstances of the case pertaining at the time.

There is no set procedure for according a hearing of complaints by the Commission and they ought to devise such procedure that would satisfy the principles of a fair hearing. In some situations, some deviation from the ideal procedure may be permissible without affecting the validity of the adjudicatory proceedings, keeping in mind the practical exigencies of the day to day administration.

In the case of ***Kenya Revenue Authority vs Menginya Salim Murgani Civil Appeal No. 108 of 2009***. The Court of Appeal delivered itself as follows;

“There is ample authority that the decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed”.

In the present case, the petitioner complains that he was summoned on telephone and was not given a complaint beforehand, was not allowed to cross examine and never had a lawyer to represent him at the hearing. It would appear the applicant has raised all these complaints of failure to be accorded a fair hearing premised on an ordinary court trial.

The Petitioner was duly given a complaint against him before the hearing and he never complained about the short notice nor did he inform the commission of any need to cross examine or to have a lawyer to enable him proceed with the hearing. It appears it is belatedly raised and the nature of the complaint against him was well within his knowledge and he duly presented his case which was determined. Some of what the petitioner was demanding squarely falls in the exigencies of the case and need to expeditiously dispose of the election disputes for example the informal manner of summoning the petitioner and the short notice given to him to appear at the hearing.

The petitioner was accorded a fair hearing in the circumstances of this case and whatever is alleged after the hearing is an afterthought.

Whether the 2nd respondent lawfully denominated the Petitioner from contesting in the Elections for Member of Parliament for Terego West Constituency?

The petitioner contended that he swore a statutory declaration to correct his names under the statutory declaration and the same was sworn 16th January 2014. According to counsel since the petitioner had sworn the statutory declaration before the coming into force of the Registration of Persons Act, then he did not need a deed poll. He argued further that no other person has come to claim the academic papers complained of and or allege that they were obtained fraudulently by the petitioner.

The respondents submitted that the petitioner had not changed his names in accordance with the law since the addition of a name required a deed poll and not merely a statutory declaration.

The respondent contended that the petitioner did not adduce any evidence to demonstrate that he complied with the procedure of change of name.

Counsel finally submitted that the statutory declarations cannot adequately change the name legally.

The 2nd respondent specifically submitted that the decision of the electoral commission to denominate the petitioner was premised on the fact he presented academic documents which are in the names that are different from those which are in the national register or his national Identity card.

Analysis

The burden to confirm that the academic papers presented at nomination belonged to the petitioner lies with the person presenting them. The academic documents should be self-explanatory and once there is any question of explanation that must be made then the person receiving them has every reason to refuse to accept them.

The petitioner in this case run the risk of putting 'his' academic documents in question and the presentation of them without following the law indeed creates doubt as to whether he is one and the same or whether he is not trying to use another person's academic documents.

The explanations that the petitioner tried to give in respect of the added name as set out in the statutory declaration are suspicious since the said document was never registered in 2009 with the Registrar of Documents when he alleged to have made it. The first statutory declaration indeed had others errors when he stated that; My parents named me EGANA SAM RAXTON; later my father processed for a passport in the names of EGAMA SAM ADRAPI leaving out RAXTON and Instead added ADRAPI.

The 2nd Statutory Declaration was actually made on 7th October 2020 and was registered on 08th October 2020 and this confirms tries to explain the addition of a name ADRAPI and removal of RAXTON. At the time the document was made it did not make any meaningful sense since the names where already being used. The addition of a name or removal of a name had to be by a deed poll.

Secondly, a Statutory Declaration is intended to correct minor errors in names such spelling mistakes and not major changes like adding a name which had never existed.

The petitioner's names on the national identity card or National Register are in the names of EGAMA SAM RAXTON ADRAPI. The academic documents and the national identity card are clearly bearing different names and the same have not been satisfactorily explained and this would amount to Change of Name or NAME Change. The ***Black's Law Dictionary 11th Edition*** defines Name Change as; A person's legal adoption of a name other than a person's previous legally recognized name.

Once a person recklessly adds names to their original name, or removes a name from the original names on the different documents then indeed the character and person has changed unless and until everything done is thoroughly explained and the circumstances that are surrounding the change of name or addition of

names will make any reasonable person to become suspicious of his/her personality.

The petitioner ought to have made a deed poll in order to satisfy the requirements of the law. A deed poll is a legal document that binds a single person to a particular course of action (in this case, changing name for all purposes)

When a new name is added or an old name is removed, that will automatically mean a change of person or new identity and any person who knew the person before the change of name will definitely not be in position to recognise the person by the new names unless explanations are made or a photograph is shown.

Therefore, the changing of the name of the petitioner creates a difficulty of substantiating the previous identity alongside the new name. Once you change a name by adding a name, there some entities that you must notify about the changed identity like Employers, Schools or Higher Learning Institutions, Banks e.t.c who may be holding the old documents bearing the former names.

The change of name will also invite multiple situations that would involve multiple background checks upon presentation of the academic papers that are in different names especially when the change of name was not done in accordance with the law or in absence of a deed poll. See ***Achola Catherine Osupelem v Electoral Commission Election Petition No. 002 of 2018***

The 2nd respondent on the available evidence of the several discrepancies in the petitioner's names was right to denominate the petitioner because of the varying names in the academic papers presented and the names in the national register or National Identity Card. The presentation of statutory declaration which was not registered as the explanation for the variation of names cannot be justification for disregarding the law.

Once a person has decided to change his/her name, they can use the new name for all purposes. However, such a person will always have to produce evidence that he/she changed names for most official purposes.

In absence of a deed poll by the petitioner, a statutory declaration could not explain a change of name by addition or removal of a name. Statutory declaration would only be applicable in cases of misspelling of names or minor errors in names.

The electoral Commission was right to denominate him due to discrepancy in his names in academic documents and National Register and National Identity card.

In the final result this Petition fails and the respondent was right to denominate the petitioner. It is dismissed with no order as to costs.

I so order

SSEKAANA MUSA

JUDGE

4th/01/2021