

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
ELECTION PETITION NO.08 OF 2020

NATAMBA SHALLON----- PETITIONER

VERSUS

1. MWESIGYE JANE BIKARA

2. ELECTORAL COMMISSION-----RESPONDENTS

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

This is an appeal by way of Petition, in which the Petitioner, Natamba Shallon, is challenging the decision of the respondent, the Electoral Commission, denominating her as a candidate in the Local Government Elections for Female District Councillor-Kyegegwa District, on grounds that she is not ordinarily resident in a given sub-county-Ruyonza, Kyegegwa as provided under Section 116(2)(f) of the Local Government Act.

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 a complaint by Mwesigwa Jane Bikara dated 11th November, 2020 to the commission challenging the nomination of Natamba Shallon for not being a resident in Ruyonza Sub-county in Kyegegwa District.

The petitioner was represented by *Mr. Simon Kiiza* while the 1st respondent was represented by *Mr. Mukwaya Edward* and *Mr. Sabiiti Eric* for the 2nd respondent.

There are only two major issues for determination;

1. Whether the 2nd respondent lawfully denominated the Petitioner from contesting in the Elections for Local government election as a Female District Councillor-Ruyonza Sub county Kyegegwa District.

2. Whether there are any remedies available to the parties?

Determination

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

The petitioner's counsel submitted the law cited by the 2nd respondent was not applicable to the petitioner who was contesting for councillorship and it is only applies to the chairperson for which she was not contesting.

In the alternative, counsel contended that the petitioner was a resident of Ruyonza sub-county and she relied on letter of introduction from the area LC 1 Chairperson Kijongobya Village-Kijongobya Parish, Ruyonza Sub county.

The respondents submitted that the petitioner was not a resident of Ruyonza Sub county and the letter that was given in her evidence was equally contradictory since it was written on 15th November after she had filed the petition. Secondly the said letter equally had deliberate falsehoods since the petitioner according to her national identity cards is resident of Mubende District.

The respondents' counsel submitted that the law requires a person to be a resident of the area as provided under Section 116(2)(f) 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 2nd respondent specifically contended that section 19 of the Electoral Commission Act provides for the registration status of every voter to be registered in a parish or ward where he or she originates or resides. Counsel further submitted that the petitioner was at liberty to change her voting particulars to where she intended to stand as a female councillor.

Analysis

The Electoral Commission made the following observations when it heard the complaint;

That candidate natamba Shallon is registered at Kitura Church of Uganda Primary School, Kitura Parish, Kitura Sub-county in Kiruhura District;

That the said candidates village of registration is Kitura 1 and she did not transfer her voting location to Ruyonza in Kyegegwa which is her address of service of process and papers upon nomination.

That although the Chairperson of Kijongobya Village confirms that she is a resident in the said village, he further states that she is a registered voter in Kasenyi Caltex, Kasenyi Caltex Ward Ward, Mubende Town Council, Mubende District;

That the said candidate in her response stated that she is registered in kiruhura District but resides with her mother in Ruyonza Sub county Kyegegwa district.

That under Section 111(4b) of the Local Government Act (as Amended) one must be ordinarily resident in a given Sub county to qualify for the above office captioned elective office; and

That the foregoing provisions should have been complied with by transferring one's voting particulars for purposes of the said election.

The Commission found that Candidate Natamba Shallon did not comply with the foregoing provisions of the law.

It can be deduced from the above observations that the petitioner did not have any basis of challenging the decision since the petition appears to have been premised on a point of law that residence was not applicable to the petitioner who was standing for councillorship position.

The petitioner's counsel has indeed conceded that there is a law that provides for residence. Section 116(2) of the Local Government Act was amended by Local Government (Amendment) Act, 2020 by inserting immediately after (2e) a new paragraph (f) as follows;

(f) is not ordinarily resident in that local government of the area.

There is no specific provision in the Local Government Act that could be held to be a guide to the concerned authorities for determining in a particular fact situation if an individual is, or is not, 'ordinarily resident of a particular place at a particular point of time. It is not possible to give a precise definition of the expression 'ordinarily resident' for purposes mentioned in the electoral law.

A person can be said to be 'ordinarily residing' at a particular place, if he/she has an intention to stay at that place for a considerably long time. A person actually residing in a constituency would become ordinarily resident in that constituency.

'Ordinarily' is primarily directed not to duration but to purpose, in the sense that the question is not so much where the person is found 'ordinarily', in the sense of usually or habitually and with some degree of continuity. The words 'ordinarily' and 'resident' have been used together and have to be construed as not to require that the person should be one who is always resident or carries on business in the particular place. Like most aspects, aspect of residence, is a question of fact and degree. ***Hipperson v Newbury District Electoral Registration Officer [1985] 2 All ER 456 at 462***

The term 'residence' or reside as used in the Electoral laws relating to qualification of voters or candidates ordinarily is synonymous with home or domicile. This denotes a permanent dwelling place, to which the party when absent intends to return. 'Residence' is not a technical term; it is a word adopted by the legislative draftsman of the Act of Parliament from the popular language of the country and is therefore to be interpreted in its popular sense. ***Barlow v Smith (1892) 9 T.L.R 57***

The petitioner had a duty to prove residence within the local government of the area and this burden would only be discharged by way of evidence of registration as a voter under section 19 of the Electoral Commission Act.

Any person who-

(a) Is a citizen of Uganda

- (b) Is 18 years of age or above,
shall apply to be registered as a voter in a parish or ward where the person-
- (i) Originates from; or
 - (ii) Resides

The law allows a voter to apply to be transferred to where he/she originates from or resides under section 19(4) of Electoral Commission Act;

Subject to subsection(1), if a registered voter wishes to vote in a parish or ward other than the one in which he or she is registered, the voter shall apply to transfer his or her registration to the parish or ward where the voter wishes to vote except that the parish or ward shall be one where the voter-

- (a) Originates from; or
- (b) Resides.

According to the petition on the record the petitioner did not transfer her voter registration to where she allegedly resides at Kinjogobya Village, Kijongobya parish in order to qualify to stand as a District Female Councillor Ruyonza District.

This court guided by the above provisions of the law is satisfied that the petitioner was not ordinarily resident within the sub-county. According to the available evidence she is a registered voter vide registration No. 54825560 at Kitura Church of Uganda Primary School, Kashongi County Kiruhura District.

The area LC 1 letter of introduction attempted to confirm that the petitioner is resident of Kijonobya Village-Kinjogobya Parish Ruyonza Sub-county. This letter is not sufficient to prove residence owing to the fact that the same letter alludes to different area of registration as a voter at Kasenyi Caltex, Kasenyi Caltex Ward Mubende Town Council Buwekula County, Mubende District.

Since residence is a question of fact, the registration of the person is conclusive evidence of residence and in absence of such proof it would be very hard for court to confirm that the petitioner is ordinarily resident of the area where he is not registered as a voter.

Section 19 provides for registration of a voter where they originate and/or where they reside. Therefore, residence is major consideration for any voter and the petitioner ought to have changed her voting registration to where she ordinarily resides in order to be conform with the section 116(2)(f) of the Local Government Act.

The Electoral Commission was right to denominate the petitioner since she is not ordinarily resident of Ruyonza Sub- county.

In the final result this Petition fails and the respondent was right to denominate the petitioner. It is dismissed with costs.

I so order

SSEKAANA MUSA
JUDGE
13th/01/2021