

ELECTION PETITION NO. 016 OF 2021

VERSUS

BEFORE HON. JUSTICE MARGARET APINY

The brief background to this application is that the Petitioner filed his petition on the 18th day of March 2021. The said petition was supported with a number of affidavits, four of which were commissioned on the 15th day of March 2021. It was discovered through a letter from the Chief Registrar dated 24th August 2021 that the Advocate who commissioned the said affidavits was not in possession of a valid Practicing certificate, her Practicing certificate having been renewed on the 16th day of March 2021. Counsel for the 1st Respondent shared the said letter with counsel for the Petitioner on the 24th day of August 2021.

On the day of scheduling the matter, counsel for the Petitioner sought for leave of court to have the defects in the said affidavits cured by way of having the oath re-administered before another Commissioner.

This Court allowed both counsel to address it by way of oral submissions, which submissions have been considered by this Court.

For the Petitioner, it was argued by Counsel Asuman Nyonyintono that **S.14 A** of the Advocates Act as amended was introduced purposely to protect clients of advocates. Counsel urged court not to expunge the said affidavits from the record simply because they were commissioned by an unlicensed advocate. Counsel cited the case of **Suubi Kinyamatama Juliet Vs Sentongo Robinah Nakasirye & Anor. Election Petition Appeal No. 92 of 2016** in support of his argument.

For the 1st Respondent, it was submitted by Counsel Nalukoola Luyimbazi that such a move is strange, illegal, irregular and unprovided for under any procedure and that the same was brought to defeat a good defense for the 1st Respondent. It was further submitted that it was illegal for an unlicensed advocate to commission documents. To support that position, counsel for the 1st Respondent cited the cases of **Prof. Syed Huq Vs Islamic University of Uganda Supreme Court Civil Appeal No.47 of 1995** and **Hard Rock Quarry Uganda Ltd Vs Commissioner Land Registration & Anor.** as his authority for that proposition.

Counsel further submitted that the Applicant's application is out of time since a petition of this nature must be brought before court in 30 days from the date of gazetting the results of the elections. Counsel for the 1st Respondent further submitted that the application is a disguised move to amend the petition since the petition is comprised of the Petition itself and the supporting affidavit and that such

an amendment should not be allowed since it is intended to deprive the 1st Respondent of a right to which he has acquired by virtue of the limitation period. Counsel cited the case of **Citizens Alert Foundation (CAF) LTD & 4 Ors VS Attorney General & 3 Others**, Misc. App.No 135 of 2021 arising from HC Misc. Cause No.339 of 2020.

Counsel for the 1st Respondent further submitted that they were so courteous and professional when they notified counsel for the Petitioner by disclosing the nature of the P.O they intended to raise in regard to the impugned affidavits.

Regarding the case of **Suubi Kinyamatama Juliet Vs Sentongo Robinah Nakasirye & Anor.** (supra), counsel for the 1st Respondent submitted that the Court of Appeal never sanctioned re-administration of an oath, but that it rather found that having an affidavit commissioned by a commissioner without a valid Practicing certificate was not a mere technicality which would be cured under Article 126 (2) (e). He thus prayed that this court finds this application to be devoid of any merit and dismiss it with costs and expunge the impugned affidavits from the record.

Counsel for the 2nd Respondent associated himself with the submissions of counsel for the 1st Respondent and prayed that this court dismisses the application with costs.

In his rejoinder, counsel for the Petitioner distinguished the cases cited by counsel for the 1st Respondent and reiterated his earlier prayers. He submitted that the Supreme Court decision in **Prof. Syed Huq Vs Islamic University of Uganda** (supra) was delivered in 1997 before the passing of the Advocates (Amendment) Act, 2002, as such he contended that the said decision is not applicable to the current situation.

Decision of Court

From the onset, it is evident that there is no dispute as to whether the person who commissioned the said affidavits was licensed to practice as an advocate at the time of commissioning the said affidavits. However, what is contested in this application is whether this court is at liberty under S.14 A of the Advocates Act as amended to have the oath re-administered by another commissioner who is licensed to practice as an advocate.

Counsel for the 1st Respondent referred to this application as an attempt to amend the petition and indicated that the Petitioner is out of time to do so. Counsel cited a number of authorities including **Kyagulanyi Ssentamu Robert Vs Yoweri Kaguta Museveni & 2 Others, Supreme Court Miscellaneous Application No. 01 of 2021** and **Obiga Mario Kania Vs Electoral Commission & Anor. EPA No. 4 of 2011**.

With all due respect to counsel for the 1st Respondent, I do not agree with his assertion that the application before me is intended to amend the petition, which makes the above cases misplaced. I also disagree with the assertion that the case of **Prof. Syed Huq Vs Islamic University of Uganda** (supra) applies to facts before us for reasons that it was decided in 1997 before the amendment of the Advocates Act in 2002. My understanding is that it was the 2002 amendment that introduced Section 14 A of the said Act whose title is clearly stated, "protection of clients of advocates". (Emphasis is mine).

The facts in the case of **Suubi Kinyamatana Juliet Vs Sentongo Robinah Nakasirye** (supra) are in tandem with the facts of the application before me in as far as the

impugned affidavits are concerned. While dealing with the same situation, the court of Appeal noted as follows;

"The essence of Section 14A of the Advocates Amendment Act 2002 (Advocates Act as amended or S.13 of the Advocates Amendment Act of 2002 which introduces S.14 A in the parent Act as an insertion) is to protect innocent litigants (from) unscrupulous advocates. We note however that S.14 A (1) (b) (2) makes provision for a victim of such an event. This, in our view means that the matter should not proceed with defective pleadings but time would be given to the innocent litigant to rectify the error, which was not done in the instant case. The petitioner, having realized that the affidavits had been commissioned by an advocate who had no practicing certificate should have proceeded under the above section to make good the defect.

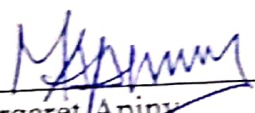
From the above decision, I note that the Court of Appeal by stating that *"this, in our view means that the matter should not proceed with defective pleadings but time would be given to the innocent litigant to rectify the error,"* recognizes the fact that the said affidavits were defective and by stating that *"the petitioner, having realized that the affidavits had been commissioned by an advocate who had no practicing certificate should have proceeded under the above section to make good the defect"*, the Court gave an innocent litigant lee way to rectify the said defect in the affidavit.

Counsel for the Petitioner having discovered the defect, moved this Court to rectify the said defect at the earliest opportunity without any delay.

I am persuaded by the above authority of **Suubi Kinyamatana Juliet Vs Sentongo Robinah Nakasiye** (supra) that it is in the interest of justice that this application must be allowed. This application is therefore allowed.

The Petitioner is hereby granted leave to have the oath re administered to the four deponents before another commissioner who is licensed to practice as an advocate. The contents of the said affidavits should not be varied. The affidavits must be filed and served upon the opposite counsel, not later than the 1st day of September, 2021.

I make no order to costs.



Margaret Apiny
Judge

31/8/2021