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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT JINJA
CIVIL SUIT NO. 177 OF 2014

1. EDWARD COLUMBUS WAMBUZI
2. OBWA KYABAZINGA BWA BUSOGA.....PLAINTIFFS

VERSUS

1. WILLIAM NADIOPE,]
THE GABULA OF BUGABULA]
2. JUMA MUNOOLU,]
THE LUBA OF BUNYHA]
3. KISIKI OF BUSIKI]
4. NKONO OF BUKONO]
5. FRED MENYHA OF BUGWERI]
6. NGOBI OF KIGULU]
7. NTEMBE OF BUTEMBE]
8. WELLINGTON NABWANA,]
THE TABINGWA OF LUUKA]
9. NANYUMBA OF BUNHYOLE].....DEFENDANTS

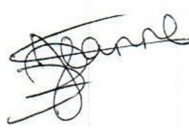
BEFORE: HON. JUSTICE JEANNE RWAKAKOOKO

JUDGMENT

Introduction

The Plaintiffs filed a suit against the Defendants for:

- a) A declaration that the Plaintiff is the duly elected Kyabazinga of Busoga Kingdom;
- b) A declaration that the purported election of the 1st Defendant as the Kyabazinga of Busoga Kingdom is null and void;
- c) A permanent injunction against the 1st Defendant restraining him from purporting to be the Kyabazinga of Busoga Kingdom;
- d) A permanent injunction against the Defendants from holding and/or purporting to hold another or other elections of the Kyabazinga of Busoga Kingdom;
- e) General damages, and



f) Costs of the suit.

Background

The 1st Plaintiff's case is that following the death of HRH Henry Wako Muloki, Kyabazinga of the Obwa Kyabazinga bwa Busoga (Busoga Kingdom) in 2008 the office of the Kyabazinga fell vacant. It is then that the Plaintiff was elected unopposed as Kyabazinga of Busoga Kingdom on 31/10/2008 by the Chiefs Royal Council. The election was presided over by Daudi Kawunyhe, the then Isabalangira who declared the Plaintiff as the Kyabazinga. The 1st Plaintiff was thereafter introduced to the Lukiiko by the Isabalangira and the Lukiiko approved of his appointment.

The Defendants conducted another election of the Kyabazinga contrary to the provisions of the Constitution of Busoga Kingdom, in which the 1st Defendant was elected Kyabazinga of Busoga. It is the Plaintiff's case that this election was invalid and therefore null and void for a host of reasons. Firstly, because the office of the Kyabazinga had not fallen vacant within the meaning of the Busoga Constitution. Secondly, there was no valid meeting in line with the Busoga Constitution for election of the 1st Defendant as Kyabazinga. Therefore, the Defendants acted ultra vires the Constitution of Busoga in electing the 1st Defendant as the Kyabazinga. The 1st Plaintiff contends that the Defendants' actions have caused him mental anguish, torture and loss for which he claims damages.

The Defendants contend that the suit is frivolous, vexatious and an abuse of court process and raised a preliminary objection to this effect. They claim that the 1st Plaintiff's purported election as the Kyabazinga of the Obwa Kyabazinga bwa Busoga on 31/10/2008 did not comply with Article 6(v) of the Busoga Constitution. The invalid election was dishonoured by the electorate, the Chiefs Royal Council, who then went on to elect a Kyabazinga in line with the Busoga Constitution. On 23/8/2014, the Chiefs Royal Council duly elected the 1st Defendant as the Kyabazinga of the Obwa Kyabazinga bwa Busoga, and he was thereafter confirmed on 25/8/2014 by the Busoga Lukiiko and sworn in on 13/9/2014.

Efforts to mediate this dispute and reach an amicable conclusion proved futile.

The 1st Plaintiff presented four (4) witness to wit, Kawutta James as PW1, the 1st Plaintiff as PW2, Yonasani Kahalwa Zirabamuzaale as PW3, and Dyogo Samuel as PW4. The Defendants presented three (3) witnesses namely; Nagumba

Ntale John as DW1, Kafuko Robert Ntuyo as DW2, and Nkuutu Samuel Zirabamuzaale as DW3. In line with court's direction, the parties filed written submissions.

Representation

Counsel for the Plaintiffs: Senior Counsel John Matovu appearing with Daniel Lubogo

Counsel for the 1st, 3rd, 5th, 6th, 8th & 9th Defendants: Steven Muzuusa, Galisonga Julius holding brief for Alex Luganda

The 2nd, 4th & 7th Defendants were self-represented.

Issues for Determination

As agreed in the Joint Scheduling Memorandum, the issues are as follows:

1. Whether the meeting held on 23/8/2014 in which the 1st Defendant was elected Kyabazinga of Busoga by the Defendants was held and concluded in accordance with the provisions of the Constitution of the Obwa Kyabazinga bwa Busoga, 2000;
2. Whether by the time the 1st Defendant was allegedly elected as Isebantu Kyabazinga of Busoga, the 1st Plaintiff had already been duly elected as Isebantu Kyabazinga of Busoga;
3. Whether the Plaintiffs are entitled to the remedies sought for in the Plaint.

Position of the Law

Article 126(1) of the 1995 Constitution of the Republic of Uganda states:

Judicial power is derived from the people and shall be exercised by the courts established under this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people.

Article 2 of the Constitution of Obwa Kyabazinga bwa Busoga provides:

The cultural and traditional rights of each of the eleven traditional hereditary chiefs in Busoga to rule over or to lead his Chieftdom in traditional and cultural matters/affairs is hereby recognized, confirmed and guaranteed by this Constitution subject to the provisions in this Constitution.

Article 24(a) to (c) of the Constitution of the Obwa Kyabazinga bwa Busoga reads:



- (a) Without prejudice to the corporation sole status of any of the eleven Traditional Hereditary County Chiefs of Busoga, the Kyabazingaship Institution, headed by His Royal Highness the Isebantu Kyabazinga of Busoga shall be a corporation sole in accordance with the provisions of the Constitution of Uganda 1995 and accordingly enjoy perpetual succession.
- (b) As a corporation Obwa Kyabazinga bwa Busoga shall have a right to sue and to be sued in Courts of Law, to own any type or kind of property and if ownership/proprietorship of such property is registrable under the laws of Uganda, the same shall be registered in the names of the Institution viz Obwa Kyabazinga bwa Busoga.
- (c) For avoidance of doubt the chiefdom properties of each of the eleven Traditional Hereditary Chiefdoms of Busoga are not properties of the Obwa Kyabazinga bwa Busoga as each of the said chiefs is a corporation sole in his capacity as a traditional/cultural ruler in line with the Constitution of Uganda 1995.

Article 6: Election of the Isebantu Kyabazinga of Busoga

- (i) If and when the throne of the Isebantu Kyabazinga falls vacant, the Issabalangira shall automatically become acting Kyabazinga, pending election of the new Isebantu Kyabazinga.
- (ii) Whenever the throne of the Isebantu Kyabazinga falls vacant, the new Isebantu Kyabazinga shall be elected within a period of 60 (sixty) days and in any case not later than 90 (ninety) days from the date when such throne fell vacant, provided that if the Chiefs Royal Council fails to act within the time limits herein due to circumstances or conditions beyond their control, the period shall automatically be extended further 60 (sixty) days.
- (iii) Upon the throne of the Isebantu Kyabazinga becoming vacant the Chairman of the Chiefs Royal Council shall, upon serving a 21 (twenty one) days written notice to all members of the Chiefs Royal Council convene a meeting of the Chiefs Royal Council at Bugembe Lukiiko or any other specified venue in case for some good reasons it is impossible to hold the meeting at Bugembe and at a specified time for purposes of electing the new Isebantu Kyabazinga.
- (iv)
- (v) The quorum of the Chiefs Royal Council for purposes of electing the Isebantu Kyabazinga or the Issabalangira shall be 8 (eight) members of the Chiefs Royal Council physically present at the meeting convened

for such purposes provided that where there is a draw in votes at such meeting, the chairman shall have one additional casting vote.

- (vi) Upon his election the new Isebantu Kyabazinga shall formally notify his acceptance in writing to the Isabalangira within 30 (thirty) days after the election.
- (vii) After his election, the new Isebantu Kyabazinga shall be introduced by the Issabalangira to the Busoga Lukiiko for approval in the presence of not less than 7 (seven) members of the Chiefs Royal Council within 21 days following his election to that throne...

The resolution of this case shall be guided by the 1995 Constitution, the Institution of Traditional & Cultural Leaders Act, 2011, the Constitution of the Obwa Kyabazinga bwa Busoga, and the norms, practices, culture and customs of the Basoga people. See Article 126(1) of Uganda Constitution). I have also taken the time to read up on, research and get some understanding on the history of Busoga and the Kyabazingaship to enable me to understand the context of this case.


Preliminary Objections

At the hearing, counsel Luganda for the Defendants raised a preliminary objection which was reserved for ruling together with the judgment.

The Defendants raised a preliminary objection that there is no legal entity known as Obwa Kyabazinga bwa Busoga and as such no suit can be sustained in that capacity. In their submissions, they argued this is a nullity which overrides all questions of pleadings including any admission. See **Makula International Limited -v- Cardinal Emmanuel Nsubuga (1981) HCB 77**. That under Article 246 of the 1995 Constitution of Uganda and Section 2 of the Institution of Traditional or Cultural Leaders Act, No. 6 of 2011 suits against or for the institution of the Obwa Kyabazinga bwa Busoga/Busoga Kingdom can only be in the name of the legal persona of the Kyabazinga of Busoga and nothing else.

Counsel for the Defendants also relied on **The Kyabazinga of Busoga -v- Ligwewo Richard & Others, Misc. Application No. 215 of 2017** wherein Justice Eva Luswata held;

"It is an error to sue the kingdom of Busoga. That institution is not registered and only exists in the minds of the Basoga people as a manifestation of their core culture but with no corporate personality. The institution was not capable of being sued and once the pleadings were filed, there would be no



room to make a substitution for the Kyabazinga of Busoga because as I have held before, it was an error that at the outset went to the root of the claim. The legal person and thus the right party to be sued vests in the Kyabazinga as the successive holder of that monarchial position within the institution of the Busoga Kingdom. He is the one to sue or be sued in his office/name or by Attorney."

Counsel for the Defendants even juxtaposed the above position to the case of the Anglican church which can only transact or sue or be sued as the Registered Trustees of Church of Uganda. That the Kyabazinga of Busoga is akin to the Registered Trustees of Church of Uganda. Counsel relied greatly on the case and holding in **Private Sector Development & Consultancy Centre Limited -v- The Omukama of Tooro, Civil Appeal No. 002 of 2015** that the king is the legal persona for the kingdom and not the kingdom itself. See also **Buganda Land Board -v- John Wampamba, Misc. Cause No. 622 of 2013**.

The Plaintiffs' counsel contended that the institution of traditional leader of Busoga is Obwa Kyabazinga bwa Busoga and the traditional leader of Busoga is the Kyabazinga of Busoga, and that both have capacity to sue and be sued under Article 246(3)(a) & (6) of the Constitution of the Republic of Uganda. They also relied on Article 24 of the Constitution of the Obwa Kyabazinga bwa Busoga.

I shall at this point reproduce the relevant law. Article 246 of the 1995 Constitution of the Republic of Uganda provides:

- (1) Subject to the provisions of this Constitution, the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.
- (2) In any community, where the issue of traditional or cultural leader has not been resolved, the issue shall be resolved by the community concerned using a method prescribed by Parliament.
- (3) The following provisions shall apply in relation to traditional or cultural leaders –
 - (a) The institution of traditional leader or cultural leader shall be a corporation sole with perpetual succession and with capacity to sue and be sued and to hold assets or properties in trust for itself and the people concerned;

- (5) For the avoidance of doubt, the institution of traditional leader or cultural leader existing before the coming into force of the Constitution

shall be taken to exist in accordance with the provisions of this Constitution.

(6) For the purposes of this article, “traditional leader or cultural leader” means a king or similar traditional leader or cultural leader by whatever name called, who derives allegiance from the fact of birth or descent in accordance with the customs, traditions, usage or consent of the people led by that traditional or cultural leader.

Section 7(1) of the Institution of Traditional or Cultural Leaders Act, No. 6 of 2011 clearly provides:

“(1) The institution of a traditional or cultural leader is a corporation sole with perpetual succession and with capacity to sue and be sued and to hold assets or properties in trust for itself and the people concerned.”

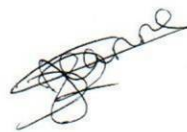
The above provisions leave no doubt that the institution with capacity legal personality under the law is the institution of the traditional or cultural leader. Put another way, the Kyabazinga of Busoga is the legal person under the law capable of suing and being sued, and not the Obwa Kyabazinga bwa Busoga/Busoga Kingdom.

The holding in **Private Sector Development & Consultancy Centre Limited – v- The Omukama of Tooro, Civil Appeal No. 002 of 2015** which counsel for the Defendants relied upon, further fortifies this position.

I recognize that the Constitution of Obwa Kyabazinga bwa Busoga provides that the Obwa Kyabazinga bwa Busoga is a corporation sole capable of suing and being sued. This position in the Busoga Constitution is however misconceived. The Constitution of the Obwa Kyabazinga bwa Busoga was made under Article 246 of the 1995 Constitution of Uganda, and should be construed as such. It should be read in line with the Uganda Constitution. This also means that in the face of a conflict between the two Constitutions, the Uganda Constitution, 1995 stands supreme.

The first leg of the preliminary objection stands. The 2nd Plaintiff is a non-existent party, and its case against the Defendants is dismissed with no award as to costs.

Counsel for the Defendants argued a second limb of this preliminary objection that the 3rd, 4th, 6th, 7th and 9th Defendants are not legal entities with capacity to sue or be sued. That these are merely office titles not clothed with legal



personality. That they are smaller constituent units that are collectively described as Obwa Kyabazinga bwa Busoga and which give rise to the corporation sole of the Kyabazinga of Busoga under the Constitution of Uganda and the Traditional Leaders Act. Further, that since the said Defendants do not exist, the plaint ought to have been rejected from the onset under Order 7 Rules 11 & 9 of the Civil Procedure Rules, SI 71-1 (CPR). See **Trustees of Rubaga Miracle Centre -v- Mulangira Ssimbwa, Misc. Application No. 576 of 2006**. On these grounds, counsel prayed that the suit be dismissed.

In response, the Plaintiffs submitted that the institution of the cultural leader under Article 246(6)(a) of the 1995 Constitution in this context means the Obwa Kyabazinga bwa Busoga or alternatively Obwa Ntembe bwa Butembe or Obwa Kisiki bwa Busiki in Busoga. As such the 2nd Plaintiff has capacity to sue and be sued. The same is echoed in Article 24 of the Constitution of the Obwa Kyabazinga bwa Busoga. Similarly, each of the chiefs are a corporation sole under both the Ugandan and Busoga Constitutions. Therefore, the 2nd Plaintiff has capacity to sue, and the 3rd, 4th, 6th, 7th and 9th Defendants have capacity to be sued.

Without prejudice, counsel for the Plaintiffs submitted that the plaint would still stand even if the 2nd Plaintiff was not party to the suit since the question is whether or not the 1st Defendant's election was a contravention of the Constitution of the Obwa Kyabazinga bwa Busoga.

I agree with the position that a plaint filed against a non-existent Defendant in law cannot be amended, because at the very heart of it, the suit is non-existent. This is the position in **Trustees of Rubaga Miracle Centre -v- Mulangira Ssimbwa (supra)** and **Buganda Land Board -v- John Wampamba, Misc. Cause No. 622 of 2013**.

However, in this case, I find that the 3rd, 4th, 6th, 7th & 9th Defendants are persons vested with legal personality. This is owing to Busoga's unique decentralized structure and history. Article 246 of the 1995 Constitution of Uganda recognizes that traditional and cultural leaders may exist in line with the customs, traditions, and wishes of the people to whom it applies. This may be a King or leader by whatever style called, including offices existent before the 1995 Constitution.

From my understanding, Pre-colonial Busoga was composed of eleven independent chiefdoms which were governed independently by chiefs who were

kings in their own right. Among these are the chiefs listed as the 3rd, 4th, 6th, 7th, & 9th Defendants.

The framers of the 1995 Constitution were mindful of both the centralized and decentralized systems of traditional governance. The Constitution of the Obwa Kyabazinga bwa Busoga echoes this in Article 24. Therefore, both the Kyabazinga and the Kisiki of Busiki and other such hereditary chiefs are recognized cultural leaders under Article 246 of the Constitution of Uganda as corporations sole.

Therefore, this argument of the preliminary objection fails.

The third limb of the preliminary objection is that the 5th Defendant, Fred Menhya of Bugweri died in 2016 and no suit can be sustained against a deceased person. The Defendants prayed that the 5th Defendant be struck off the record of pleadings.

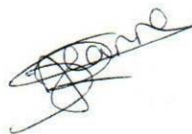
I observe that the case against the 5th Defendant is against Fred Menhya of Bugweri, and not against the office of the Menhya of Bugweri (the cultural leader's office.) It was brought against Fred Menhya in his personal capacity and not his capacity as cultural leader of Bugweri. In the circumstances the suit did not survive the 5th Defendant. DW3 testified that he succeeded his father as the Menha of Bugweri in 2016. This however is of no relevance since the Plaintiffs decided to sue Fred Menhya in his personal capacity. Further, DW3 did not present any Letters of Administration or Grant of Probate to justify his continuing to represent his late father's interests in this suit. Therefore, the suit as against the 5th Defendant is dismissed.

Further, counsel for the Defendant argued that no action can be sustained against the three would-be remaining Defendants because the actions complained of were collectively carried out by the Royal Council members. In the premises, counsel prayed that the suit be struck out with costs.

Having dismissed the second leg of the Defendants' objection, I find that the case against the remaining Defendants stands. For avoidance of doubt, the 1st Plaintiff's case against the 1st, 2nd, 3rd, 4th, 6th, 7th, 8th, and 9th Defendants stands.

Resolution

Issue 1: Whether the meeting held on 23/8/2014 in which the 1st Defendant was elected Kyabazinga of Busoga by the Defendants



was held and concluded in accordance with the provisions of the Constitution of the Obwa Kyabazinga bwa Busoga, 2000.

Issue 2: Whether by the time the 1st Defendant was allegedly elected as Isebantu Kyabazinga of Busoga, the 1st Plaintiff had already been duly elected as Isebantu Kyabazinga of Busoga

The above two issues were in submissions redrafted by counsel on both sides as *Whether the election of the 1st Defendant as Kyabazinga of Busoga was valid*. In answering the above issues, this issue too will be answered.

These issues first investigate the circumstances surrounding the 1st Defendant's election and subsequent enthronement as Kyabazinga of Busoga. The events as relayed in evidence are as follows. In relation to issue 1, counsel for the Plaintiff submitted relying on the testimonies of PW1, PW2, PW3, and PW4 that the 1st Plaintiff was elected Kyabazinga on 31/10/2008 and presented to the Lukiiko on the same day. It is the Plaintiff's case that the 1st Plaintiff is the duly elected Kyabazinga of Busoga and he has never vacated the throne.

Counsel for the Defendants submitted that the 1st Defendant's election was valid. Counsel refuted claims that at the time of the 1st Defendant's election the 1st Plaintiff was the sitting Kyabazinga. This, according to counsel, is because the 1st Plaintiff's election was carried out contrary to Article 8 of the Busoga Constitution, that is, without the requisite quorum of at least 8 members of the Chiefs Royal Council.

Subsequently, the 1st Defendant was elected on 23/8/2014 and the Government of Uganda gazetted the 1st Defendant as the duly recognized Busoga cultural leader vide Gazette General Notice No. 649 of 2019 dated 29th April 2019. Counsel for the Defendants also relied on DE3 which is a resolution by the Chiefs wherein they agreed that all elections prior to 2014 were null and void for lack of quorum. Therefore, that the argument that the 1st Plaintiff was the valid Kyabazinga of Busoga at the time of the 1st Defendant's election is untenable.

In rejoinder, Counsel for the Plaintiff contended that the question before this court relates to the validity of the 1st Defendant's election and not the validity of the 1st Plaintiff's election. Counsel argued that questions relating to the 1st Plaintiff's election are not matters that this court can look into without a counterclaim filed by the Defendants. As such, the Defendants' submissions as to illegality and lack of quorum in the 31/10/2008 election are irrelevant.

Going by the issues submitted in the Joint Scheduling Memorandum, the question before this court relates to both the 1st Plaintiff and 1st Defendant's election. The justice of this case also requires that the validity of both elections be investigated.

First I will iron out preliminary issues arising from the main issues. Counsel for the Plaintiffs also rejoined that the issue of validity of the 1st Plaintiff's election was resolved when the court dismissed Election Petition No. 1 of 2009 for lack of prosecution. As such the question is now res judicata under Section 7 of the Civil Procedure Act. Section 7 provides:

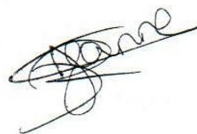
"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court."

I disagree with counsel for the Applicant. PE7 which is Election Petition No. 1 of 2009 was dismissed for want of prosecution. It was without determining the issues raised, part of which were the question of the validity of the election of 31/10/2008. As such the issue is not res judicata.

The Plaintiffs presented a video recording marked PEV which captured the election of the 1st Plaintiff as Kyabazinga and his subsequent presentation for approval before the Lukiiko on 31/10/2008. However, this court rejects the video recording and shall not rely on it because it offends the rules of evidence.

Justice Wangutusi in **Elizabeth Nakayiwa & 2 Others -v- Attorney General, HCCS No. 549 of 2013** explained that "For electronic evidence to be admitted in evidence there must be a degree of certainty that the evidence being presented is authentic and was handled in such a way that it has not compromised the integrity of its content."

Firstly, PEV is a video production- in essence a film produced by TJT Video Coverage. It is not an unadulterated and authentic representation of the events of the day in question. There is also no sworn affidavit by TJT Video Coverage verifying the video's authenticity. The video skips over and jumps on more than one occasion, showing that it has been tampered with. It skips in the sense of fast forwarding to what are deemed by the producer to be the more relevant parts.

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The video is also recorded in Lusoga which is not the language of court. The correct course of action in this case would have been to provide court with a translation of the video into the language of court, with the attendant Certificate of Translation. See **Serunjogi Charles Musoke -v- Amooti Nyakana Godfrey & Electoral Commission, Electoral Petition No. 29 of 2006**. For the above reasons, court is not confident of the authenticity of the video, and therefore rejects it. I shall instead rely on the minutes supplied of the meeting of 31/10/2008 (PE4).

Election of 31/10/2008

I agree with counsel for the Defendant's submissions that this election was conducted contrary to Article 8 of the Busoga Constitution. The Constitution of the Obwa Kyabazinga bwa Busoga provides for 8 of the 11 chiefs as the required quorum for electing the Kyabazinga. See Article 8(v) of the Constitution of the Obwa Kyabazinga bwa Busoga. PW1, PW2, DW2 testified to this requirement of quorum. The question here is one of quorum. Whether there was sufficient quorum in line with Article 8(v) of the Busoga Constitution at the time of electing the Kyabazinga.

The minutes of the meeting of 31/10/2008 show 7 hereditary chiefs in attendance. The minutes also show that there were three hereditary persons who ran away from the meeting, namely the 1st Defendant, Lukalu Ceaser, the Isabalangira of Gabula, and Munoolo Juma from Bunya.

The 1st Plaintiff testified that at the time of voting, the above named three had left the election hall. Now I wish to emphasize as captured in Minute 77/10/2008 that Juma Munolo was not a hereditary chief, but caretaker of Mukajanga Byansi, the Luba of Bunhya who remained all through the meeting. Lukalu Caesar was also merely a caretaker of the 1st Defendant, the Gabula of Bugabula. So in essence only one of the hereditary chiefs left the meeting before voting. Three other hereditary chiefs are captured as absent in PE4, that is the Menhya of Bugweri, the Nkono of Bukono, and the Ngobi of Kigulu.

From that, it is concluded that there were 7 out of 11 hereditary chiefs present at the meeting of 31/10/2008. The minutes marked PE4, and PW2's testimony in cross examination leave this court with the conclusion that 7 hereditary chiefs attended the meeting, including the 1st Plaintiff, and all 7 chiefs voted for the 1st Plaintiff.



That however, contravenes Article 8(v) of the Constitution of the Obwa Kyabazinga bwa Busoga, 2000 which requires a quorum of 8 hereditary chiefs at the voting of the Kyabazinga. For that reason, the election of 31/10/2008 was invalid.

Had it been argued that the chief who walked out of the election hall still counted as part of the quorum, this argument still would not stand. The argument in essence questions whether a party who leaves a meeting before the business of the meeting is conducted can still be counted as part of the quorum. What are the legal consequences of conducting business after losing quorum in the meeting?

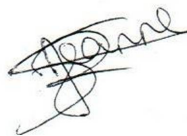
Black's Law Dictionary, 9th Edition defines "quorum" as the minimum number of members (usually a majority of all the members) who must be present for a deliberative assembly to legally transact business. **Stroud's Judicial Dictionary on Words and Phrases, Vol 4: P-R, Fourth Edition, Sweet & Maxwell** at page 2233 illustrates on this issue using the example of quorum at a company board meeting thus;

"Where a quorum of directors or shareholders is prescribed, that means, imperatively, that no business shall be transacted unless the prescribed number, at least, be present."

The essence of quorum is to have a majority voice present while making certain decisions. Particular to this case, the requirement of the quorum in Article 8 of the Constitution of the Obwa Kyabazinga bwa Busoga, is to have a distinct majority of the hereditary chiefs elect the Kyabazinga. The required 8 hereditary chiefs must be present all through the transaction of the business of the meeting. This requirement was not met.

At the time of voting, there was a quorum of 7 and not the required 8 hereditary chiefs. The Isabalangira at that point should have rescheduled the voting day to another time when the quorum necessary to transact the business of the day could be procured.

Counsel for the Plaintiff pointed out that there was judgment on admission by the 1st, 3rd, 5th, and 9th Defendants wherein they stated that the election of the 1st Defendant as Kyabazinga was regrettable and done contrary to the Constitution of the Obwa Kyabazinga bwa Busoga since the 1st Plaintiff was the sitting Kyabazinga. Be that as it may, these admissions are of no consequence to the resolution of this case. The question for resolution is whether the 1st



Plaintiff's election on 31/10/2008 was valid. As already stated, it was for lack of quorum at the meeting. This submission does not change the resolution.

In conclusion, the 1st Plaintiff's election as Kyabazinga on 31/10/2008 was null and void for lack of quorum.

Election of 5/10/2009

Following contestations regarding the earlier election, the Chiefs Royal Council again sat on 5/10/2009 to elect the Kyabazinga of Busoga. DW1 testified that this election was null and void for lack of quorum. He averred in paragraph 17 of his witness statement that only 7 of the 11 hereditary chiefs attended the meeting.

No minutes of this meeting were presented, and DW1 held up in cross examination. DW2, Kafuko Robert Ntuyo also testified to the lack of quorum at this meeting. See paragraph 15 of DW2's witness statement.

Therefore, the election of 5/10/2009 was null and void for lack of quorum as required under Article 8(v) of the Constitution of the Obwa Kyabazinga bwa Busoga.

Election of 23/8/2014

Counsel for the Plaintiffs also argued that there was government interference in the cultural affairs of Busoga. This is not a main issue for resolution before this court. There is no evidence to suggest that there was intermeddling by the Central Government into the affairs of Busoga. There is no merit to this argument. The events leading to the election of 2014 as presented before this court are as follows.

Following the two earlier elections, Busoga was thrown into uncertainty as to the Kyabazingaship. The Central Government decided to intervene as mediator between warring faction of Busoga and facilitate a conclusive election of the Kyabazinga by the Chiefs Royal Council.

The result was a meeting with the government representative Hon. Adolf Mwesigye, Minister for Local Government on 18/10/2008. The resolutions out of this are marked Exhibit D3. In there the 11 hereditary chiefs resolved to hold another election where Hon. Mwesigye would act as the neutral government observer.



Subsequently, on 23/8/2014 the 10 chiefs of Kigulu, Luuka, Bukooli, Bunha, Bunhole Bunanhumba, Bugweri, Busiki, Bukono, Butembe and Bugabula met. Only the 1st Plaintiff, hereditary chief of Bulamogi was absent. They voted the 1st Defendant as the Kyabazinga of Busoga. The 1st Defendant per D5 accepted his election as Isebantu Kyabazinga and was presented to the Busoga Lukiiko on 25/8/2014. See Exhibit D6.

This election was held in line with Article 8 of the Constitution of the Obwa Kyabazinga bwa Busoga. It was not in contravention of Article 6 of the Constitution of Obwa Kyabazinga bwa Busoga because at the time there was no validly elected Kyabazinga of Busoga.

I therefore find, in resolving the two issues, that the election of the 1st Defendant as Isebantu Kyabazinga of Busoga on 23/8/2014 was valid. At the time of the 1st Defendant's election on 23/8/2014, the 1st Plaintiff was not the duly elected Isebantu Kyabazinga of Busoga. This is because his purported election was without the required quorum.

Issue 3: Whether the Plaintiff is entitled to the remedies sought.


The Plaintiff sought a number of remedies. However, his case having failed, the same are rejected.

The defendants sought costs to be awarded at the Court's discretion. See Section 27(1) of the Civil Procedure Act and **Mungecha -v- Attorney General [1981] HCB 55** and that costs be against the 1st Plaintiff.

Conclusion and Orders:

Following resolution of this case in favour of the 1st, 2nd, 3rd, 4th, 6th, 7th, 8th & 9th Defendants, this suit is hereby accordingly dismissed with costs to the above Defendants.

I so order.



Jeanne Rwakakooko
JUDGE

17/12/2021

This Judgment was delivered this 18th day of Feb, 2022

18/2/2022

C81 Kabuku Ntango for 1st bet
together C81 Alex Luganda.

C81 Daniel Lubongo together

C81 Joel O Sekeny.

Mr Wanzwa of dock.

Ct: Ruff dehen
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