

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
ELECTION PETITION APPEAL NO. 13 OF 2021
(ARISING FROM LUWERO CHIEF MAGISTRATES COURT ELECTION
PETITION NO. 001 OF 2021)

1. SUUNA MULEMA

2. ELECTORAL COMMISSION ::::::::::::::::::::::::::::::::::: APPELLANTS

VERSUS

SEKABIRA HERBERT ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE BONIFACE WAMALA

JUDGMENT

Introduction

[1] The Appellants being dissatisfied with the judgement and decree of **His Worship Samuel Munobe**, Chief Magistrate, delivered on 29th October 2021 at Luwero Chief Magistrates Court, brought this appeal seeking orders that the appeal be allowed, the judgment and orders of the learned Chief Magistrate be set aside, the 1st Appellant be held as the duly elected District Councilor representing persons with disabilities of Luwero District and costs of the appeal in this Court and in the lower Court.

Brief Background to the Appeal

[2] The Respondent filed Election Petition No. 001 of 2021 against the Appellants in the Chief Magistrates Court of Luweero for declarations that the 2nd Appellant failed to conduct an election for the position of District Councilor representing persons with disabilities (PWDs) at Luwero District in accordance with the law. The Respondent (then Petitioner) stated that the actions of the 2nd Appellant in conducting an election hearing in which the petitioner was denied natural justice were illegal, unconstitutional, null and void. The Respondent

had also stated that the 1st Appellant was not validly elected as a male councillor representing persons with disabilities. The Appellants (then Respondents) contested the petition. The learned trial Magistrate allowed the petition, made orders nullifying and setting aside the election of the 1st Appellant, and ordered the 2nd Appellant to conduct a fresh election. He also ordered that the costs of the petition were to be met by the 2nd Appellant. The Appellants were dissatisfied with the decision and thus filed the present appeal.

Representation and Hearing

[3] At the hearing, the 1st Appellant was represented by **Mr. Assasira Bosco** from M/s Kiyonga – B. Asasira & Co. Advocates; the 2nd Appellant was represented by **Mr. Eric Sabiti** from the Legal Department of the Electoral Commission; while the Respondent was represented by **Mr. Christopher Kajwara** from M/s Tayebwa, Sserwadda & Co. Advocates. It was agreed that the hearing proceeds by way of written submissions which were duly filed by both counsel. I have considered the submissions in the determination of the matter before Court.

The Grounds of Appeal

[4] The Appellants raised six grounds of appeal in their joint memorandum of appeal, namely;

- a) That the learned trial Magistrate erred in law in not addressing the preliminary point of law raised by the Appellants that the Respondent did not have a cause of action against the Appellants as the petitioner was not a person qualified to contest under the provisions of the Disability Act.
- b) That the learned trial Magistrate erred in law and fact when he held that the Respondent had complied with section 138 of the Local Government Act by not addressing the preliminary point of law raised by the

Appellants in Election Petition No. 10 of 2021: Sekabira Herbert vs Electoral Commission, thus reaching a wrong conclusion.

- c) That the learned trial Magistrate erred in law by finding that the petition was competently filed by the petitioner who does not fall under the PWD electoral college regarding him as a candidate, a qualified person with disability under the Disability Act as amended there by reaching a wrong conclusion.
- d) That the learned trial Magistrate erred in law and fact by wrongly evaluating the whole evidence on record that the Respondent was a person eligible to contest under the persons with disability (PWDS) by not relying on any medical report or examination that had been wrongly denominated thereby reaching a wrong conclusion.
- e) That the learned trial Magistrate erred in law and fact by declaring that the 1st Appellant had not contested for the position of male councillor for Luwero District representing persons with disabilities as he had just been brought in by the 2nd Appellant who based on a complaint, there by reaching a wrong conclusion.
- f) That the learned trial Magistrate erred in law and fact that the 2nd Appellant had no capacity to disqualify the Respondent upon a hearing that was conducted by the 2nd Appellant under Min. Comm 341/2020 thereby reaching a wrong conclusion.

Duty of the Court on Appeal

[5] The duty of a first appellate court is to scrutinize and re-evaluate the evidence on record and come to its own conclusion and to a fair decision upon the evidence that was adduced in a lower court. See: *Section 80 of the Civil Procedure Act Cap 71*. This position has also been re-stated in a number of decided cases including *Fredrick Zaabwe v Orient Bank Ltd CACA No. 4 of 2006*; *Kifamunte Henry v Uganda SC CR. Appeal No. 10 of 1997*; and *Baguma*

Fred v Uganda SC Crim. App. No. 7 of 2004. In the latter case, **Oder, JSC** stated thus:

“First, it is trite law that the duty of a first appellate court is to reconsider all material evidence that was before the trial court, and while making allowance for the fact that it has neither seen nor heard the witnesses, to come to its own conclusion on that evidence. Secondly, in so doing it must consider the evidence on any issue in its totality and not any piece in isolation. It is only through such re-evaluation that it can reach its own conclusion, as distinct from merely endorsing the conclusion of the trial court”.

Burden and Standard of Proof

[6] The burden of proof in an election petition lies on the petitioner to prove the assertions raised in the petition. This is in line with the rule of evidence under section 101 of the Evidence Act Cap 6 to the effect that he who alleges must prove. See: *Kyakulaga Bwino Fred & EC v Waguma Badogi Ismail, Election Petition Appeals No. 15 and 20 of 2016* and *Akuguzibwe Lawrence v Muhumuza David & 2 Others, Election Petition Appeal No. 22 of 2016*.

[7] The legal burden of proof normally remains on the petitioner throughout the trial and does not shift to the Respondent. See: *Mutembuli Yusuf v Nagwomu Moses Masamba & EC, Election petition Appeal No. 43 of 2016*. It is only in a few specific instances, depending on the grounds relied upon in a particular petition, that the burden may shift. One of the few exceptions relates to situations where the authenticity of one’s academic credentials is challenged, whereby the burden of proving the authenticity of the impugned academic credentials rests on the person that relies on those credentials. See: *Acen Christine Ayo v Abongo Elizabeth, Election Petition Appeal No. 58 of 2016* citing *Abdul Balingira Nakendo v Patrick Mwondha, Supreme Court Election Appeal No.9 of 2006*.

[8] The standard of proof required in a Local Council Election Petition is to the satisfaction of the court as provided for under Section 139 of the Local Governments Act, Cap 243. For avoidance of doubt, Section 139 of the Local Government Act provides that;

“The election of a candidate as a chairperson or a member of a council shall only be set aside on any of the following grounds if proved to the satisfaction of the court –

- a) that there was failure to conduct the election in accordance with the provisions of this part of the Act and that the non-compliance and failure affected the result of the election in a substantial manner;*
- b) that the person other than the one elected purportedly won the election;*
- c) that an illegal practice or any other offence under this Act was committed in connection with the election by the candidate personally or with his or her knowledge and consent or approval; or*
- d) that the candidate was at the time of his or her election not qualified or was disqualified from election”.* [Emphasis added]

Consideration of the Grounds of Appeal

[9] Before consideration of the grounds of appeal, let me briefly address the preliminary issue raised by Counsel for the 2nd Appellant in their submissions to the effect that the subject matter of this appeal is a pre-polling matter which ought to have been resolved by the Electoral Commission and for which this Court is not seized with jurisdiction to handle. To begin with, I would agree with Counsel for the Respondent in their submissions in rejoinder that this objection represents an attempt by the 2nd Respondent’s Counsel to cause confusion in the matter. This is because after the impugned decision by the 2nd Respondent, the present Respondent filed an appeal vide Election Appeal No.10 of 2021: Sekabira Herbert vs Electoral Commission, in line with *The Parliamentary Elections (Interim Provisions) (Appeals to the High Court from Commission) Rules S.I 141-1*; to which appeal the 2nd Respondent’s Counsel

objected. The Court allowed the objection upon a finding that the appropriate remedy for the present Respondent was to file a petition before the magistrate's court in line with Section 138 of the Local Governments Act. Such was the background to the petition from which this appeal arose.

[10] It is clear to me that if the present matter was a pre-polling one as now claimed by Counsel for the 2nd Respondent, the Court would not have taken the position it did; moreover, upon the prompting of the same counsel. Since the said decision of the Court remains in force, this Court is *functus officio* and cannot delve into the same issue. Secondly, and equally important, even if the court was not *functus officio*, the objection ought to have been raised before the trial court. This Court on appeal, cannot deal with a matter that was not raised during the trial in the lower court and upon which no evidence or arguments were made and considered before the trial court. See: *William Twakirane v Viola Bamusede*, HCCA No. 046 of 2007. For the above reasons, the preliminary point raised by Counsel for the 2nd Appellant is unsustainable and devoid of merit. It is accordingly overruled.

Ground 1: That the learned trial Magistrate erred in law in not addressing the preliminary point of law raised by the Appellants that the Respondent did not have a cause of action against the Appellants as the petitioner was not a person qualified to contest under the provisions of the Disability Act.

Submissions by Counsel for the Appellants

[11] It was submitted by Counsel for the Appellants that the learned trial Magistrate ignored the requirement to call a medical doctor with relevant expertise to carry out an examination to determine the disability as provided for under Section 2 of the Disability Act 2020. Counsel argued that the medical report from Kadic Hospital on page 99 of the record of appeal shows that the

disability that the Respondent alleges to have, had healed. Counsel argued that the failure to invite a medical doctor to challenge the medical report on court record led to a wrong conclusion.

Submissions by Counsel for the Respondent

[12] In response, it was submitted by Counsel for the Respondent that this ground of appeal is based on a preliminary objection that was never raised before the trial court since the point of law raised before the trial court was about the competence of the proceedings before the court. Counsel implored the court to find that this ground of appeal is misleading and is a fishing expedition which should fail. Counsel further argued that the trial magistrate exhausted the appellants' preliminary objection and came to a right conclusion by making a distinction between rights enjoyed by individuals by reason of their economic or commercial relationships and those rights engraved in the Constitution while evaluating the contention that the Respondent was irregularly and unlawfully disqualified from election by the 2nd Appellant. Counsel argued that the 1st Appellant was a beneficiary of all the illegalities and injustices committed by the 2nd Appellant against the Respondent.

Determination by the Court

[13] It is clear from the record that the learned trial Magistrate pointed out in his judgment that the Appellants (then respondents) had raised a preliminary objection regarding the competence of proceedings before the court and the court took the view that the preliminary point of law was one of mixed law and facts, reserved its ruling and opted to have the point framed as one of the issues for resolution on the merits. Accordingly, Issue 1 before the trial court was whether the petition before court was competently filed. The learned trial Magistrate considered the different aspects touching the competence of the petition, namely; that the petition did not disclose the right under which it was brought by the petitioner as the petitioner had ceased to be a candidate when

he was de-nominated by the 2nd Appellant; and that the petitioner had no cause of action against the 1st Respondent (now 1st Appellant). The learned trial Magistrate exhaustively dealt with the two points of objection, found no merit in them and overruled them upon making a finding that the petition was competently filed before the court. By this ground of appeal, the Appellants have not raised any complaint indicating whether and how the trial Magistrate was wrong in his finding. Rather, it is alleged that the trial Magistrate did not address the preliminary points; which is an incorrect proposition. That being the case, this ground of appeal raises no substantial point on appeal and it accordingly fails.

Ground 2: That the learned trial Magistrate erred in law and fact when he held that the Respondent had complied with Section 138 of the Local Government Act by not addressing the preliminary point of law raised by the Appellants in Election Petition No. 10 of 2021: Sekabira Herbert vs Electoral Commission, thus reaching a wrong conclusion.

Submissions by Counsel for the Appellants

[14] Counsel for the Appellants faulted the trial Magistrate for finding that the Respondent had complied with the requirements under Section 138 of the Local Governments Act which provides that an election petition can be brought by a candidate who loses an election or a registered voter with less than 500 signatures from the constituents of that particular constituency. Counsel argued that the Respondent, although duly nominated, was disqualified when the 2nd Appellant found out that he was not a person with a disability and did not adduce any evidence that he tried and failed to get the required signatures in support of the petition. Counsel argued that the trial Magistrate reached a wrong conclusion because the Respondent did not comply with Section 138 of the Local Governments Act.

Submissions by Counsel for the Respondent

[15] Counsel for the Respondent submitted that although the Local Governments Act is silent about the definition of a candidate in an electoral process, Section 172 of the Local Governments Act Cap 243 allows application of laws relating to presidential and parliamentary elections. Counsel relied on the definition of a candidate as a person duly nominated as a candidate for presidential election or as an elected member of parliament respectively and submitted that the trial magistrate was alive to those definitions and rightly stated that the petitioner was one of the two candidates nominated to participate in an election for a male councillor representing PWDS for Luweero District. Regarding the second category under which the Respondent could have brought a petition as a registered voter with not less than 500 signatures from the constituents, Counsel argued that the elections of councilors representing persons with disabilities at the level of District council are elected by electoral colleges and that at the time of the elections, Luweero District had 13 sub-counties meaning the voters register had 65 registered voters; which is short of the required number by 435. Counsel submitted that it was impossible to exercise the 2nd option. Counsel concluded that the trial magistrate correctly decided that the Respondent had complied with Section 138 of the Local Governments Act.

Determination by the Court

[16] The contention on this ground of appeal is that the Respondent did not have locus to institute the election petition before the trial court on account that he was not a candidate or did not bring the petition as a registered voter accompanied by 500 signatures of registered voters as required under Section 138 of the Local Governments Act. For avoidance of doubt, Section 138(3) of the Local Governments Act provides that;

“An election petition may be filled by any of the following persons –

- (a) a candidate who loses an election; or*
- (b) a registered voter in the constituency concerned supported by the signatures of not less than five hundred voters registered in the constituency”.*

[17] The trial Magistrate correctly pointed out that neither the Local Governments Act nor the Electoral Commission Act define a “candidate” and made recourse to the provision under Section 172 of the Local Governments Act that permits the application of the Parliamentary Elections Act with such necessary modifications in the case of any issue not provided for under Part X of the Act. The trial court stated that under Section 1 of the Parliamentary Elections Act, a “candidate” is defined as any person nominated as a candidate for election ...” He then found that the Respondent was one of the two candidates having been nominated to participate in the election for male councillor representing PWDS for Luwero District. The argument by Counsel for the Appellants is that the Respondent ceased to be a candidate when his nomination was revoked by the 2nd Appellant and was disqualified from the contest for the position of councilor.

[18] In my view, the learned trial Magistrate correctly evaluated the law and the facts of the matter before him. It is the correct position of the law that the term candidate refers to any person nominated as a candidate for election to a particular office. The person remains a candidate until after the election process. Where a person is disqualified by the electoral body after nomination, he is disqualified as a “candidate” and he/she has a right, subject to the reason and manner of disqualification, either to complain to the electoral body or where the disqualification affects the election results, to petition the court in accordance with the governing law. In the present case, the disqualification led to the other candidate in the race remaining unopposed and was declared as the duly elected councilor for PWDs for Luwero District. The Respondent, as

one of the candidates, therefore lost an election. The Respondent asserts that the 2nd Appellant (the electoral body) acted illegally and unjustifiably and accordingly challenged the declaration of the 1st Appellant. I find nothing in law that would disqualify the Respondent from bringing the petition before the trial court. He was a candidate that clearly lost an election for the office he was vying for. As rightly pointed out by the trial court, an election is a process and does not only encompass polling. Counsel for the Appellants appear to labour under the impression that the term “election” as used in the relevant provision refers only to polling. That is a wrong impression. As such, the Respondent clearly fitted within the provision under Section 138(3)(a) of the Local Governments Act.

[19] Like it was found by the learned trial Magistrate, the provision under Section 138(3)(b) of the Local Governments Act was inapplicable to the Respondent’s circumstances and the Respondent (as petitioner) indeed never sought to rely upon it. Upon qualifying to petition as a candidate that lost an election, the requirement under Section 138(3)(b) above could not be imposed upon him. In the circumstances, this ground of appeal is devoid of merit and it accordingly fails.

Ground 3: That the learned trial Magistrate erred in law by finding that the petition was competently filed by the petitioner who does not fall under the PWD electoral college regarding him as a candidate, a qualified person with disability under the Disability Act as amended there by reaching a wrong conclusion.

Ground 4: That the learned trial Magistrate erred in law and fact by wrongly evaluating the whole evidence on record that the Respondent was a person eligible to contest under the persons with disability (PWDS) by

not relying on any medical report or examination that had been wrongly denominated thereby reaching a wrong conclusion.

Submissions by Counsel for the Appellants

[20] The two grounds were argued jointly by counsel on both sides. Counsel for the Appellants submitted that disability is defined by the Disability Act 2020 to mean a substantial functional limitation of a person's daily life activities caused by physical, mental or sensory impairment and environment barriers, resulting in limited participation in society on equal basis with others. Counsel pointed out that one of the impairments mentioned in the third schedule of the Act includes a hearing impairment. Counsel submitted that the trial magistrate ignored the evidence of the Respondent's medical report that was relied on to disqualify him from the election which was to the effect that the hearing impairment had become normal meaning that he had ceased to have substantial limitation on the function of his daily life and ceased to be a person of disability and thus did not fall under the PWD electoral college.

[21] It was further submitted that the trial Magistrate contradicted himself when he stated that the petitioner did not attend the meeting yet the minute on record and the cross examination indicated that he attended. Counsel concluded that the trial Magistrate reached a wrong conclusion that the petitioner was not granted a fair hearing before his disqualification.

Submissions by Counsel for the Respondent

[22] In response, Counsel for the Respondent submitted that there is evidence on record by way of a letter from National Union of Disabled Persons of Uganda that was marked as PE3 and that the medical report from Kadic Hospital which show that the Respondent has a profound loss of hearing in the right ear and was advised to accept the loss given the fact that bicros hearing aids are not readily available in Uganda. Counsel stated that this implies that the

Respondent's impairment still has substantial limitations on the functionality of his daily activities which makes him a person with disabilities under the Disability Act and thus fell under the PWD electoral college. Counsel also argued that since Section 2 of the Persons with Disabilities Act requires that a medical doctor with relevant expertise has to be appointed by the council of persons with disabilities to give an opinion as to whether or not a person is a person with disability, the complainant before the 2nd Respondent ought to have produced evidence to show that the Respondent is not a person with disability which was not done at the hearing.

[23] Counsel further submitted that the Respondent's de-nomination was not legally justified on account that the Respondent was not given a fair hearing before disqualification as a candidate. Counsel argued that the Respondent was not given sufficient prior notice of allegations against him, the summons was very ambiguous and he was not informed of the nature of the complaint against him. Counsel cited the case of *Fort Hall Bakery Supply Co. v Fredrick Mugabi (1959) EA 474* to the effect that a non-existing person cannot sue and once the court is made aware that the plaintiff is non-existent, it cannot allow the action to proceed and argued that the complainant to the 2nd appellant is a non-existing party that was incapable of maintaining an action. Counsel concluded that the trial magistrate correctly evaluated the evidence and reached the correct decision.

Determination by the Court

[24] The gist of these two grounds of appeal is that the learned trial Magistrate erred in law and fact, and in his evaluation of evidence, leading to a finding that the Respondent qualified to contest as a person with disability yet he was not a PWD according to the Persons with Disabilities Act 2020. Section 2 of the Persons with Disabilities Act 2020 provides as follows;

“Determination of a person with a disability

Whenever a question arises whether a person has a disability or not or where the court so requires, a medical doctor with the relevant expertise or an expert appointed by the Council, shall carry out an examination to confirm the disability”.

[25] The implication of the above provision of the law is that before determining whether the Respondent was a person with disability or not, upon the complaint that was made to the Electoral Commission, a medical examination had to be conducted or a report of such examination by a medical doctor with relevant expertise, had to be produced before the Commission. Counsel for the Appellants painted an erroneous impression that it was the duty of the Respondent to establish before the Electoral Commission that he was indeed a person with disability. This is a wrong view. The complaint to the Commission was preferred by a body whose existence was questioned by the Respondent. The Respondent was invited by letter and allegedly on short notice. As such, before the Commission (2nd Appellant), the present Respondent was still respondent to the complaint. The allegation by the complainant was that although the Respondent had presented himself for election as a representative of PWDs, he was indeed not a person with disability. Clearly, therefore, the burden lay on the complainant to prove that the Respondent was not a person with disability. To execute the burden, the complainant had to move the Commission to cause the examination of the Respondent in a manner directed by the provision of the law above cited. Alternatively, the Commission as a tribunal could move itself to have the examination conducted in order for them to be satisfied over the disability status of the Respondent.

[26] To my mind, it was not open to the 2nd Appellant to casually determine the question of the Respondent’s disability in light of the clear guidance by the relevant law. It was stated by the Appellants’ Counsel that the 2nd Appellant

relied on a report from Kadic Hospital, at page 99 of the Record of Appeal. However, it is clear that this report had been procured by the Respondent for a different purpose and the report itself restates the existence of a disability on the Respondent's part. The fact that the Respondent was advised to accept the loss and use normal hearing aids as "bicros hearing aids are not readily available in Uganda" is testimony to the fact that the Respondent suffered hearing impairment; which is classified as disability under the third schedule to the Act on disability. It is therefore surprising as to how the 2nd Respondent arrived at the conclusion that the Respondent was not a person with disability, leading to his disqualification from the election.

[27] I find that the learned trial Magistrate correctly evaluated the evidence on the matter and came to the right conclusion. There was no evidence before the 2nd Appellant showing that the Respondent was not a person with disability. The 2nd Respondent also failed to follow the law before disqualifying the Respondent. Like it was found by the trial court, the Respondent was, therefore, unlawfully and wrongly disqualified from contesting for the position he was vying for. Grounds 3 and 4 of the appeal are devoid of merit and they accordingly fail.

Ground 5: The learned trial Magistrate erred in law and fact by declaring that the 1st Appellant had not contested for the position of male councillor for Luweero District representing persons with disabilities as he had just been brought in by the 2nd Appellant who based on a complaint, there by reaching a wrong conclusion.

Submissions by Counsel for the Appellants

[28] Counsel for the Appellants submitted that Section 114 of the Local Governments Act empowers the Electoral Commission to declare a candidate unopposed by the returning officer in the event that the other candidate

withdraws or is disqualified and that since the Respondent was disqualified, the 2nd Appellant exercised its mandate and declared the 1st Appellant as the elected local councillor LC5 for Luweero for persons with disabilities. Counsel stated that there is no way the 2nd Appellant would have declared the 1st Appellant as the only candidate if he had not contested. Counsel concluded that the notion by the Respondent that the 2nd Appellant simply brought up the 1st Appellant is misconceived and the trial Magistrate made a wrong conclusion.

Submissions by Counsel for the Respondent

[29] It was submitted by Counsel for the Respondent that this complaint by the Appellants does not form any part of the judgment or record of appeal. Counsel stated that the trial Magistrate did not make any finding or declaration to the effect that the 1st Appellant had not contested for the position of male councillor for Luweero District representing persons with disabilities and that he had just been brought in by the 2nd Appellant. Counsel stated that the only declaration made by the trial Magistrate at page 24 of the judgment was that Mr. Suuna Mulema was not validly elected as a male councillor for Luweero District representing persons with disabilities. Counsel concluded that this ground is irrational and should fail.

Determination by the Court

[30] The position of the law is that grounds framed in a memorandum of appeal must emanate from the proceedings and decision of the lower court. See: *Nalongo Naziwa Josephine v Uganda [2018] UGSC 27*. In this case, upon perusal of the record of appeal and thorough scrutiny of the judgment of the trial Magistrate, I am unable to see any finding by the trial Magistrate, or any evidence or issue raised regarding the allegation that the 1st Appellant was not one of the two candidates in the race for the position of councilor. The clear facts, evidence and finding of the trial court were that two persons had been

nominated, that is, the 1st Appellant and the Respondent; and that upon disqualification of the Respondent, the 1st Appellant was declared unopposed and duly elected for the position. In light of the above, I do not see the basis of the complaint by the Appellants as raised in this ground of appeal. It appears to me that this ground is based on a misunderstanding of the language used by the trial Magistrate. The ground of appeal, therefore, raises no material point and it fails.

Ground 6: The learned trial Magistrate erred in law and fact that the 2nd Appellant had no capacity to disqualify the Respondent upon a hearing that was conducted by the 2nd Appellant under Min. Comm 341/2020 thereby reaching a wrong conclusion.

Submissions by Counsel for the Appellants

[31] It was submitted by Counsel for the Appellants that Section 114 of the Local Governments Act empowers the Electoral Commission to declare a candidate unopposed by the returning officer in the event that the other candidates withdraw or are disqualified. Counsel submitted that among the mandates of the 2nd Appellant under Section 15 of the Electoral Commission Act is to resolve conflicts that have arisen in elections and that in the instant case, the 2nd Appellant received a complaint which it resolved as per Min 134 of 2020 and went on to carry out its mandate of declaring the 1st Appellant as unopposed. Counsel concluded that the trial Magistrate erred in law and fact in stating that the 2nd Appellant had no capacity to disqualify the Respondent and prayed that the appeal be allowed, the judgment and orders of the Chief Magistrates Court be set aside and the 1st Appellant be held as the duly elected District Councilor representing Persons with Disabilities of Luwero District.

Submissions by Counsel for the Respondent

[32] In reply, it was submitted by Counsel for the Respondent that this ground of appeal is very ambiguous, misleading, poorly drafted and based on facts which are neither on record nor in the judgment of the trial court. Counsel submitted that the learned trial Magistrate did not state anywhere that the 2nd Respondent had no capacity to disqualify the Respondent. Counsel stated that rather, the learned trial Magistrate found that to his satisfaction, the disqualification of the Respondent was not legally justified. Counsel stated that it is clear that in his judgment, the trial Magistrate was very keen and alive to the mandate of the 2nd Appellant and correctly relied on the relevant provision of the law. Counsel prayed to Court to find no merit in this ground of appeal.

Determination by the Court

[33] I have examined the decision of the learned trial Magistrate and I have not come across any finding to the effect that the 2nd Appellant had no capacity to disqualify the Respondent from participating in the elections upon conducting a hearing under Min 341/2020. The import of the decision by the trial Magistrate is that the 2nd Respondent based on a complaint by a non-existent entity and its proceeding did not comply with the principle of fair hearing. The trial Magistrate held that, as such, the 2nd Respondent was not legally justified to disqualify the Respondent from the race. Nowhere in the judgment did the trial Magistrate question the capacity or mandate of the 2nd Respondent in the conduct of the said business. The trial court questioned, and rightly so, the manner in which the 2nd Respondent carried out its mandate in non-compliance of the law and the requirements of due process. It is apparent to me that like the 5th ground of appeal considered above, this ground too is based on a misconstruction of the judgment of the trial Magistrate. This ground of appeal also raises no material complaint and is disregarded.

Decision of the Court

[34] In all, therefore, none of the grounds of appeal raised by the Appellants has been made out. The appeal wholly fails and is accordingly dismissed with orders that;

- a) The judgment and decree of the learned trial Magistrate are upheld and maintained.
- b) The 2nd Respondent shall conduct a fresh election for the position of LC 5 Male Councilor representing Persons with Disabilities (PWDs) for Luwero District within 90 days from the date of this judgment.
- c) The costs of this appeal shall be borne by both Appellants while those of the lower court remain payable by the 2nd Appellant.

It is so ordered.

Dated, signed and delivered by email this 19th April, 2024.



Boniface Wamala

JUDGE