THE REPUBLIC OF UGANDA

I THE HIGH COURT OF UGANDA HOLDEN AT SOROTI

ELECTION PETITION NO. 0005/2006

MOSECY OKAO .....PETITIONER

VERSUS

1. **ADOLI OGWOK ALFRED JOHN**
2. **THE RETURNING OFFICER**
   AMOLATAR DISTRICT..... RESPONDENTS
3. **UGANDA ELECTORAL COMMISSION**

BEFORE : HON. MR. JUSTICE MUSOTA STEPHEN.

RULING

On the 2nd day of March 2006, elections were held for Chairpersons District Local Governments throughout the country. In the recently created District of Amolatar, the results released by the Electoral Commission declared one Adoli Ogwok Alfred John winner. His opponent, Mosey Okao, was dissatisfied with the declaration. He filed Election Petition 005 of 2006. The Election Petition was filed under a long list of legal previsions which I will quote in full. It is stated that:-

"PETITION (brought under sections 112 (3) (e), 139(1), (3) & (4), 140 (a) & (d), 142 and 173 of the local Government Act No. 1 of l997 and sections 4 (1)(c), (5),(6),(7) (8),(13) and (14) of the Parliamentary Elections Act 17 of 2005).

In this petition the petitioner is represented by M/S Twontoo Oba and Mr. Magezi. The 1st respondent is represented by Mr. Jude Otim Atiang, while the second and third Respondents are represented by Mr. Ddungu.

At this point in time, I do not wish to elaborate the grounds upon which this petition is promised but suffice is to mention that the petitioner was dissatisfied with the entire electoral process. He is seeking orders from this Court that:-

(i) The candidate Adoli Ogwok Alfred John was not validly elected as Chairperson Amolatar Local Government Council and the said Election should be declared a nullity.

(ii) The petitioner was the one duly elected Chairperson and should accordingly be declared as validly elected Chairperson Amolatar Local Government Council.

Alternatively, it is sought that:-

(a) The election of Adoli Ogwok Alfred John be set aside and or nulllified.
(b) The costs of this petition be provided for.
(c) The Election Results for Akol P.7 polling Station be nullified forthwth.

The respective respondents answered the petition.

In the answer filled by the 1st Respondent, he denied the petitioner's allegations against him and through his advocate, Jude Otim Atiang, he contended in paragraph 6 thereof that:-

' .....this petition is bad in law, misconceived frivolous and vexatious and incurably defective for non-compliance with the relevant and enabling laws of Uganda and the first Respondent shall at the earliest opportunity raise a preliminary objection on point of law that the petition be struck off and or dismissed wherefore, the first Respondent prays that this Honourable Court:

(a) Upholds the results of the election as declared by the second and third Respondents.

(b) Costs be awarded to the first Respondent.

The above quoted threat appeared to me to go to the basis of this petition. I therefore decided to entertain this point before the scheduling conference.

In his submission Mr. Jude Atiang stated that:-

(1) The election Petition is not backed by any statutory provision and therefore is wrongly before Court.
(2) What is stated by the petitioner as the laws to move this Court are not correct so as to enable this Court continue to hear the Petition.
(3) The petitioner wants the Court to look for possible laws under which he can get remedy.
(4) Since the first Respondent is not a member of and never intended to be one, invoking the Parliamentary Elections Act 2005 (Act 17/2005) becomes redundant and not applicable to this matter.
(5) S.173 of the Local Government Act referred to in the petition is about immunities which is irrelevant in the petition.
(6) The petitioner does not have a cause of action and the petition is of no consequence. He referred to the case of **Byabazaire v Mukwano Industries (2002) 2 EA 253**

That since the petition is brought under the wrong law, it be dismissed with costs.

In reply, on Twontoo Obaa for the petitioner urged that:

(a) The petitioner is properly before court and should be heard because the most important issue raised is the illegality which took place by the first Respondent in connivance with the 2nd and 3rd respondents
(b) Referring to the case of **Makalu International**, Mr. Twontoo stated that once an illegality is raised in court, it must be investigated, addressed and pronouncement

made by Court. That illegality overrides all questioning including pleadings and/or admissions made.

(c) He conceded that he quoted the old law, Act 1 of 1997, which was subsequently amended by Act 13 of 2001 and lately by Cap 243 of 2006, but added that the latest law should not be looked at alone and the mistake is not fundamental.

(d) The new law derives its legitimacy from the parent Act 1 of 1997 and the Constitution.

(e) Failure to quote the correct sections of the law does not invalidate the entire petition.

(f) The latest amendment, cap 243 came into force on February 15th 2006 but took time to come into circulation. He could not get hold of the law to enable citation of the correct provisions.

Mr. Magezi supplemented the submission by Mr. Twontoo. He urged that:-

(i) Article 126 (2) (e) of the Constitution emphasizes substantive justice without undue regard to technicalities and citing a wrong law is a technicality.

(ii) The Local Government Act was not repealed and the amendments did not take away the rights being sought in the petition.

(iii) The respondents are not in any way prejudiced by citation of the wrong law. The 1st respondent referred to the correct law in all his answers. They were not mistaken as to what is against them.

(iv) If Court feels it needs the correct citations and in the interest of Justice, they could work round the clock and amend the petition. This would help during the scheduling. He referred to Rule 26 of SI 141 – 2.

(v) That the case of **Byabazaire** (Supra) is distinguishable from the present case. It does not apply to wrong sections which omission is minor.

Finally, Mr. Jude Otim Atiang made a rejoinder to the effect that:

(a) The case of **Makula International** is not applicable because the facts of that case arose on appeal yet the instant objection involves moving Court to hear somebody.

(b) Act 1 of 1997 is referred to now as History. The petitioner can not rely on it to be heard. The said law is now non-existent.

(c) One cannot use the Constitution in reference to non-existent law. This Court cannot convict if there is no law on which to base judgment.

(d) The petitioner should not blame publishers because by the time of this petition, the law was already in force.

(e) The defects cannot be cured by amendment because what is non-existent can not be amendable.

I have given my most anxious attention to the objections raised by Mr. Jude Otim Atiang learned counsel for the 1st respondent. I have related it to the respective replies by Mr. Twontoo and Mr. Magezi, learned counsel for the petitioner. The only issue for determination is: what effect does citing the wrong provision of the law have on the *locus standi* of a litigant seeking remedy from Court.

In order to have a proper perspective of the complaint by the 1st Respondent, I will refer to the laws on which this petition has been based.

Act 1 of 1997, the Local Government Act, was extensively amended and transformed into the Local Government Act Cap 243. It is referred to as one of the Historical peaces (See 3rd schedule).

The petitioner further based his petition on the Parliamentary Elections Act 17 of 2005 S. 4 thereof. The subtitle to S4 is "Qualifications and disqualifications of Members of Parliament''. This petition does not refer to Parliamentary elections.

Mr. Twontoo urged this Court to ignore the objection by Mr. Jude Atiang saying that since they have revealed an illegality, it should override pleadings. While conceding to citing the wrong law, Mr. Twontoo urged that failure to quote the correct law does not invalidate the entire petition.

Mr. Magezi supplemented Mr. Twontoo by saying that this Court should invoke Article 126 (2) (e) of the Constitution and disregard technicalities. That technicalities should not take away the rights being sought. Learned counsel referred to the case of **Makula International Ltd V. His Eminences Cardinal Nsubuga and Anor (1982) MC B III**

I do not agree with the submission by both learned counsel for the petitioner. In order for a person to seek legal redress from Court, he must base his/her ***locus standi*** on an existent law. The remedies sought must be based on the said law. This is what gives courts of law jurisdiction and guidance as to what remedies should be considered and/ awarded. I agree with the holding by Tinyinondi J. in **Byabazaire V Mukwano Industries (2002) 2 EA 353 (a)** that an action founded on provisions of a statute must conform to the provisions and a plaintiff (Petitioner) can not look beyond those provisions unless so provided by clear provisions of the statute in question.

I agree with Mr. Jude Atiang that the instant Election petition is not barked by any statutory provision and is wrongly before court. Election petitions are not about wishes but also about offences which are a creature of statute. The correct legal basis must be cited for court to uphold any objections.

The law upon which the petitioner based this petition are not correct. .Act 1 of 1997 no longer exists. It is recognized as a Historical piece. S173 of the Local Government Act refers to protection against court action of Local Government officials. This is absolutely irrelevant to this petition.

The petitioner also invokes the Parliamentary Elections Act 17 of 2005. I wonder how relevant this reference is to this petition. The 1st respondent is not a member of parliament. This reference therefore is irrelevant and redundant.

This petition lacks a legal basis to be sustainable. It is not right to argue that this court should disregard technicalities as enshrined in the Constitution. True technicalities should not stand in

the way of substantive justice but conferring jurisdiction and founding a cause of action is not a technicality.

Learned counsel for the petitioner heavily relied on the case of **Makula International** (Supra). I agree with Mr. Atiang that the said case is not applicable to this case. The said case arose on appeal yet in the instant case, the petitioner is moving a trial court to give him a hearing. In Makula, the appellate Court was exercising its constitutional duty to guide the lower courts on the correct position of the Law. The judicial system had taken cognizance of the dispute which had been properly filled in the lower court.

Mr. Magezi submitted in the alternative that Court allows the petition so that the correct sections are cited. Amendments can cure a defect in an existent suit/petition which is sustainable at law. Amendment in the instant circumstances is untenable. It would entail re writing the petition which will be prejudicial to the respondents. The reasons given herein above bear this out. Mr. Magezi further sought to invoke SI 141-2 i.e. The Parliamentary Elections (Election Petitions) Ruler made under S.93 of the Parliamentary Elections Act. Learned counsel referred to Rule 26 thereof barring defeat of petitions by any formal objections or by a miscarriage of any notice or any other document sent by the Registrar to any party to the petition.

Under Rule 2 thereof it is enacted that:

‘’These Rules shall apply to the conduct of Election Petitions in respect of Parliamentary elections held under the statue’’. It would appear these Rules apply to Parliamentary Elections unless a given situation is not covered under the relevant law.

As I have already stated, there were not Parliamentary Elections. Even if the Rules were to apply, I do not think the matter before me is an irregularity envisaged under Rule 26 (Supra).

In the case of **Peragio Munyagira V. Andrew Mutayitwako HC Misc. Application No 37 of 1993, (1993) I KALR, 36,** Okello.J. (as he was then) held iteralia that :

‘’Every application must specify the actual rule under which it is brought. S.18 of the CPA as cited was too general. That application was thereby defective for failure to cite the specific rule under which it was brought’’.

The application was thereby dismissed. In that application, the application was brought to court and learned counsel cited S.18 of the civil procedure Act and nothing else.

When cases are filled before court and especially if the filling involves counsel, counsel are expected to cite the correct provisions of the law under which they bring their cases to court. Failure to do so renders such cases defective. This results into dismissal.

In conclusion, I will uphold the objection raised by Mr. Jude Otim Atiang that this petition is not properly before Court. It is incurably defective for non-compliance with the relevant and enabling laws of Uganda. I will dismiss the same with costs.

Before I take leave of this matter, I wish to comment that there is a trend taking place which is likely to dilute ethical standards in this noble profession. It is common place for some lawyers not to do work expected of them and instead jump on to pleas for substantive justice without justification. Much as nobody wants to give up the “right to sue and substantive justice’’ or shift counsel’s blame to his client, such pleas have no substance without the rule of law. Rights without law do not protect freedom but undermine it thus causing disorder in court and eventually society.

Musota Stephen

Ag. JUDGE

17.7.2006