



Act (Cap 140) alleging that the nomination paper of the Petitioner was in violation of Section 11 (1) (a) of the Parliamentary Elections Act, 2005 (PEA), because it was not signed or countersigned. The nomination was, therefore, said to be invalid as per S. 13 (a) of the PEA.

The petitioner was represented by Mr. Hassan Kamba assisted by Mr. Owen Murangira, while the respondent was represented by Mr. Patrick Wetaka.

The issues to be determined here appear to be whether the decision of the respondent to disqualify the petitioner was valid, and the remedies available to the parties.

In support of the Petition, Mr. Kamba submitted that the impugned decision was no decision at all because Section 8 of the Election Commission Act requires that decisions of the Commission had to, as far as possible, be by consensus. Since Annexure “LL” to the affidavit in reply, which contains the decision of the Commission does not bear the approvals of the Commission members, it was not a valid decision.

On failure to comply with Section 11 (a) and (d) of the PEA, Counsel submitted that the Returning Officer having verified the seals of the Chief Magistrate on oath (See Annexure “O” to the Petition), the respondent could not denominate the petitioner. Further the copy of the Petition which was also cited by the returning officer

(Annexure “C”) to the Petition, indicated that the Magistrate Grade II duly commissioned the Nomination Paper on pages 2 and 6 on 22/10/2010.

Counsel relied on *Twinomuhangi Pastol Vs Kabale Local District Government Council and 2 others MC 152 of 2006 and Lall Jeypee Investments Ltd* for the proposition that where no consequences are laid down for failure to observe a laid down procedure, the provision is not mandatory. Since Section 11 of the PEA did not state that a person who fails to make oath would be denominated, and S. 13 only referred to failure to sign and counter sign as invalidating the nomination, the invalidation on basis of failure to have the oath attested to was wrong.

Counsel further relied on *Sitenda Sebalu Vs Sam Kalega Njuba Election Petition No. 2 of 1998 (CA)* to state that courts must construe a statute in light of what was common knowledge with which it was enacted or the mischief it was intended to cure. He further cited *Sagu Vs Road Master Cycles [2002]IEA 258* to state that a defect in the Jurat or any irregularity in the form of an affidavit could not be allowed to vitiate an affidavit in view of Article 126 (1) (e) of the Constitution, and related it to the oath in question.

Mr. Kamba concluded by asking court to quash the decision of the respondent which he said was harsh and was taken without giving the Petitioner ample time to get to know the complaint against him.

In reply, Mr. Wetaka for the respondent, referred to the affidavit in reply by Mr. Eric Sabiiti specifically paragraphs 4, 5, 6, and 7 to the effect that the Petitioner did not comply with the provisions of the law.

The complaint brought under Section 15 of the PEA was to the effect that the papers filed with respondent were not commissioned. Under Section 13 of the PEA, failure to sign or countersigned the nomination invalidated the nomination. Counsel however admitted that the law was silent on who was to do the signing or the counter signing.

On the allegation that the impugned decision was a single man's decision, Mr. Wetaka submitted that the Chairman of the respondent, Mr. Kiggundu, was only communicating a decision of the respondent. That was the practice of the respondent.

Counsel further submitted that the returning officer's letter to the respondent, (Annexure "O") referred to by the Petitioner's Counsel, did acknowledge that there was an omission on two copies submitted to the respondent. And if the respondent had discretion in the matter as per Sagu's case (supra), then the respondent declined to exercise the discretion to allow the Petitioner have the anomaly rectified.

Counsel prayed that decision be upheld with costs.

I have considered the Petition, the affidavit in reply, the submissions of learned Counsel for both sides and the laws and authorities relied on.

I feel it pertinent to put in view the laws relating to the procedure for nomination, before proceeding to determine the issues at hand.

The relevant part of Section 11 (1) (a) of the Parliamentary Elections Act, 2005, (PEA) states:

***“Procedure for the nomination of candidates:***

***(1) Nomination of a candidate shall be made on nomination day by two registered voters appearing in person tendering to the returning officer the following:***

***(a) a nomination paper in duplicate in the prescribed form containing a statement under oath by the person seeking nomination specifying:***

- i) the name, age, address and occupation of the person seeking nomination;***
- ii) the address designated by the person seeking nomination for service of process and papers under this Act;***
- iii) the name and address of a person appointed official agent by the person seeking nomination.”***

Section 13 states:

***“Factors which may invalidate a nomination;***

***A person shall not be regarded as duly nominated for a constituency and the nomination paper of any person shall be regarded as void if;***

***a) the person's nomination paper was not signed and countersigned in accordance with sub-section (1) of Section 11."***

The Petitioner's first objection related to the signature by the Chairman Electoral Commission of the letter dated 22/12/2010 (Annexure "LL" to the affidavit in reply) instead of the Commissioners all affixing their signatures.

I have looked at the said communication which is conveying the decision of the Commission taken at its special meeting held on 22/12/2010 to reverse the nomination of the Petitioner for Samia-Bugwe North Constituency. I find no anomaly with the way the communication of the decision was made especially when the details of the meeting were included. There was no need to attach a copy of the minutes to show that it was a decision of the Commission. The Petitioner could have sought for further and better particulars if it was felt that there was need to examine the minutes of the respondent. I find that this ground has no merit.

Regarding the gist of the impugned decision, Paragraph 2 of the Chairman's letter states:

***"This is to inform you that at its special meeting held on the 22<sup>nd</sup> December 2010, under Minute SP117/2010, the Commission reversed the Returning Officer's decision to***

*nominate Mr. John Mulimba for the Samia-Bugwe North Constituency elective position due to non-compliance with Section 11 (1) (a) and (d) of the Parliamentary Elections Act, No. 17 of 2005 (as amended)".*

The communication does not go any further to state in what way the Petitioner failed to comply with the provisions mentioned in the letter. This was very necessary especially when the minutes indicating the basis of the decision were not attached to the communication. One is therefore left to guess as to what went amiss.

In the above circumstances, the court would be required to look at the affidavits, the nomination papers themselves and the provisions of the law and try to work out what was actually missing. Paragraph 5 of the affidavit in reply deponed to by Eric Sabiiti and dated 3/01/2011 states that the respondent received a complaint against the nomination of the Petitioner complaining that the Petitioner's nomination paper was not signed and countersigned in accordance with the law. In the respondent's Counsel submissions, he admitted that the above law was silent as to whether the signing and countersigning was to be done by the candidate or the Commissioner for oaths.

The petitioner for his part deponed under paragraph 5 of the affidavit in support of the petition dated 29/12/2010, that he duly followed the procedure and took oath as required by that section.

Section 11 (1) (a) requires two registered voters to present a nomination paper in duplicate in the prescribed form containing statement under oath by the person seeking nomination specifying his name, age, address and occupation, the address of his designated campaign agent, and the candidate's address of service.

Section 11 (6) states that a duplicate copy of the nomination paper certified by the returning officer shall be given to the candidate. Annexure "C" to the Petition is a copy of such a duplicate that the returning officer gave to the petitioner. It bears the stamp of the returning officer and the date for nomination as 25/11/2010. All the places that were required to be filled in appear duly filled in, especially the oath of the candidate and the attestation by the Senior Principal Magistrate Grade II. The original duplicate copy of the nomination form that the court sighted at the hearing had the seals of the Chief Magistrates Court on both page 2 and page 6.

Furthermore, the candidate duly signed the part for "candidate's signature on page 2 of the nomination paper, followed by the signature of the Ag. Chairperson NRM Electoral Commission, Professor Elijah Mushemeze. Page 3 is the appointment of the official agent for the candidate and the candidate (petitioner) did sign in the provision for signature on 25/10/2010. Page 4 is the statement of acceptance of appointment which was duly signed by the official agent on 25/10/2010. Lastly, pages 5 – 6 contain the "Statement under Oath by person to be nominated as a



Parliamentary candidate”. The statement was duly filled and signed by the candidate on 22/10/2010; and attested to by the Senior Principal Magistrate Grade II on the same date.

The copy of the nomination form which was presented to court by the respondent’s Counsel, has more or less the same dates and signatures throughout. What is conspicuously missing from this copy is the attestation to the ‘oath of the candidate’ by the Senior Principal Magistrate Grade II on page 2. The name of the candidate in the oath itself, and his signature towards the bottom of the page, are all in place as in the candidate’s duplicate copy referred to above.

Since no particulars were given by the respondent in Annexure “LL” as already indicated, one can only assume that the above omission is the one referred to by the Chairman in his communication “LL” attached to the affidavit in reply, as failure to comply with Section 11 (1) (a) and (d). Would this omission invalidate the nomination of the Petitioner? Section 13 of the Parliament Election Act (Supra) lays down the circumstances that may render the nomination void. The Sub-section relied on by the respondent as per the submissions of Counsel, is S. 13 (a), which is to the effect that a nomination paper would be void if the person’s nomination paper was not signed or counter signed. Counsel for the respondent did not indicate whose signatures were referred to here. If it is the signature of the candidate, all the

provisions for signatures by the candidate were duly signed on both the duplicate form given to the candidate and on the copy submitted to court by the respondent. Was the omission to attest to the second page of the other copy of the nomination form fatal? It is not clear whether this is the countersigning referred to and on this I got no help from the respondent's Counsel.

Be the above as it may, the Court of Appeal in Sagu's Case (Supra) ruled in a case where the affidavit was not dated, as required by Section 6 of the Oaths Act, Cap 19 that it was trite that a defect in the jurat or any irregularity in the form of the affidavit could not be allowed to vitiate an affidavit in view of Article 126 (e) of the 1995 Constitution, which stipulates that substantive justice shall be administered without undue regard to technicalities. The court went on to say that the Learned Judge had power to order that the undated affidavit be dated in court or that the affidavit be re-sworn before putting it on record.

In the present case, the petitioner through his affidavit in support deponed under paragraphs 6, 7, 8, 9, and 10 that he attended the Magistrate Grade Two's Chambers, Mr. Kahawa Basil on 22/10/2010 where questions as to the correctness and truthfulness of the contents of the nomination form were put to him to which he answered in the affirmative. It turned out that the Magistrate attested to one copy fully with page 2 and 6, but omitted to attest on page 2 on the other copy. The courts

have been urged by the Supreme Court to always take a liberal view of defective affidavits in election petitions so as not to defeat the ends of justice. (See *Dr. Kiiza Besigye Vs Electoral Commission and Museveni Kaguta Election Petition No. 1 of 2001*).

In the present case, I would liken the statements on oath to the affidavits in electoral petitions referred to in the Kiiza Besigye's case (Supra). I would say that from the evidence available, there was substantial compliance with the statutory provisions relating to the procedure for nomination. In particular, the petitioner and the Magistrate Grade Two through affidavits have confirmed that the oaths were administered. One copy of the nomination paper indicates that the Magistrate, however, omitted to attest to page 2 of the copy sent to the respondent. This small deviation, in court's view, should not be made to invalidate the nomination of the petitioner, otherwise the ends of justice would not have been met. The decision of the respondent contained in annexure "LL" to the affidavit in reply is therefore quashed. The copy(ies) of the nomination form(s) with the said omission should therefore be duly attested to match the copy in the possession of the Petitioner. The Petitioner will be penalized in costs. In conclusion, the Petition is granted with no order as to costs.

It is so ordered.

**Elizabeth Musoke**

**JUDGE**

**12/01/2011**