



2. On the 3<sup>rd</sup> February, 2021 the 3<sup>rd</sup> Respondent organized elections for the position of Chairperson of Sub County/Town/Municipal Divisions in Uganda.
3. Three (3) persons were nominated to stand for the position of Chairperson of Nawanjofu Sub county and these were:
  - 1) Haumba Benard
  - 2) Mulepo Umaru Faduru (1<sup>st</sup> Respondent)
  - 3) Wanghede Aliyi (Petitioner)
4. At the end of the polling exercise, the 2<sup>nd</sup> Respondent declared the following results:
  - 1) Haumba Benard..... 426 votes
  - 2) Mulepo Umaru Fadulu... 2,305 votes
  - 3) Wanghede Aliyi..... 2,155 votes
5. The 3<sup>rd</sup> Respondent published the above results in the Uganda Gazette of 3<sup>rd</sup> May, 2021.
6. The above results were from Fourteen (14) polling Station as the results for Masaba Main Mosque polling station were omitted by the 2<sup>nd</sup> Respondent from the return form for transmission of results allegedly for the acts violence that took place during the elections at this polling station.
7. The Petitioner has a photocopy of the declaration of results form for Masaba Main Mosque polling station indicating that he won the 1<sup>st</sup> Respondent at this polling station with a margin of Three Hundred (300) votes implying that if the results at this polling station had been added to the final tally the Petitioner would have won this election.
8. The Petitioner being dissatisfied with the results declared by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed the instant petition.
9. This matter came up for scheduling on 17<sup>th</sup> August, 2021 and indeed it was set down for hearing on the same day and this is when the Petitioner was cross-

examined by counsel Mutembuli Yusuf whereupon the Petitioner stated that he was not conversant with the English language and that a one Isaac Watindi Malwa was the who assisted him interpret the contents of his affidavit to him but the said Isaac Watindi Malwa did not endorse on his affidavit.

10. Court had wished to continue with the hearing of this petition to the very end but the subsequent conduct of counsel for the Petitioner in attempting to reopen the Petitioner's case led to the court striking out the Petitioner's affidavit in support of this petition and determining the competency of the petition.

### **Legal representation**

11. Mr. Byamugisha Gabriel together with Mr. Nabende Isaac represented the Petitioner, while Mr. Mutembuli Yusuf together with Mr. Nappe Geoffrey represented the 1<sup>st</sup> Respondent and Mr. Obed Mwebesa represented the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

### **Decision of court**

12. While this Petition was in an advanced stage of hearing whereby the Petitioner had closed his case and the 2<sup>nd</sup> Respondent had been cross examined by Mr. Byamugisha Gabriel counsel for the Petitioner.
13. It became apparent that Counsel for the Petitioner had abused the magnanimity of the court in not striking out the Petitioner's affidavit in support of the petition on 17<sup>th</sup> August, 2021 when it was glaring that this affidavit contravened the provisions of Sections 2 and 3 of The Illiterates Protection Act.
14. Counsel for the Petitioner filed two (2) affidavits one by the Petitioner and the other by an advocate called Sserwadda Gonzaga on 20<sup>th</sup> August, 2021 to the effect that actually the Petitioner understood the English language and he should be recalled to come and prove this fact before court.
15. On 31<sup>st</sup> August, 2021 Mr. Byamugisha Gabriel applied to have the Petitioner recalled which application was vehemently opposed by Counsel Nappa

Geoffrey and Mr. Obed Mwebesa Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents respectively.

16. In its brief ruling court agreed with Counsel for the Respondents that indeed the affidavit in support of this petition by the Petitioner contravened the provisions of Sections 2 and 3 of Illiterates Protection Act and on the strength of the Court of Appeal decision **Mugema Peter Versus Mudiobole Abedi Nasser** Election Petition Appeal No. 16 of 2016 struck out the affidavit of the Petitioner in support of this petition.
17. The above state of affairs led the court to inquire from Counsel if the petition in its current form without the Petitioner's affidavit in support of the petition was competent?
18. Counsel Mutembuli Yusuf for the 1<sup>st</sup> Respondent argued that Section 138(1) of the Local Government Act only permits an aggrieved candidate for position of chairperson to petition the High Court and he referred court to the decision of **Tiken Francis & Anor Versus the Electoral Commission & 2 others** Mbale High Court Election Petition No. 001 of 2012.
19. Counsel Mutembuli Yusuf further argued that in order to get the format of the petition, court had to look at s Section 172 of the Local Government Act where for matters not provided for in the Act this court had to apply the Presidential Election Act and the Parliamentary Election Act.
20. Counsel also referred court to Rule 4 of the Parliamentary Election Petitions (Election Petitions) Rules SI 141-2 which sets out the format of the petition and specifically Rule 4(8) which refers to an affidavit accompanying the petition setting out the facts on which the petition is based together with a list of any documents on which the petitioner intends to rely.
21. Mr. Obed Mwebesa Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents concurred with the submissions of Mr. Mutembuli Yusuf and he submitted a petition without an

affidavit in support by the Petitioner is incompetent and therefore prayed for the same to be struck out with costs.

22. Mr. Byamugisha Gabriel Counsel for the Petitioner insisted that any other affidavit could suffice to support an election petition and in this case since the petition had two (2) affidavits in support then the one of Hyuha Ahmed (PW2) could suffice to sustain this petition.
23. With all due respect to Counsel Byamugisha Gabriel Section 138(1) of the Local Government Act only permits an aggrieved candidate to petition this court challenging the results of an election and this position is well emphasised in Section 138(3)(a) of the Local Government Act.
24. The only way Mr. Hyuha Ahmed would petition this court would be under section 138(3) (b) of The Local Government Act and this is when he proved that he is indeed a registered voter in Nawanjofu Sub county and even then the said Mr. Hyuha Ahmed would need signatures of not less than five hundred (500) voters registered to vote in this same constituency.
25. A casual look at the affidavit of Hyuha Ahmed does not even bear any evidence to prove that he is indeed a registered voter in Nawanjofu sub county eligible to swear an affidavit to support an election petition arising from this constituency.
26. Section 172 of the Local Government Act permits this court to make use of the provisions of the Parliamentary Election Act and in this regard court will refer to Rule 4(8) of the Parliamentary Election Petitions (Election Petitions) Rules SI 141-2 which reads; -

**“The petition shall be accompanied by an affidavit setting out the facts on which the petition is based together with a list of any documents on which the petitioner intends to rely.”**

27. It is the finding of this court that the affidavit referred in Rule 4(8) above is that of the Petitioner as he is best placed to know all his or her grievances relating to a particular election.
28. The affidavits of any other persons only come in to fortify the grievances raised by the Petitioner in the petition.
29. It's a settled principle of law that a petition not supported by any evidence as is required by law is defective. See case of **Suubi Kinyamatama Juliet Versus Sentongo Robinah Nakasirye** Election Petition Appeal No. 92 of 2016
30. Now therefore in the petition before court where neither the petition itself nor any accompanying affidavit is duly signed by the Petitioner court finds such a petition to be incurably defective and hereby strikes out the same with costs.

### **Orders**

31. Election Petition No. 21 of 2021 is hereby struck out.
32. The Petitioner is ordered to pay the costs of this petition to the Respondents.

Dated at Mbale this 7<sup>th</sup> day of September, 2021

**David Matovu**

**Judge**