

**Emorut v Akurut and Anor (HCT-09-CV-EP
2 of 2016) [2016] UGHCEP 34 (15 July 2016)**
[2016] UGHCEP 34

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1 / 14

Provisions) Rules.

The petition's main ground is that the 1st Respondent offered herself for nomination and was nominated without retiring from public employment; in effect, breaching Sections 4(4)(a) of the Parliamentary Elections Act and Article 80(4) of the 1995 Constitution of Uganda. The other ground is that the 1st Respondent was not validly nominated for elections. The Petitioner therefore sought declarations from this court that:

- Akurut Violet Adome, the Katakwi Woman Member of Parliament's election is inconsistent with the Parliamentary Elections Act;
- that the election as District Woman Member of Parliament is illegal as it is void at law,
- that the election of the 1st Respondent as District Woman Member of Parliament should be declared null and void,
- that the said election be set aside and a new election be held;
- that the Respondents pay the costs of the Petition

The 1st Respondent's defense to this petition is that she did not resign because she was not required to do so as she was protected by Article 257 of the Constitution which excludes members of commissions as employees of public service required to resign under Article 80(4).

The agreed facts of this petition are that the 1st Respondent was nominated NRM flag bearer for the position of Katakwi district woman Member of Parliament and was presented by the NRM Chairman to the 2nd Respondent on 28th October 2015. It is without dispute that in spite of her nomination, the 1st Respondent was still employed as a member of the Uganda Human Rights Commission, a position she did not resign based on the legal advice of the Solicitor General of 8th July 2015 which pronounced that members of boards of directors need not resign for purposes of participating in partisan politics.

It is not in contention that the 1st Respondent did not resign. Her non resignation was indeed confirmed by the Secretary of the Uganda Human Rights Commission in his letter to the 2nd Respondent dated 3rd December 2015. In this letter, the Secretary confirmed that the 1st Respondent had been appointed a member of the commission from 8th July 2012 and had sought a leave of absence from the commission from 28th September 2015 for purposes of participating in elections and that she continued to receive her salary because she had not resigned from the position.

For the determination of this petition, the parties agreed on a number of issues thus:

1. Whether the Assistant Registrar had jurisdiction to entertain Miscellaneous Application No 05 of 2016 and Miscellaneous Application No 19 of 2016;
2. Whether the said Miscellaneous Application No 05 of 2016 and Miscellaneous Application No 19 of 2016 were filed out of time;

3. Whether the Petitioner effected service upon the 1st Respondent as required by law;
4. Whether the petition was properly presented;
5. Whether the 1st Respondent was at the time of her nomination and election not qualified or was disqualified for election as a Member of Parliament; and
6. What remedies are available to the parties?

In a petition of this nature, Section 61(1) of the Parliamentary Elections Act places the burden of proof on the petitioner, who has to prove to the satisfaction of court, the grounds on which the election should be nullified. The Act further provides in Section 61(3) that the standard of proof in election petitions is on a balance of probabilities. These provisions have been interpreted and applied in a number of authorities, some of which include the Supreme Court in **Col. (RTD) Dr Besigye Kizza V Museveni Yoweri Kaguta & the Electoral Commission Election Petition No.1 of 2006**, **Mbowe V Elu Foo [1967] EA 240** and **Margaret Zziwa V Nava Nabagesera Civil Appeal No. 39 of 1997**.

Whether the Registrar had jurisdiction to entertain Miscellaneous Application No 05 of 2016 and Miscellaneous Application No 19 of 2016;

The 1st Respondent faulted service of the petition. She deponed that service was not done in accordance with the electoral laws. She stated that the Registrar who heard and Miscellaneous Application No 05 of 2016 and Miscellaneous Application No 19 of 2016 and issued an order for substituted service had no jurisdiction to do so. In her counsel's submissions, they contended that it was only a judge who could hear such applications. In support, they cited Rule 24 of the Parliamentary Elections (Election Petition) Rules SI 141-2 which provide:

All interlocutory questions and matters arising out of the trial of the petition other than those relating to leave to withdraw a petition shall be heard and disposed of, or dealt with, by a judge; and references in these rules to court shall be construed accordingly.

He further relied on HCMA No 124 of 2010 which arose out of **Election Petition No 2 of 2010 Hon Sabila V Maket Latif** in which Hon Justice Musota vacated an interim order issued by the Registrar. He referred to Rule 24 as;

*"..*an express and mandatory provision of the law ousting the jurisdiction of the registrar from handling interlocutory matters in election petitions*."*

The Petitioner on the other hand contended that the Registrar had jurisdiction and that the jurisdiction was drawn from Rule 17 of the Parliamentary Elections (Election Petition) Rules SI 141-2 which provide:

Subject to these rules, the practice and procedure in respect of a petition shall be regulated, as nearly as may be, in accordance with the Civil Procedure Act and rules made under that Act relating to the trial of a suit in the High Court, with such modifications as the court may consider necessary in the interest of justice or expectation of the proceedings.

The Petitioner contended that the foregoing rule brought into play Order 50 of the Civil Procedure Rules, which grant Registrars general powers under Order 50 Rule 1, conduct of formal and interlocutory matters Order 50 Rule 3 and performance of under taking, inspection, proceedings or things to be carried out to the satisfaction or in accordance with the directions of a judge of the High Court or a Commissioner appointed to and adjust accounts; Order 50 Rule 5

While I accept that Rule 17 of the Parliamentary Elections (Election Petition) Rules imports the Civil Procedure Act and rules into matters to do with Election Petitions, it does so subject to the Parliamentary Elections (Election Petition) Rules SI 141-2. In other words, the Civil Procedure Rules only fill in the gaps where the Parliamentary Elections (Election Petition) Rules have not provided for.

In the instant case, the Parliamentary Elections (Election Petition) Rules SI 141-2, specifically in Rules 24, removed “*all interlocutory questions and matters arising out of the trial of petitions*” save for those related “*to leave to withdraw a petition*” from the jurisdiction of Registrars and placed them in judges. The sum total here is that the Registrar had no jurisdiction to entertain MA 05 of 2016 and MA 19 of 2016.

Whether the said Miscellaneous Application No 05 of 2016 and Miscellaneous Application No 19 of 2016 were filed out of time;

The 1st Respondent contended that the applications were filed out of time. Her counsel relied on Rule 6(3) of the Parliamentary Elections (Election Petitions) Rules SI 141-2 which provide that service of the petition on the Respondent under the rules should be personal and Rule 6(4) which provides that where the Respondent cannot be found within three days for effecting personal service on him or her, the Petitioner shall immediately make an application to the Court supported by an affidavit stating all reasonable efforts have been made to effect personal service on the Respondent but without success.

Counsel for the Respondent also submitted that the Petitioner should have filed an application stating the difficulty encountered in serving the Respondent, on the 4th day after filing the petition. He must have assigned the 4th day because of the words “*shall immediately file an application*” I do not think he was right to import into legislation a time frame of his own and which could not have been intended by the legislature.

I say so because according to Rule 6(4) of the Parliamentary Elections (Election Petitions) Rules SI 141-2, it is only after the third day without finding the Respondent that a petitioner can file the application. In this application, he must include that he has looked for the Respondent for the last 3 days and as failed to find him. In my view he can only state that after the expiration of the 3rd day. It is therefore only on the 4th day or after that he can prepare a sensible application that informs the court that he has failed to find the Respondent within the provided time. I however find, that this application must not be done after the 7th day assigned to effect service.

For Counsel to expect filing on the 4th day presupposes that the Petitioner's advocate also has chambers in the town where the court is situate and that he would draft and type the application on the 4th day and file the same day. In a petition being heard in Soroti where the advocates are based in Kampala, they could only file on the 4th day if they prepared the application before the expiration of the three days. I say so because it would also require them to travel to Soroti for the filing.

What I see from the rules is that they provide the day after which the application may be filed instead of when. In my view therefore, the same could be filed any time after the expiration of the 3rd day but before the expiration of the 7 days provided for service. The word “*immediately*” does not mean the day following the 3rd day. It simply creates a need for speed of action which should, in this case, be before the expiration of the 7 days provided. The mandatory nature of the words “*shall immediately*” does not hold especially following the decision in **Sitenda Sebalu V Sam K Njuba & Electoral Commission Election Petition Appeal No 26 of 2007** where the Lordships of the Supreme court removed the mandatory character from Sections 62 of the Election Petitions Act and Rule 6 of the Parliamentary Elections (Election Petitions) Rules SI 141-2 by holding that Rule 19, which empowers the judge to enlarge time and do all that was expedient to the proper disposal of election petitions, applicable.

In conclusion, since no particular time was set for filing the applications, and also that they were filed within the time provided for service, it is my finding that applications 5 and 19 of 2016 were filed in time and in accordance with the electoral laws

Whether there was service of the petition;

In legal language, service of court process is the transmission of and notification of a pending or status of a pending matter before court.

It is therefore the procedure by which a party to a law suit gives an appropriate notice of initial legal action to another party in an effort to exercise jurisdiction over that person so as to enable that person to respond to the proceedings.

The object of service of the petition is that the Respondent may be informed of the institution of the petition in due time before the date fixed for hearing. Whether the Petitioner in the instant petition brought the existence and contents of the petition to the 1st Respondent can be discerned from the affidavit of the process server, one Kabwisa Pius Kiryowe, who took the petition for service. This affidavit of service was annexed to the 1st Respondent's answer to the petition filed on 11th April 2016.

In the affidavit, whose details I reproduce below, he deponed that he had taken copies of the petition directly to the 1st Respondent personally. Personal service here means in-hand delivery of the papers to the proper person. In this case, the proper persons are the 1st and 2nd Respondents. Kabwisa deponed as follows:

1. *That on the 21st day of March 2016, I received a petition from this Honourable court for service of court process upon the 1st Respondent.*
2. *That on that day at around 10:00 am I called Ms Akurut on her mobile phone number(s) 0772696249 and 0776211777 which numbers I got from the Petitioner*
3. *That I introduced myself to the 1st Respondent and informed her the reasons why I had called her, she informed me that she was on her way to Entebbe Airport, told me to get a bodaboda and meet her there in the next one hour*
4. *That upon my arrival at the airport, I called her and she told me to wait from the lounge where I went, sat and she found me there. I then handed over to her a copy of the petition which she looked at and declined to receive. She told me she had told her lawyers M/s Kiwanuka and Karugire Advocates about it, gave me directions to the said law firm, her email address and told me to call her on arrival there.*
5. *That on my arrival at M/s Kiwanuka and Karugire Advocates at Acacia Avenue next to Uganda Law Society, I called her and she called her lawyer who welcomed me at the reception.*
6. *That I then introduced myself to the lawyer and tendered to him copies of the said Petition which counsel perused and made photocopy of the same, he thereafter called Ms Akurut and they talked in a local language I could not understand.*
7. *That the lawyer then informed me that the 1st Respondent is their client however they have not received official instructions to represent her in the petition. As he was explaining all that to me, Ms Akurut called me, said that she had discussed with her lawyer who advised her to personally receive the petition and requested that we meet on 28th March 2016*
8. *That on that day I called the 1st Respondent to meet as we had agreed but she declined to pick my calls; only making them busy every time I called her*
9. *.**That I did the same on the 30th March but still she declined to receive my calls*
10. *That on the 31st March I sent the petition to her lawyers M/s Kiwanuka and Karugire Advocates through DHL, proof of delivery by DHL is hereto attached and marked annexure "A"*
11. *That on 31st March 2016, I scanned the petition, annexures and one of the legal assistants in the law firm, a one Judith Arinaitwe sent them to the 1st Respondent's email address (violetakurut@gmail.com), a copy of the sent email is hereto attached and marked annexure "B"*

In the reply to the petition, the Respondents did not contest the statements of the process server. They were given on oath in an affidavit of service and would therefore be taken as the truth of what transpired.

What the affidavit shows is that on the 21st day of March 2016, Kabwisa the process server received the petition and with the aid of the 1st Respondent's telephone numbers *0772696249 and 0776211777* tracked her down and met her in the passenger lounge. The affidavit shows that it is the 1st Respondent who told him to meet her there and that this was after being told why she was sought.

According to the affidavit, while in the passenger lounge, he handed her a copy of the petition, which she looked at and returned to him and told him to take it to her lawyers M/s Kiwanuka & Karugire. He proceeded to the said law firm, on arrival he called the 1st Respondent who talked to the lawyers. They perused and photocopied the petition and told him that although the 1st Respondent was their client, they had not received official instructions to represent her in the petition.

That the 1st Respondent then rung him again and said he could take the petition to her on the 28th March 2016. None of the foregoing is rebutted by the Respondent. Service, as I said, is intended to notify the opposite party. In my view when the Respondent received the petition and read, it amounted to notification amounting to service. Her direction to the process server to take it to the advocates simply amounted sending to her advocates what she had received. Her advocates told the process server that indeed the 1st Respondent was their client but that they had no instructions in this matter. I found that strange because otherwise why would they have proceeded to photocopy the petition?

They must have been her advocates in the matter as they are even the ones who filed the answer to the petition within time. Furthermore, the 1st Respondent herself told the process server to take to her a copy of the petition on 28th March 2016, the date she knew was after the seven days prescribed for service. Having asked the process server to take to her the petition well knowing the days of service would have expired, she cannot now turn around and raise belated service.

The sum total is that service was actually effected upon her personally in the lounge at the airport. The advocates must have photocopied the petition because they were her advocates as indeed they were because ultimately they filed the answer to the petition. The conduct of the 1st Respondent seems to point at someone who was trying to avoid service of court process.

I say so because she sent the process server to the advocates, then these advocates said they had no instructions yet proceeded to photocopy the petition and later filed the answer to the petition. Furthermore, when the process server called to meet in fulfilment of what they had agreed, the 1st Respondent did not pick the calls. I find this strange. That conduct was because the 1st Respondent having read the petition in the lounge at the airport knew the contents of the same.

That notwithstanding, even if personal service had not been effected on the 1st March 2016, what transpired was an act of a diligent process server who tried all means to effect service also by courier DHL and email at violetakurut@gmail.com and who infact, through his persistence, notified the 1st Respondent of what the petition contained. This in my view is buttressed by the fact that the 1st Respondent filed a reply within time.

Election petitions are so important that a party that has filed a petition and gone to the lengths the petitioner went through should be heard especially if allowing the hearing to go on does not prejudice the Respondent. In this, I take comfort in **Sitenda Sebalu V Electoral Commission Election Petition Appeal No 6 of 2009** which cited Col. (RTD) Dr Besigye Kizza V Museveni Yoweri Kaguta & the Electoral Commission Election Petition No.1 of 2006 in which Odoki C. J as he then was, wrote:

*“*Courts are therefore enjoined to disregard irregularities or errors unless they have caused substantial failure of justice.”**

In conclusion, being satisfied that service was effected when the process server delivered to the 1st Respondent the copy of the petition, I find the same to have been rightly served and would not strike it out.

Whether the petition was properly presented;

The petition was brought under the Section 60(2) of the Parliamentary Election Act 2005 which requires that such a petition be brought by a registered voter in the constituency concerned, supported by the signatures of not less than 500 voters registered in the constituency. The instant petition was supported by a list of 717 signatures. The 1st Respondent submitted that 4 of the names on the list were without signatures namely; Elukut Pauto, Icumar H Christine, Apio Loyce and Aguti Madalena.

They also submitted that the list comprised of a repeated page bearing 19 names and signatures in respect of Abwokodia and Usuk Parishes and that 10 names in Ongema and Usuk parish were repeated using the National Identification Number on one page and a Voter's card number on another. They further submitted that 99 of the signatories to the list were illiterate since they used thumb prints to sign and that no certificate of translation of the petition was attached to each of their thumbprints as required by the Illiterates Protection Act. It was also submitted that 157 of the purported signatories have denied knowledge of the petition by stating either that they did not sign it at all or signed it under the mistaken belief that it was in support of the Education minister bringing a project to them. They submitted that deducting these names from the list brings the non-contested signatures below the 500 threshold which invalidates the petition as a whole.

I have looked at form EP, the list of 717 signatures and I notice that there were thumbprints not as prominent as the others. I have noticed that some thumbprints were lightly pressed and others pressed with a lot of force exerted. The lightness of Apio Loyce's thumbprint therefore cannot be construed as no print. A similar occurrence can be seen in the signature place of Aguti Madalena; a thumbprint impressed albeit with a little force. Both Apio and Aguti swore an affidavit in support of the foregoing stipulations. However, for Icumar H Christine and Elukut Pauto, there's completely nothing to indicate that they participated in the signing of the petition.

As to the 19 repeated names in Abwokodia and Usuk Parishes, the 1st Respondent did not state these names and this claim therefore remained unproved.

With regard to the 10 names in Ongema and Usuk parish allegedly repeated using the National Identification Number on one page and a Voter's card number on another, it is important to consider that is an area where people are highly likely to have similar names. Indeed there were instances of people with similar names but these could be distinguished from each other by their age, signature and numbers on their documents of identification. But there were people with similar names and similar ages. One such example was Itikila Ikiat in both parishes with the same age in but different documents of identification. There was also 22 year old Amuron Agnes and a second Amuron Agnes who was also 22 years old. The distinction in both these instances were the signatures and the fact that while one used a Voter card number, the other used a National Identification number.

For Imudong J. M, both were 48 year olds but they could not be distinguished from each other by the numbers on their identification documents.

Omojel Robert was a 37 year old with yet another Omojel of the same age, only that the numbers on their ID documents differed, in that one used a National ID number while another used a Voter card number. I find this very strange. It is interesting that whenever two similar names appeared, they belonged to people of the same age.

Interesting enough, not the same people used the same documents. This pattern sticks out so much that the only conclusion one can arrive at is that these 10 people were actually only 5. It is my finding that the names were registered twice but they seem to have been registered by different people because the handwritings of those registering them differ. Nonetheless, having found that there were 5 names that should not have been there, the number of those said to have supported the petition is reduced by 5.

As to the claim that 99 of the signatories to the list were illiterate, while it is true that a literate person will be anxious to sign instead of thumb printing, there is nothing in the law that prevents a literate person from thumb printing. The immediate impression one gets when he/she sees a thumb print is that the person who endorsed the print is illiterate. However, the burden to prove that these people were illiterate and that therefore a jurat to that effect was necessary lay upon the 1st Respondent who claimed their illiteracy. This they could have done by filing affidavits which gave proof of their illiteracy so as to reach the required standard of proof in election petitions. They did not do this therefore Court finds it difficult to simply strike out people on speculation. In the circumstances, those 99 signatories are left unaffected.

The 1st Respondent also sought that 157 signatures be struck out as the signatories either did not sign at all or signed mistakenly in expectation of a project. From the onset, I'd like to deal with the issue of whether the people who signed the list in support of the petition knew they were signing. I have looked at the list and found that each and every page of that list titled "*Form EP*" clearly spells out the purpose of the list. I find it appropriate to reproduce the words in that heading. It states:

“We the undersigned support the election petition of EMORUT SIMON PETER who is a registered voter in the USUK Constituency and whose voter registration number is CM89043100U6HF”

This heading is repeated on all the sheets and going by the signatures, there is nothing to suggest that those who were signing did not read and understand the purpose of collecting the signatures.

Even if some of them could not read and write, which has not been proved, the majority who could read and understand would not have gone through the rigors of signing without telling their village mates why they were signing. Therefore the contention that those people who signed did so without knowing why they were signing cannot be sustained. What has been said against the Petitioner can best be applied to the list of the 1st Respondent comprising people who allegedly signed without their knowledge because that list does not have a heading on any of the pages on which the objectors signed. That one was done in a manner that would encourage attachment, giving any purpose that the compiler of the list wanted.

As to the allegation that some of the signatories of the list supporting the petition signed because they had been promised a project by the former MP Hon. Jessica Alupo, this project was never named. Interestingly, none of the deponents namely Otunyu, Ojur, Okworo, Iwasit, Oyiba, Akori, Ogele, Okiror and Opus attended these meetings and therefore the truth of the allegation could only be obtained from those people who were listed as having been duped by the agents of the Petitioner.

As it stands therefore, what allegedly transpired in meetings where the supporters of the petition endorsed the list cannot be proved by the 10 deponents who supplement the affidavit in support of the answer to the petition.

Furthermore, the majority of the people listed by the deponents namely Otunyu, Ojur, Okworo, Iwasit, Oyiba, Akori, Ogele, Okiror and Opus swore affidavits in rejoinder and denied that they were against the Petitioner. They deponed that they supported the petition and that they signed the list which had been filed in court because as they said, the elected MP Akurut Violet did not resign from her position as Commissioner in Uganda Human Rights Commission before the election.

They all also deponed that they were not duped and were clear about the purpose of the list that they signed in support of the petition. The allegation therefore that the 157 of those that signed the petition did so based on a misrepresentation cannot stand. It is my finding therefore that they knew what they were doing and did so without misrepresentation, free of coercion and undue influence.

In all therefore, after deducting the 7 signatures earlier from the 717 total on the list, the Petitioner was still armed with the required signatures in compliance with Section 60(2) of the Parliament Election Act at the filing of the petition.

Whether the 1st Respondent was at the time of her nomination and election not qualified or was disqualified for election as a Member of Parliament;

The Petitioner alleged that the 1st Respondent was employed as a commissioner at the Uganda Human Rights Commission and that she was therefore a public officer required to resign 90 days before nomination. In this he relied on Article 80(4) of the Constitution as amended which provides:

Under the multiparty political system, a public officer or a person employed in any government department or agency of the government or an employee of a local government or anybody in which the government has controlling interests, who wishes to stand in a general election as a Member of Parliament shall resign his or her office atleast 90 days before nomination day

This provision was as a result of the Amendment of 2005

He also relied on Section 4(4)(a) of the Parliamentary Election Act 2005 which is spelt out in similar terms:

“Under the multiparty political system, a public officer or a person employed in any government department or agency of the government or an employee of a local government or anybody in which the government has controlling interests, who wishes to stand in a general election as a Member of Parliament shall-

1. *In the case of general election, resign his or her office at least ninety days before nomination day*
2. *In the case of a by-election, resign his or her office at least 14 days before nomination day”*

In reply the 1st Respondent contended that she was not required to resign because “a reference to an office in the public service did not include a member of a commission” that since she was a commissioner in the Human Rights Commission, she was not a member of the Public Service and therefore she could not fall under the category of the people referred to in Article 80(4). In this she relied on Article 257(2)(b) which provides:

“ a reference to an office in the public service does not include a reference to the office of the President, the Vice President, the Speaker or Deputy Speaker, a Minister, the Attorney General, a Member of Parliament or a member of any Commission, authority, council or committee established by this constitution.”

To further support her assertion that she was not in the public service, she buttressed her argument with Article 257(4) of the Constitution that a person would not be considered as holding a public office simply because, he or she received pension or such allowance in respect of service under the Government.

It is not in doubt that the 1st Respondent worked with Uganda Human Rights Commission. There is also no doubt that while employed, she received emoluments by way of salary. Lastly, it is also admitted by the 1st Respondent herself that she did not resign because of the provisions in Article 257 and also because the Solicitor General told her that it was not necessary.

Reading Article 257 and 80(4) separately one would say they conflict. That would however be the wrong way of constitutional interpretation. The constitution must be read and construed in a manner that harmonises the provisions. It must also be read taking into account the things that existed at the time and what it intended to cure at that time. Dealing with construction of statutes, Lord Atkinson in **Keates V Lewis Merthyr Consolidated Collieries [1911] AC 641 at 642** wrote as follows;

*“*In the construction of a statute, it is, of course, at times and under all circumstances permissible to have regard to the state of things existing at the time the statute was passed, and to the evils which, as appears from the provisions, it was designed to remedy.**

If the words are capable of one meaning alone, then it must be adopted, but if they are susceptible of wider import, we have to pay regard to what the statute in the particular piece of legislation intended.

Though the definition might be more or less the same in two different statutes, still the objects to be achieved not only as set out in the preamble but are also gathered from antecedent history of the legislation may be different. The same words may mean one thing in one context and another in a different context.”

Article 257 was part of the Constitution in 1995. Article 80(4) was intended to keep pace with the march of times and to provide for a new situation since Uganda was entering a new political dispensation, namely the multiparty. Article 80(4) was intended to eliminate those that would take advantage of government resources to campaign as against those who are not in such employment.

While Article 257 read alone would tend to remove the members of the commission from being public officers and thus not required to resign, a harmonised construction would breathe life into Article 80(4) which in any case was a later inclusion having been a child of the 2005 Constitution Amendment. So it did not mean to construe one provision against the other. This position was considered in **PK Ssemwogerere & Ors V Attorney General Const. Petition 1/2001**. In his judgment at page 4, the Hon CJ Odoki (as he then was) wrote;

“The second question is that of harmonization... It is not a question of construing one provision against another, but of giving effect to all the provisions in the constitution. This is because each provision is an integral part of the constitution and must be given meaning and effect in relation to others. Failure to do so will lead to an apparent conflict within the constitution.”

In this, the learned Chief Justice cited **Smith Dakota V North Carolina 192 1940 268** which had similar pronouncements. The Supreme Court observed;

“It is an elementary rule of constitutional construction that no one provision of the constitution is to be square-faced from the others and to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be interpreted so as to effectuate the general purpose of the instrument.”

In the instant petition, Article 80(4) and 257 would have to be brought in view and interpreted so as to effectuate the great purpose of the Uganda constitution. So what then was the great purpose of Article 80(4)? It was in my view to harmonise the campaign field, do away with a group that would use public resources for their campaigns against all the other candidates who were not so well placed.

Furthermore, a close reading of Article 257 shows that the said Article was subject to other provisions of the constitution. So when the legislators amended the constitution in 2005, they included the commissioners who were part of government and drawing salary; into the category that had to resign.

Furthermore, Section 4(19) of the Parliamentary Elections Act clearly shows the spirit under which Article 80(4) was brought into the constitution. Section 4(19) in defining a public officer and public service provides:

In this section, “Public Service” and “Public Officer” have the meanings assigned to them by Article 257 and “Public Officer” shall for avoidance of doubt, include an employee of any commission established by the Constitution.

It is therefore clear that the Section 4(4) of the Parliamentary Election Act buttresses Article 80(4) in issues of elections.

Lastly, the issue at stake was considered in **Kwezira Eddie V Attorney General Constitutional Petition 14 of 2005** wherein Lady Justice Alice Mpagi; on the issue of who a person employed in any government department or agency in government was in Article 80(4) of the constitution as amended, declared:

“That being the case, according to the literal rule of interpretation, the context of the phrases complained of, to wit “a person employed in any government department or agency of the government” permit of no other definition than that of an officer employed in any government department or in any of those bodies controlled by the government and whose emoluments are payable directly from the consolidated fund or directly out of moneys provided by Parliament.”

Since a commission is such an office, it is my conclusion that Article 80(4) of the constitution and Section 4(4) and (19) of the Parliamentary Election Act are mandatory and have to be complied with even by members of the commission.

Such a member had to resign 90 days to nomination if he or she wanted to run for parliamentary election. The 1st Respondent being such a person, employed by the Commission, she ought to have resigned 90 days to nomination. Having failed to resign from office rendered her nomination and the subsequent election a nullity.

Having found as above, it is accordingly declared and ordered as follows:

- * 1. That the 1st Respondent was not validly elected for nominations as Woman Member of Parliament for Katakwi district
- 2. That the election of the 1st Respondent as Katakwi Woman Member of Parliament is hereby nullified
- 3. It is ordered that fresh elections be conducted for Woman Member of Parliament for Katakwi district
- 4. The Petitioner is awarded costs of this petition against both Respondents.

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David K. Wangutusi

JUDGE

Date: 15th July 2016

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