



**HANDLING ELECTION PETITIONS:  
PAST EXPERIENCE AND LESSONS  
LEARNT.**

**A PRESENTATION AT A WORKSHOP  
ON ELECTION PETITIONS AT HOTEL  
AFRICANA – 13<sup>TH</sup> – 14<sup>TH</sup> APRIL, 2011.**

**A PRESENTATION BY Ms.  
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## **1.0 Introduction**

The Constitution of the Republic of Uganda 1995, (as amended) provides in Article 59 for the right to vote for citizen of Uganda of eighteen years of age or above. Article 59(2) also places a duty upon every citizen of Uganda of eighteen and above to register as a voter for public elections and referenda.

Pursuant to the above articles, provision is made for the establishment of the Electoral Commission whose functions are enumerated in article 60 of the constitution. The Electoral Commission is therefore under a duty to hold free and fair elections.

The Constitution and other enabling laws regulate the conduct of these elections. These laws also give the registered voters a right to contest the process of elections right from nomination of the candidate to the end of the electoral process when the results of the elections are published.

## **2.0 Law Applicable**

1. The Constitution of the Republic of Uganda, 1995 (as amended);
2. The Presidential Elections Act 2005 (as amended);
3. The Parliamentary Elections Act, 2005 (as amended);
4. The Electoral Commission Act cap 140 (as amended);
5. The Local Government Act of 2005 (as amended);
6. The Political Parties and Organization Act, 2005, (as amended); and
7. Several Regulations made under the said laws.

## **3.0 Past Experiences and Lessons Learnt**

The Attorney General Chambers when requested represents the Electoral Commission in courts of law on issues arising from the conduct of the elections.

These have mainly been in 3 stages:-

- (a) Appeals from the decision of the Commission under Section 15 of the Electoral Commission Act, Cap 140;
- (b) Application for recounts in the Chief Magistrate's courts; and
- (c) Election petitions filed as a result of the conduct of the polls; and consequent declaration and gazetting of the results.

I will accordingly share my experience derived from the stages as enumerated above.

### **3.1 Appeals from the Decision of the Commission.**

These are provided for under S.15 of the Electoral Commission Act cap 140 (as amended); and the Parliamentary Elections Act (Appeals to the High Court from Commission Decision) Rules provide for the procedure of lodging an appeal.

The appeal shall be lodged within 5 days after the decision of the Commission complained of in the petition.

The Electoral Commission is required to respond within 3 days from the time service is effected upon it. The time frames given in the said laws are extremely short. This may be because of the fast moving process of elections.

The Election Commission, however, is usually constrained since these complaints can be brought at any stage of the electoral process. Rule 9 of the said Rules requires the Registrar to immediately give two days notice to all parties to attend the judge for directions concerning the hearing of the appeals.

### **3.2 Application for Recounts filed in the Chief Magistrates' Courts**

Provision for recounts is provided for under Section 55 of the Parliamentary Elections Act before the Chief Magistrate's Court. Under the said provision the application must be filed within 7 days from the time the Returning Officer declares elected the candidate who has obtained the highest number of votes; and the same must be determined within 4 days.

We note that the law does not give a timeline within which the Commission and the declared should file the responses, which becomes a constraint given the fact that some of the applications are served on the eve or the day of hearing the application.

The recount process shall be conducted in accordance with the *directions of the Chief Magistrate*. Some of the Magistrates however, have gone ahead to appoint persons who are not conversant with elections to conduct a recount.

Other Magistrates have not been physically present during the recount, yet, the law has been interpreted with the effect that the Chief Magistrate should supervise the recount exercise.

Other issues faced with have been as to whether the Chief Magistrate can stop the recount exercise; and if yes, what procedure should be followed by the advocates present seeking to stop the recount.

### **3.3 Election Petitions:**

This can be as challenging, yet each case must be treated on its own merit.

#### **Evidence**

- Evidence is by way of affidavits. This involves taking down the statements of witnesses and deducing them into affidavits.

#### **Witness allowances;**

- The witnesses are drawn from the presiding officers who must travel to a central point in a District/ Sub County to be interviewed and later to court if required for cross examination. The Electoral Commission does not have a budget line for witness allowances.
- The Presiding Officers are not permanent employees of the election and may not feel duty bound to defend the allegations that arise from the petitions.
- There is fear by the public to attend court proceedings for fear of being arrested.
- Retracting of affidavits. Sometimes witnesses retract their statements and allege that at the time they swore they did not understand the content.
- The volume of evidence to sift through can be intimidating as there is a multiplicity of affidavits on the same or similar issues.
- Some pleadings mention people by one name and / the person mentioned is not known to the Returning officer or other polling officials and where no replies are made, the court is likely to take this evidence as not rebutted.
- The unending breaks in the power supply in many district bogs down the preparation of these affidavits.
- There has been generally no prosecution made against people involved in election malpractices. The prosecution and consequent conviction, I believe, would deter people who are bent on interfering with the electoral process.
- Sections 80, 87 and 159 of the Presidential Elections Act, Parliamentary Elections Act and Local Government Act respectively, provide that prosecution for an offence under this Act shall not be done without the written consent of the DPP, however a person can be charged with an

offence, arrested with or without a warrant in respect of such offence, or remanded on bail or in custody in respect of such offence.

Subsection (3) of the respective sections cited above, provides that if no consent is sought within 3 months from the date of arrest or charge, the person shall be discharged.

This means that the police must deal diligently and quickly with the offender; otherwise he is automatically discharged as provided for in subsection 3.

- Sections 88 and 160 of the Parliamentary Election Act and Local Government Act, respectively, provide that Criminal prosecutions against a person under this Act shall be commenced within 3 months after the offence which is alleged to have been committed or within one month after court finds, on a trial of a petition, that an offence may have been committed.
- The trial Courts ought to make reports to DPP under S.63 (7) of the Parliamentary Elections Act or Section 142 (2) of the Local Government Act of their findings. This usually is not done.

#### **4.0 Conclusion**

Needless to mention, the legal jurisprudence covering election petitions has greatly evolved in the last 3 cycles of the elections, - 1996, 2001 and 2006 for the better; and stakeholders' confidence in the process has improved and there is a lot to learn from the precedents as passed by the courts.

Thank you for listening to me.

**FOR GOD AND MY COUNTRY**