

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

IN THE MATTER OF THE ELECTORAL COMMISSION ACT, CAP 176

AND

IN THE MATTER OF AN APPEAL AGAINST THE DECISION OF THE ELECTORAL
COMMISSION DATED 23RD DECEMBER, 2025 IN RESPECT OF A COMPLAINT
LODGED BY YEKO IBRAHIM AGAINST THE NOMINATION OF MR. MULIRIRE DANIEL
AS A CANDIDATE FOR MEMBER OF PARLIAMENT, BUDIOPE EAST CONSTITUENCY,
BUYENDE DISTRICT

HCT-00-CV-EP-0018-2025

MULIRIRE DANIEL:..... PETITIONER

VERSUS

YEKO IBRAHIM:.....1st RESPONDENT

ELECTORAL COMMISSION:.....2nd RESPONDENT

BEFORE: HON. JUSTICE SIMON PETER M. KINOBE

JUDGMENT

INTRODUCTION

1. This is an appeal by way of a Petition brought under the provisions of Article 64(1) of the Constitution of the Republic of Uganda, Section 15 (2) of the Electoral Commission Act, Cap 176, and Rules 2&5 of the Parliamentary Elections (Interim Provisions) (Appeals to the High Court from Commission) Rules, SI 141-1.
2. The Appellant herein referred to as the Petitioner seeks orders allowing the appeal and setting aside the decision of the 2nd Respondent disqualifying him from the election for Member of Parliament for Budiope East Constituency, Buyende District, and a further order directing that the Appellant be re-instated on the ballot paper for the election for Member of Parliament for Budiope East Constituency, Buyende District. Appellant also prays for costs of the Petition.
3. The grounds upon which the appeal is premised are set out in the notice of motion and further elucidated in the affidavit in support deponed by the Appellant. They are;
 - i. *The 2nd Respondent erred in law in holding that the Petitioner's failure to attach proof of resignation from Uganda Police Force to his nomination paper contravened Section 4(4)(a) of the Parliamentary Elections Act, Cap 177.*
 - ii. *The 2nd Respondent erred in law and fact when it disregarded the fact that the Petitioner resigned from Uganda Police with effect from 15th April 2024, and*

such documentary proof was in its possession prior to the impugned decision.

- iii. The 2nd Respondent erred in fact in sitting to determine the complaint on the 18th November 2025 whereas service of the complaint was effected on 23rd November 2025.*
 - iv. The 2nd Respondent erred in fact in holding a meeting with the 1st Respondent's advocates on the 18th November 2025 in the absence of the Petitioner and without service of any hearing notice on him or his lawyers.*
 - v. The 2nd Respondent erred in law and fact in disregarding the Petitioner's response to the Complaint filed on the 24th November 2025.*
4. The background to the appeal as can be discerned from the motion and supporting affidavit is that;
- i. The Petitioner was duly nominated as a candidate to contest for the position of Member of Parliament for Budiope East Constituency, Buyende District on the 22nd October, 2025 by the Returning Officer of Buyende District. On the 14th Day of November, 2025, the 1st Respondent, a registered voter in the Constituency, lodged a complaint with the 2nd Respondent seeking to have the Appellant denominated on the ground that he was still a serving Police Officer in the Uganda Police Force and there was no evidence of his resignation from the Uganda Police Force in the nomination documents.
 - ii. The appellant was served with the said complaint on 23rd November 2025 via

his WhatsApp number by the Returning Officer of Buyende District, Eliau George William. Consequently, on the 24th November 2025, the Appellant's legal counsel filed a response to the complaint. The 2nd Respondent delivered a decision on the 23rd December 2025, alluding to a hearing held on 18th November 2025. The decision annulled the Petitioner's nomination on account of failure to furnish/attach proof of his resignation from Government Service at the time of his nomination, contrary to section 4(4)(a) of the Parliamentary Elections Act, Cap 177.

5. It is against that background that the Appellant preferred the instant appeal to this Court, inter-alia contending that the section 4 (4) (a) of the Parliamentary Elections Act, Cap 177, on the basis of which the 2nd Respondent rendered its decision is in pari materia with *Article 80(4) of the Constitution*, which was declared unconstitutional in *Constitutional Petition No.14 of 2005, Kwizera Eddie vs Attorney General* and is thus as a matter of law void. The Petitioner further contends that the decision by the 2nd Respondent is blatantly erroneous, illegal, and unconstitutional both legally and factually.
6. The appeal is opposed by the Respondents who filed their respective affidavits in reply. In summary, the gist of their contention is that the decision of the 2nd Respondent is justified in law and fact. That the finding of the 2nd Respondent was premised on the apparent non-compliance by the Petitioner with the conditions precedent prescribed by *section 4 (4) (a) of the Parliamentary Elections Act, Cap 177*. They contend that at the time of nomination, the

Petitioner did not present evidence of his resignation from the Uganda Police Force and was thus disqualified from being nominated. His nomination by the Returning officer was in contravention of the law. They further contend that the Petitioner was duly served and afforded an opportunity to be heard and that the Commission took into account his response to the complaint before rendering its decision. They pray that the Court be pleased to uphold the decision of the Commission denominating the Petitioner and that the appeal should be dismissed with costs.

REPRESENTATION

7. At the hearing of the appeal, the petitioner was represented by Ms. Jude Byamukama Advocates, the 1st Respondent by Ms. Alaka & Company Advocates, and the 2nd Respondent by its Legal Department.

DIRECTIONS OF THE COURT.

8. Court ordered counsel for the respective parties to file any outstanding pleadings, submissions and authorities and serve accordingly. These have been taken into account in consideration of the appeal.
9. Upon closing of pleadings, the 2nd Respondent filed Application No 002/2026 Electoral Commission versus Mulirire Daniel, seeking leave to file an affidavit in surrejoinder on ground that the Appellant in its affidavit in rejoinder raised new facts alleging that at the time of the hearing and rendering its decision, the Commission lacked the requisite quorum. The appellant averred that he derived

this from the proceedings attached to the 2nd Respondent's affidavit in reply, which did not contain the quorum of the Commission at the time. The 2nd Respondent therefore sought orders that it be allowed to file an affidavit in surrejoinder to enable it adduce the evidence of an extract of the quorum of the Commission. The court considered the application and granted leave to the 2nd Respondent, which filed the affidavit in surrejoinder. The same has equally been considered.

ISSUES FOR DETERMINATION

10. Learned counsel for the Petitioner in their submissions raised five issues for determination by the Court. The first two are critical as the same may determine this application without the need to delve into the merits. I have adopted these issues and added issue iv. The issues to be determined are;-

- i. Whether Section 4(4)(a) of the Parliamentary Election Act Cap. 177 is good law in light of the Constitutional Court's decision in Constitutional petition No. 14 of 2005 Kwizera Eddie Vs Attorney General holding that Article 80(4) of the Constitution was inconsistent with Article 21(1) of the Constitution.
- ii. Whether the Electoral Commission's Decision is invalid for Non-Compliance with Section 8 of the Electoral Commission Act, Cap 176 in light of the Okabe Patrick vs Electoral Commission & Opio Joseph Decision.
- iii. Whether it is a requirement of Section 4(4)(a) of the Parliamentary

- Election Act Cap. 177 to attach proof of resignation from civil service to the nomination paper by candidates.
- iv. whether the letter submitted by the petitioner constituted adequate proof that he had effectively resigned from the service of the Uganda Police Force.
 - v. Whether the Petitioner's right to a fair hearing was violated by the 2nd Respondent in conduct of an ex-parte hearing on 18th November 2025 prior to service of the complaint and filing of a response
 - vi. Whether the Petitioner is entitled to the remedies sought

DETERMINATION

11. In determining this appeal, I have carefully considered the pleadings, affidavits, and annexures filed by the respective parties. I have also examined the written submissions and the authorities cited in support thereof. My analysis of the law and evidence has taken into account the rival submissions of counsel, though I found it unnecessary to reproduce them verbatim. While I agree with the authorities cited in the submissions, I find that others were either misconceived or quoted out of context. As will be discussed in this ruling, those authorities shall either be applied verbatim or distinguished with reasons.

12. I must note from the onset that what is before the court is an appeal from the decision of the 2nd Respondent, save that the procedure, as is prescribed in

section 15 (3) of Electoral Commission Act, Cap 176 is to file the appeal by way of a petition and supporting affidavit. The appeal is filed pursuant to the provisions of Article 64(1) of the Constitution of the Republic of Uganda, Section 15 (1) & (2) of the Electoral Commission Act, Cap 176, and Rules 2&5 of the Parliamentary Elections (Interim Provisions) (Appeals to the High Court from Commission) Rules, SI 141-1. Unlike in ordinary election petitions filed after the elections, where the High Court exercises its unlimited original jurisdiction, in the context of an appeal from a decision of the Electoral Commission arising from the determination of a pre polling complaint, the High Court exercises appellate jurisdiction extending to determination of whether the decision of the Electoral Commission, the subject of the appeal was justified in law and on the evidence before the Commission. I am fortified by the decision of the Court of Appeal in *Akol Hellen Odeke v Okodel Umar (Election Appeal No. 6 of 2020) [2021] UGCA 7 (18 March 2021)*. It follows that the rules governing appeals equally apply to election petition appeals following pre-polling complaints.

13. It is therefore incumbent upon the Petitioner to set out grounds of the appeal upon which he challenges the decision of the Commission and prove the same to the required standard. I reiterate the same position that was highlighted in the recent decision of this Court in *EPA No. 10/2025 Walukaga Mathias versus the Electoral Commission & Anor* that the burden of proof in a petition/appeal of this nature lies on the petitioner and the standard of proof is to the satisfaction of court on the balance of probabilities.

14. I take cognizance of learned Counsel for the Petitioner's submissions that the two grounds framed as preliminary grounds are capable of disposing of the petition and should thus be determined as such. The grounds relate to the question of whether section 4 (4) (a) of the Parliamentary Elections Act, Cap 177, that formed the basis of the decision by the Electoral Commission is good law and secondly, whether the decision of the Commission is void for want of the requisite quorum.

15. With cross reference to the provisions of **Order 6 Rule 28 and 29 of the Civil Procedure Rules**, I agree that in appropriate cases, the court may determine the appeal or suit on the basis of a preliminary point of law, if such determination is capable of disposing of the appeal or suit, without the need to hear the matter on its merits. I find useful guidance in the decision of *Fakrudin. V. K & Anor vs. Kampala District Land Board & Anor Civil Suit No.570/2015*.

16. In the instant appeal, I find that the issue of whether section 4 (4) (a) of the Parliamentary Elections Act, Cap 177, is void on account of being unconstitutional is one of law which is capable of determination without need for evidence. It's purely a question whose answer depends on the correct construction of the decision in *Kwizera Versus Attorney General* and the other subsequent decisions that have considered the said section. The question of whether the Commission has the requisite quorum is not one of pure law. It is a question of mixed law and fact that can only be determined after the court has interrogated the affidavit and other available evidence on record adduced by the parties. I have therefore considered the two preliminary issues in that context.

Issue 1: Whether Section 4(4)(a) of the Parliamentary Election Act Cap. 177 is good law in light of the Constitutional Court's decision in Constitutional petition No. 14 of 2005 Kwizera Eddie Vs Attorney General holding that Article 80(4) of the Constitution was inconsistent with Article 21(1) of the Constitution.

17. I note that this issue was not raised before the Electoral Commission by the Petitioner. Indeed, in his response to the Complaint marked *Annexure D* to the affidavit in support of this Appeal, it is apparent that the Petitioner did not raise issues of constitutionality of the impugned section as part of his objection to the determination of the complaint by the Commission, no wonder, in its decision, the Commission did not make any determination of that question. It would thus be unfair to fault the Commission for rendering its decision the way it did without consideration of the question of whether the section under which it rendered its decision was void for the reasons being advanced in this appeal.

18. Nevertheless, the question raised is a pertinent one that goes to the root of the decision of the Commission. It calls for interrogation of the decisions alluded to by learned counsel for both parties.

19. In support of the objection, learned counsel for the Petitioner contended that *Section 4(4) (a) of the Parliamentary Elections Act, Cap 177* is in pari materia with *Article 80(4) of the Constitution*. They further argued that the present Article

80(4) in the revised Constitution is not law. It was declared to be inconsistent with **Article 21(1)** by a majority decision of the Constitutional Court in the captioned decision of *Kwizera Eddie vs Attorney General, Constitutional Petition No.14 of 2005*. Counsel referred court to the various extracts of the decisions of the majority of the Constitutional Court inciting court to find that the sum total of the judgment of the majority was that *Section 18(d) of the Constitution (Amendment) Act No 11 of 2005 (now Article 80(4) of the Constitution)* was found to be inconsistent with **Article 21 of the Constitution**. Counsel contended that, *Section 4(4) (a) of the Parliamentary Elections Act Cap.177* was simply a re-enactment of what is already provided for under *Article 80(4)*, formerly **Section 18(d) of the Constitution Amendment Act No.11 of 2005**. Counsel submitted that in *Constitutional Petition No.14 of 2005, Kwizera Eddie vs The Attorney General*, by majority decision 4-1, that **Clause 4 of Article 80 of the Constitution** (which was then *Section 18d of the Constitution Amendment Act No.11 of 2005*) was found to be inconsistent with **Article 21(1)**. That it would follow that *section 4 (4) (a) of the Parliamentary Elections Act, Cap 177*, which was a reenactment of the said Article would by extension be void, it being a replica of *Article 80(4) of the Constitution* that had been found to be inconsistent with **Article 21 of the Constitution**.

20. It was counsel's contention that based on the said decision, *Article 80(4)* has no legal effect, and similarly, *Section 4(4)(a) and (b) of the Parliamentary Elections Act* is void and of no legal consequence. That the decision of the 2nd Respondent rendered pursuant to the impugned section to disqualify the Petitioner from the

race for Member of Parliament for Budiope East Constituency in Buyende district is legally untenable.

21. In response to this preliminary point, learned counsel for the Respondents in their respective submissions contended that the issue was never raised before the Commission and should not arise on appeal. They further submitted that notwithstanding the findings alluded to by the Petitioner's counsel in the decision of *Kwizera versus Attorney General (supra)*, there was no clear and final declaration by the Constitutional Court nullifying **Article 80(4) of the Constitution (formerly Section 18(d) of the Constitution (Amendment) Act No 11 of 2005**. Counsel submitted that the said decision did not, whether directly or otherwise, consider nor nullify **section 4(4) (a) of the Parliamentary Elections Act, Cap 177**. There is no decision of the Constitutional Court or the Supreme Court albeit in any appeal, nullifying **section 4 (4) (a) of the Parliamentary Elections Act, Cap 177**.

22. Further, it was the contention of learned counsel for the Respondents that the contention by the Petitioner that the decision in *Kwizera versus Attorney General* rendered **Article 80 (4) of the Constitution and Section 4 (4) of the Parliamentary Elections Act, Cap 177** void on account of being unconstitutional was the subject of consideration by the Supreme Court in the subsequent case of *Wasike Stephen Mugeni versus Aggrey Awori Siryoyi, (Election Petition Appeal 5 of 2007) [2007] UGSC 4 (19 November 2007)*. Counsel contended that, in the said appeal, the appellant argued, as the Petitioner does herein, that the resignation requirement

under **Section 4(4)(a)** of the **Parliamentary Elections Act** was unconstitutional in light of the Constitutional Courts decision in *Kwizera Eddie versus Attorney General, Constitutional Petition No. 14 of 2005* and that of *Darlington Sakwa and Another v The Electoral Commission and Others (Constitutional Petition No. 8 of 2006) [2006] UGCC 3 (8 August 2006)*.

23. It was the Respondent's counsel's submission that, upon an exhaustive review of both the decision of the Constitutional Court in *Kwizera Eddie versus Attorney General, Constitutional Petition No. 14 of 2005*, and the case of *Darlington Sakwa and Another v The Electoral Commission and Others (Constitutional Petition No. 8 of 2006) [2006] UGCC 3 (8 August 2006)*, the Supreme Court found and held that, the contention that **clause 4 of Article 80 of the Constitution** was nullified by the Constitutional Court in the decisions was unsustainable. The Court further held that it was apparent from the judgment of the Court of Appeal that clause (4) was not declared null and void. Counsel concluded that the Supreme Court succinctly stated that, *prima facie*, there were in force, two laws which required the appellant to resign in order to participate in the General Elections of 2006, the first law being the basic law of the land, namely, **clause (4) of Article 80 of the Constitution** and the second law being **Section 4(4) of the Parliamentary Elections Act, 2005** and that the resignation requirement was valid and applicable. Counsel thus invited court to overrule the objection.

24. Before interrogation of the decisions alluded to by counsel for the parties, I find it pertinent to reproduce the impugned provisions of the law in contention.

Article 80 (4) of the Constitution provides as follows;

“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 interest, who wishes to stand in a general election as a member of Parliament shall resign his or her office at least ninety days before nomination day.”

Section 4(4)(a) & (b) of the Parliamentary Elections Act No.17 of 2005 (Cap.177 after revision of Laws of Uganda) provides as follows;

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

(a) in the case of a general election, resign his or her office at least ninety days before nomination day; and

(b) in the case of a by-election, resign his or her office at least fourteen days before nomination day.

25. In my view, the determination of the question of whether the decision rendered by the 2nd Respondent denominating the Petitioner on account of non-

compliance with **section 4 (4) (a) of the Parliamentary Elections Act, Cap 177** is a simple matter of proper construction of the decision in *Kwizera versus Attorney General*. I am inclined to agree with the submission of learned counsel for the Respondents that the question of whether the decision of the Constitutional Court in *Kwizera versus Attorney General* nullified *Article 80 (4) of the Constitution* and by implication *section 4 (4) (a) of the Parliamentary Elections Act, Cap 177*, which prescribes the requirement relating to resignation from public office was extensively considered and determined by the **Supreme Court** in the subsequent case of *Wasike Stephen Mugeni versus Aggrey Awori Siryoyi, (Election Petition Appeal 5 of 2007) [2007] UGSC 4 (19 November 2007)*.

26. From my reading and understanding of the judgment of the Supreme Court in *Wasike Stephen Mugeni versus Aggrey Awori Siryoyi, (Election Petition Appeal 5 of 2007) [2007] UGSC 4 (19 November 2007)*, it is quite apparent that the Supreme Court was invited to inter alia, interrogate the decision in *Kwizera versus AG* and determine whether the requirement for resignation from public office in **Article 80 (4) and section 4 (4) (a) of the Parliamentary Elections Act, Cap 177** was rendered unconstitutional and therefore void. The Supreme Court indeed extensively reviewed the decision in *Kwizera* and that in *Darlington Sakwa and Another v The Electoral Commission and Others (Constitutional Petition No. 8 of 2006) [2006] UGCC 3 (8 August 2006)*, and concluded that clause (4) of Article 80 of the Constitution was not declared null and void. Indeed, the Court held that, *prima facie*, the said provisions were in force, two laws which required the appellant to resign in order to participate in the General Elections of 2006, the

first law being *clause (4) of Article 80 of the Constitution* and the second law being *Section 4(4) of the Parliamentary Elections Act, 2005*. The Supreme Court thus concluded that the resignation requirement was valid and applicable.

27. I note that, no other subsequent decision controverting that position was cited to me. However, there are subsequent decisions of the High Court and the Court of Appeal that have, on the basis of *Article 80 (4) and Section 4 (4) (a)* upheld the requirement for a public officer or a person employed in any government department or agency of Government or an employee of a local government or anybody in which the government has controlling interest, who wishes to stand for election as a member of Parliament to demonstrate that they resigned their office at least ninety days before nomination day. *See EP. No.001 & 006 of 2021 Bintu Lukumu Jalia versus Electoral Commission & Anor EPA 26/2021 Komakech & Anor versus Odonga Otto, Omara Yuventine V Ariko Johnny De West Election Petition Appeal No. 4 of 2023*. In fact, in *EPA No 32/2016 Kalemba Christopher and Anor versus Lubega Drake Francis*, the Court of appeal having reviewed *Section 4 (4) (a) of the Parliamentary Elections Act, Cap 177*, held that the requirement for resignation from public office at least 90 days prior to nomination under the said section is mandatory.

28. The current attempt to challenge the decision of the 2nd Respondent on grounds that *Section 4 (4) (a) of the Parliamentary Elections Act, Cap 177* is void, is an afterthought, misconceived and devoid of merit. This objection is therefore overruled.

Issue 2: Whether the Electoral Commission's Decision is invalid for Non-Compliance with Section 8 of the Electoral Commission Act, Cap 176 in light of the Okabe Patrick vs Electoral Commission & Opio Joseph Decision.

29. I have carefully perused the grounds of appeal set out in the Petition and find merit in the objection by learned counsel for the Respondents that this issue does not arise from any of the grounds of appeal in the Petition. There is indeed no ground challenging the decision of the 2nd Respondent on account of want of quorum or on account of non-compliance with the section 8 of the *Electoral Commission Act, Cap 176 in light of the Okabe Patrick vs Electoral Commission & Opio Joseph Decision*. This is a ground of both law and fact that ought to have been raised.

30. My understanding of the law is that where a party is aggrieved with the decision of the Electoral Commission, they have the right of appeal to the High Court against the decision of the Commission confirming or rejecting the existence of an irregularity. This is the import of *Section 15 (1) and (2) of the Electoral Commission Act Cap 176*. Under *Section 15 (3) of the Act*, it is provided that the appeal shall be made by way of a Petition. It would follow that the grounds upon which the decision of the Commission is being challenged must be set out in the Petition.

31. Essentially, such grounds would constitute the Petitioner's cause of action in the

appeal. It would therefore follow that, save with special leave of court, the appellate court cannot entertain the appeal on any extraneous issues outside the specific grounds of appeal. I find useful guidance in the Supreme Court decision of *Kaggwa v Musiimenta (Civil Appeal 10 of 2022) [2024] UGSC 41 (20 June 2024)*. I note that no such leave was sought by the Petitioner to challenge the decision of the Commission on new grounds other than those specified in the petition. I note that in the case of *Okabe Patrick versus Electoral Commission & Opio Joseph*, the Petitioner therein raised non-compliance with **section 8 of the Electoral Commission Act** as a clear ground of appeal. Accordingly, the court would ordinarily be inclined to disregard the said issue.

32. It has been contended by learned counsel for the Petitioner that the issue was raised in the affidavit in rejoinder, it having arisen from the proceedings attached to the 2nd Respondent's affidavit in reply. The question would then be whether it is legally tenable for a petitioner/ appellant to raise a new ground challenging the decision of the 2nd Respondent by way of an affidavit in rejoinder. A similar question was considered by the Court of Appeal in *EPA No. 43/2016 Mutembuli Yusuf Versus Nagwomu Moses Musamba & Anor*. In that case, the Appellant had raised fresh grounds challenging the election of the 1st Respondent in affidavits in rejoinder. The grounds were not set in the petition and affidavit in support. The court of appeal held;

"If we consider the petition and reply thereto in an election petition to constitute pleadings, then a Petitioner is not permitted to introduce fresh issues or to change the substance of his or her claim by introducing new

matter by way of affidavits in rejoinder. A party cannot adduce evidence in respect of a matter that is not pleaded.

33. Similarly, in the context of an appeal by way of a Petition, the grounds upon which the decision of the Commission is being challenged must be set out in the Petition. No new grounds can be introduced by way of an affidavit in rejoinder. The lawful recourse available to the Appellant/ petitioner would be to seek leave of court to amend the Petition so as to introduce additional grounds of appeal. This is especially so where the issue raised is one of mixed law and fact. In the instant appeal, the issue of alleged want of quorum or non-compliance with *section 8 of the Electoral Commission Act* is one of mixed law and fact. It was incumbent on the Petitioner to raise a ground of appeal in his petition to that effect, rather than seek, as an afterthought to smuggle in the issue through an affidavit in rejoinder.

34. **Notwithstanding** the above, I find it necessary to invoke the inherent powers of court to ensure that an illegality is not allowed to stand if at all. Especially one that relates to compliance with the law. As such, I have considered the rival submissions of the parties in respect of the dictates of **section 8** of the said Act. The Petitioner's contention as I understand it, and as is clear from Paragraph 9 (iii) of the affidavit in rejoinder, is that there is no evidence from the minutes of the proceedings attached to the 2nd Respondent's affidavit in reply showing that, at the time of hearing and determination of the complaint, the Commission had the requisite quorum. The contention is restricted to alleged want of the

requisite quorum. However, learned counsel for the Petitioner have in their submissions raised other grounds like the decision not being rendered apparently in compliance with **section 8**, which grounds were neither pleaded in the Petition nor raised, albeit irregularly, in the impugned affidavit in rejoinder.

35. As noted earlier in this judgment, because the question of alleged want of quorum was belatedly raised in the Petitioner's affidavit in rejoinder, the 2nd Respondent sought leave to file an affidavit in surrejoinder and leave was granted. I note that the burden was on the Petitioner to adduce evidence in support of the allegation that the Commission was not fully or properly constituted. The same position *was* reiterated by this Court ***EPA No. 10/2025 Walukaga Mathias versus the Electoral Commission & Anor citing the decision in Patrick Okabe versus Opio and the Electoral Commission***. I note that the 2nd Respondent attached minutes in answer to issues only raised in the Petition and the affidavit in support, none of which related to any alleged want of quorum. The 2nd Respondent in its affidavit in surrejoinder presented evidence of the Members of the Commission that constituted the quorum at the hearing and determination of the complaint. From the said extracts, it is clear that the Commission was properly constituted with the requisite quorum prescribed under ***section 8 (4) of the Electoral Commission Act***.

This preliminary objection is therefore overruled.

Issue 3: Whether it is a requirement of Section 4(4)(a) of the Parliamentary Election Act Cap. 177 to attach proof of resignation from civil service to the nomination paper by candidates.

36. It appears from the pleadings and submissions of the parties that there is no dispute that the Petitioner was a person subject to the conditions precedent prescribed in **Section 4 (4) (a) of the Parliamentary Elections Act, Cap 177**. Having been employed in the service of Government under the Uganda Police Force, the Petitioner fell in the category of a public officer or a person employed in any Government department or agency of Government or an employee of a local government or any body in which the government has controlling interest, who wishes to stand for election as a member of Parliament and was therefore required to resign his office at least ninety days before nomination day.

37. It is also not in dispute that at the time of his nomination by the Returning officer, the Petitioner did not submit or adduce evidence of his resignation. Indeed, from the pleadings and evidence on record, there is no evidence adduced by the Petitioner to prove that the nomination documents submitted to the Returning officer at the time of nomination included either a resignation letter or letter of acceptance of the resignation or proof that the conditions if any, attached to the acceptance of resignation had been complied with.

38. Therefore, the only contention which the court is invited to determine is whether at the time of nomination, the Petitioner was required to adduce evidence of his

resignation from the Uganda Police Force. The Electoral Commission made a finding and conclusion that the Petitioner was, at the time of nomination before the Returning Officer required to adduce or furnish evidence of his resignation in accordance with **Section 4 (4) (a) of the Parliamentary Elections Act, Cap 177** and that his failure to do so rendered his nomination illegal, whereof it made a decision to denominate him. The law is that in a first appeal, the burden lies on the Appellant to demonstrate to the appellate Court that the findings, conclusion and orders of the trial court which are the subject of the grounds of appeal were not justified in law and were not supported by the evidence on record. I am fortified by the decision in *Nazmudin Gulam Hussein Viram v Nicholas Roussos [2006] UGSC 21 (23 November 2006)*.

39. It is the Petitioner's submission that there is nothing in **Article 80 (4) of the Constitution and section 4 (4) (a) of the Parliamentary Elections Act, Cap 177** that required him to adduce or attach evidence of resignation at the time of nomination. Counsel contends that what is required under the section is that the person appearing for nomination must have resigned at least 90 days prior to nomination. They further contend that proof of resignation at the time of nomination is not one of the requirements under **Guideline 3.3 of the Parliamentary Elections 2025 Guidelines for nomination of candidates**, which are the Regulations issued by the Commission.

40. Further, the Petitioner contends that in any case, at the time of the hearing of the Complaint by the Commission, the Commission had before it evidence of his resignation which he had attached to the response to the complaint.

41. On the other hand, it is the submission of the Respondents that resignation under **section 4 (4) (a) of the Parliamentary Elections Act, Cap 177** can only be proved at nomination, by way of adducing or attaching evidence of such resignation. Where no evidence of such resignation is adduced or attached by the person affected by the provisions of the said section, no valid nomination can be done by the Returning officer.

42. I have considered the provisions of **Article 80 (4) of the Constitution** and **Section 4 (4) (a) of the Parliamentary Elections Act, Cap 177**. It is not in dispute that the said provisions make it a condition precedent that for any candidate affected by the provision to qualify for nomination, they must have resigned at least 90 days prior to nomination. In *EPA No 32/2016 Kalemba Christopher and Anor versus Lubega Drake Francis*, the Court of appeal held that requirement for resignation from public office at least 90 days prior to nomination under **section 4 (4) of the Parliamentary Elections Act, Cap 177** is mandatory. Indeed, under *section 30 of the Parliamentary Elections Act*, one of the grounds for disqualification of a candidate is non-compliance with **section 4 of the Parliamentary Elections Act**.

43. The intriguing question is whether compliance with *section 4 (4) (a) of the Parliamentary Elections Act, Cap 177* is satisfied by mere statement by the

candidate at the time of nomination that he resigned from public service, without adducing evidence in support of the said resignation. I find it pertinent to first set out the context of a Parliamentary election and the relevant stages and the importance of compliance at each stage. I find useful guidance in the decision of *Justice VF. Musoke Kibuuka (RIP) in Byanyima Winnie v Ngoma Ngime (Civil Revision No. 9 of 2001) [2001] UGHC 92 (17 July 2001)* in which his Lordship stated thus;

“The Parliamentary Elections process is a progressive one. The Act contains clearly marked and self-contained segments in the electoral process. The context also reveals that the electoral process does not move along a dual track nor does it go forward and backwards. It is clear that it moves in a single direction and along a single track. Once one segment is completed, the process moves on to another segment. Those segments or sets of election activities e.g. nomination of candidates, campaigning voting, counting of votes, announcing of results and election petitions are all well demarcated by the law. Indeed, each segment is contained in a well numbered and different part of the Act. It is clear that none of them flows into the other. The law does not provide for any overlapping”

44. My understanding of the above decision is that there must be compliance with the requirements prescribed by law at each stage of the electoral process. Where there is no compliance, such non-compliance cannot be sought to be cured by

subsequent actions past that stage. (see;- *Election Petition No. 08/2006 Ongole James Michael versus Electoral Commission & Anor*).

45. However, in agreement with the petitioner I find that **Section 4 (4) of the Parliamentary Elections Act, Cap 177** and **Guideline 3.3 of the Parliamentary Elections 2025 Guidelines for nomination of candidates**, which are the Regulations issued by the Commission do not make it a requirement for the petitioner to render proof of resignation before or on nomination. It is a call of prudence that a person bound by this provision would provide proof of resignation but not one of law.

Making it mandatory without a specific guideline or provision of law would in my opinion create an injustice.

46. It is for this reason that I find that a candidate that fails to provide proof of resignation at the point of nomination or one that has merely stated the same in his nomination documents should be given the opportunity to produce proof upon the commencement of a complaint. The 1st respondent would exercise its mandate Under **Section 15 of the Electoral Commission Act** to evaluate whether the candidate who is the subject of the requirement of resignation at least 90 days prior to nomination under **Section 4 (4) (a) Parliamentary Elections Act, Cap 177** has the requisite documentation to satisfy this condition.

47. In the end it is my view that the failure to provide proof of resignation on nomination day is not fatal and should not lead to denomination of a candidate

as there is no specific provision of law that makes the provision of proof on nomination day mandatory. This is a matter that can be resolved at the level of complaint upon the petitioner providing proof of his resignation.

Issue 4: whether the letter submitted by the petitioner constituted adequate proof that he had effectively resigned from the service of the Uganda Police Force.

48. During the hearing with the Electoral Commission, it was the duty of the petitioner to adduce cogent evidence in support of the claim of resignation given that the same had become contentious. Cogent is deemed to be of the kind, which is free from contradictions, truthful and compelling as to convince a reasonable tribunal to give judgment in the Petitioner's favour. *Cogent means; compelling or convincing. It is not enough to adduce evidence raising mere suspicion. See; Sematimba Simon Peter and NCHE versus Steven Sekigozi Election Petition No. 8 & 10 of 2016.*

In the instant appeal, it is not in dispute that, at the time of the hearing of the complaint at the Electoral Commission, the Petitioner, in his response attached a photocopy of a letter which is attached to Paragraph 3(ii) of the petition as Annexure B. The letter which appears to be originating from the Uganda Police Force, indicated that the Uganda Police Force had accepted his resignation. The issue to be determined is **whether the letter submitted by the petitioner**

constituted adequate proof that he had effectively resigned from the service of the Uganda Police Force.

49. It is my opinion that the letter was not sufficient for the simple reasons that the letter was signed by a one Aryatuha Dora, apparently on behalf of the Inspector General of Police. The title and capacity of the author is not indicated. The letter is **not certified**, and neither is there evidence that such a letter existed as at the time of nomination. This letter in the least should have been certified as a show of its authenticity. Had he fulfilled any of the conditions above, perhaps an analogy of resignation would have been drawn from the above letter.

Resignation involves formally notifying your employer of your intent to leave, through a resignation letter. If accepted, your employer would state the conditions (if any) for acceptance of your resignation. For resignation to be effective one must show that he fulfilled the requirements for acceptance. The most important of these documents inline with **Section 4 (4) (a) of the Parliamentary Elections Act, Cap 177**, is the resignation letter. This resignation letter should be stamped by the employer as proof of receipt and date of resignation to indicate fulfilment of the 90-day requirement.

In **EPA No 4/2023 Omara Yuventine V Ariko Johnny De West**, The appellant had at the time of his nomination submitted a certificate of service as proof of compliance with the requirement for resignation. The Court of Appeal noted once the certificate of service adduced by the Appellant was contested as being irregular, it was incumbent on the Appellant to adduce other evidence in support of the resignation. He could only do so by showing that he sought and was discharged by the appropriate authority.

I find that the petitioner herein failed to discharge this obligation. It is also the finding of this court that the provision of proof of resignation becomes mandatory and vital at the point of a complaint being lodged with the Electoral Commission. I therefore agree with the 1st respondent that the petitioner failed to prove that he had resigned from the service of government in line with **Section 4 (4) (a) Parliamentary Elections Act, Cap 177**

Narrow window.

50. All requirements of law have to be fulfilled including resignation. As noted above the issue of resignation was considered by the Electoral Commission during the hearing. In a case like this one, there is a small window within which court may exercise its inherent jurisdiction if moved to avoid a potential miscarriage of justice. The court may in the interest of the administration of substantive justice consider **whether there is cogent evidence of resignation as a matter of fact and whether the failure to adduce such evidence at the time of the Electoral Commission hearing is excusable (See; The Executrix of the Estate of the late Christine Mary Namatovu Tebajjukira and Anor Vs Noel Grace Sharita Supreme Court Civil Application No. 8 of 1998)**

51. In this particular appeal the petitioner did not advance any sufficient cause or explanation as to why he never submitted evidence of resignation at the time of the hearing if it indeed existed. I would have expected the Petitioner to at least adduce affidavit evidence from the author of the impugned letter confirming its

authenticity and source or provide a certified copy thereof. Better still it would have been prudent for the petitioner to provide court with a received copy of his letter seeking resignation in evidence. The Petitioner has not done any of the above and therefore the inherent unlimited jurisdiction of this court cannot be exercised as doing so would be injudicious.

52. In the end, the petitioner has failed to discharge the requisite burden that at the time of nomination, he had resigned from public office. In the result, this ground fails and the decision of the 2nd Respondent denominating the Petitioner is upheld.

Issue 5: Whether the Petitioner's right to a fair hearing was violated by the 2nd Respondent in conduct of an ex-parte hearing on 18th November 2025 prior to service of the complaint and filing of a response.

53. The Petitioner's grievance as I understand it is that he was not afforded a hearing and that his response to the complaint against him was not considered by the Commission. It is further argued that the complaint was determined ex parte. The petitioner contends that the commission in rendering its decision flouted the provisions of Articles 28 and 42 of the Constitution. A party cannot be condemned unheard or treated unfairly during the decision-making process.

54. It is contended by the Petitioner that the 2nd Respondent in its decision delivered on 23rd December 2025 refers to a meeting allegedly held on 18th November 2025

and that the Petitioner was not notified of the meeting and was therefore not able to attend. The Petitioner further contends that the 1st Respondent's complaint was only served upon him on on 23rd November 2025 by the 2nd Respondent's Returning Officer for Buyende District via the Petitioner's WhatsApp number. It was contended that the hearing of the complaint was conducted before the Petitioner was served with the complaint.

55. In the alternative, the Petitioner contends that he filed a response to the complaint dated 24th November 2025, in which he provided evidence of his resignation. It is his contention that since the evidence of his resignation was availed to the commission as part of his response to the complaint on 24th November 2025, it was erroneous for the Commission to disregard that evidence and conclude that he had not furnished evidence of his resignation and thereby flouted the provisions of Section 4 (4) (a).

56. In response to the ground of failure to accord the Petitioner a fair hearing, both respondents contend that the Petitioner was indeed offered a fair hearing and was duly served with notice of appearance for the hearing scheduled for 18th November 2025 and subsequent thereto further afforded an opportunity to file his response to the complaint by 21st November 2025, which response he filed on 24th November 2025. The 2nd Respondent contends that the Petitioner's response was actually considered before the determination of the complaint as is clearly indicated in the minutes of the proceedings.

57. I have carefully considered the pleadings, evidence on record and submissions of both counsel. I note that *section 8 (8) of the Electoral Commission Act* confers discretion upon the Commission to regulate its own procedure. In the persuasive decision of ***Kenya Revenue Authority v. Menginya Salim Murgani, Civil Appeal No. 108 of 2009***, it was held that there is ample authority that the decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures, provided that they achieve the degree of fairness appropriate to their task is for them to decide how they will proceed”.

58. It would follow therefore that, in the regulation of its own procedure, it is pertinent that the Commission does not lose sight of the need to ensure that the parties, the subject of complaints preferred before it for determination, are accorded a fair hearing. In the case of ***Andua Martin Drani versus Candia Emmanuel, Election Petition No. 001 of 2020***, the court held that;

“the procedure of according a fair hearing should be determined in accordance with the institution and exigencies coupled with the peculiar circumstances of the case pertaining at the time. There is no set procedure for according a hearing of complaints by the Commission, and they ought to devise such procedure that would satisfy the principles of a fair hearing. In some, deviation from the ideal procedure may be permissible without affecting the validity of the adjudication proceedings keeping in mind the practical exigencies of the day administration.”

59. My understanding of the right to a fair hearing is that a party should be afforded an opportunity to be heard among others. The position of the law is that where a party is afforded an opportunity to be heard and they do not take the opportunity, they cannot be heard on an allegation that they were not heard. I am fortified by the decision in ***Civil Appeal No. 113/2020 Hezekiah Mukiibi & Anor versus Commissioner Land Registration***. The Commission would therefore not be faulted unless there is cogent evidence adduced to prove that the manner in which it conducted the proceedings did not afford the Petitioner an opportunity to be heard.

60. I have considered the rival affidavit evidence and the minutes of the proceedings of the Commission for both 18th November 2025 and 23rd December 2025. I have also considered the fact that service of notice of hearing was both electronic through WhatsApp messages and partly formal service of the notice. The 2nd Respondent averred that on 17th November 2025, the Petitioner was notified of the complaint and the meeting scheduled for 18th November 2025. The Petitioner denies being served with the notice but further contends that such notice was too short. I am aware that the law governing election petitions requires expeditious prosecution and disposal of election related complaints/petitions. I find useful guidance in the decision in ***EPA No.007/2025 Hope Maurisha versus Kyarikunda Loydah Twinomujuni***. The court must thus keep in mind the practical exigencies of the day administration. The strict rules relating to service of court summons and hearing notices alluded to in the decisions cited by counsel for the Petitioner may not apply in the context of

service, hearing and disposal of complaints before the Commission, as long as the procedure adopted by the Commission ensures that the party is afforded a fair opportunity to defend themselves against the allegations in the complaint.

61. One of the contentions by the Petitioner is that notice of hearing served on 17th November requiring him to attend the meeting at the commission was very short. In my view and given the need for expeditious disposal of election related complaints, which are time bound, where in the opinion of a party, the notice served is too short, the remedy does not lie in refusing to appear. The proper and practical recourse would be to appear in person or through counsel at the Commission, inform the Commission of his inability to file a response to the complaint on account of short notice and then pray for an adjournment to enable them file an appropriate response.

62. The evidence before court is that indeed, in the meeting held on 18th November 2025, the Commission made directions that the Petitioner be afforded up to 21st November 2025 to file a response to the complaint. The evidence adduced by the 2nd Respondent further shows that by 21st November 2025, the Petitioner had not filed the response. Further efforts were made on 23rd November to serve him and indeed, on 24th November 2025, the Petitioner filed a response to the complaint attaching thereto a photocopy of a letter which he contended constituted sufficient evidence of his resignation from the Uganda Police Force. In the said response, he contended that at the time of his nomination, he had duly resigned from the Uganda Police Force and had ceased to be a public

servant. That was his answer to the 1st Respondent's claim that he had not resigned from public office. It is quite apparent that the Petitioner got notice of the complaint, understood the allegations therein and grounds for challenging his nomination and indeed made an appropriate response to the complaint. All that was required was for the Commission to ensure that efforts are made to ensure that the Petitioner is informed of the complaint and that he is able to file an appropriate response to the claim. The desired effect of notification to the Petitioner was achieved, as his side of the story was presented and considered by the Commission.

63. The question before the Commission was to determine whether under section 4(4) (a) of the Parliamentary Elections Act, Cap 177 required the Petitioner, as at the time of nomination to adduce evidence proving that he had duly resigned from public office and if the failure to adduce such evidence before the Returning Officer rendered his nomination illegal. Contrary to the Petitioner's contention that the Commission, in arriving at its decision disregarded his response and evidence of resignation attached thereto, the proceedings of 23rd December 2025 clearly indicate that the Commission ably considered the response by the Petitioner. Indeed, the minutes contain a summary of the gist of the Petitioner's response. The Commission therefore took into account the Petitioner's response, save that it found no merit therein.

64. I have read the Petitioner's response to the complaint and the ruling of the commission and agree that his response was taken into consideration.

I therefore find that in these circumstances, the Petitioner was afforded a fair opportunity to be heard. Indeed, the Commission as is clear from the proceedings considered his response to the complaint, save that the Commission found that there was no evidence that, at the time of his nomination, the Petitioner had adduced evidence of resignation in compliance with the dictates of section 4 (4) (a) of the Parliamentary Elections Act, Cap 177.

Issue 6: Whether the Petitioner is entitled to the remedies sought.

65. Pursuant to the above analysis and determination of the issues raised by the Petitioner, I find that;-

- a) Article 80 (4) of the Constitution and Section 4 (4) (a) of the Parliamentary Elections Act, Cap 177 and the requirement therein for public officers, who wish to contest in a Parliamentary election to resign in the manner prescribed therein is still good law. The Electoral Commission cannot be faulted for rendering its decision under the said provision.
- b) By not adducing cogent evidence of resignation at the time of the Electoral Commission hearing, the respondent rightly found that the Petitioner did not comply with the condition precedent in section 4 (4) (a) of the Parliamentary Elections Act, Cap 177.
- c) I uphold the decision of the Electoral Commission denominating the Petitioner on account of non-compliance with the mandatory condition in section 4 (4) (a).
- d) The net effect of the above findings is that the Petition/appeal fails and is

hereby dismissed.

e) Regarding the prayer for costs of the petition, the award of costs is governed by **Section 27 of the Civil Procedure Act**. It is trite law that under the said section, the award of costs is in the discretion of the Court. That position was restated by the Supreme Court in *Lyamulemye David Vs Attorney General SCCA No.4 of 2013*. Nevertheless, the general rule is that costs follow the event, and, in that context, a successful party is entitled to costs unless for good cause Court orders otherwise. I find that the Petition has raised a pertinent issue of the applicability of **section 4(4) (a)** and a rather novel issue of whether it is a requirement for the candidate affected by the said section and seeking nomination to, at the time of nomination, adduce evidence of their resignation, which this court has now clarified. In the circumstances, I am inclined not to condemn the petitioner in costs. Therefore, all parties shall bear their costs.

I, so order.

Before I take leave of this matter, I wish to raise a matter concerning the growing trend not necessarily restricted only to this Petition but general legal practice as well. It has now become quite fashionable for some advocates to engage in extensive discussion of matters in which they are engaged as counsel and which are being prosecuted before the court on social media and other public fora including discussing their submissions as filed in court and insinuating the likely outcome of the litigation, a practice that has now been borrowed by litigants too. I should not be understood as meaning that

advocates are barred from engaging in any professional discussion of a matter pending in court, albeit within the confines of the rule against *sub judice*. I only wish to caution such errant legal counsel of the need to remind themselves of their professional duty as officers of Court to always maintain professional decorum and etiquette and restrict any such discussions to what is acceptable within professional limits as guided by the Advocates Act and Advocates Professional Conduct Regulations.

Dated this 9th day of January 2026 and delivered electronically via ECCMIS pursuant to the Judicature (Electronic Filing, Service and Virtual Proceedings) Rules, 2025.



.....
SIMON PETER M. KINOBE

Ag. JUDGE