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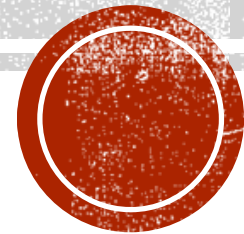
# **AN APPRAISAL OF EMERGING JUDICIAL PRINCIPLES IN ELECTORAL JURISPRUDENCE: A VIEW FROM THE BAR**

**BY**

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1. Provisions of the Parliamentary Elections Act Cap. 177 cannot be imported into adjudication of petitions under the Local Government Act Cap.138 on grounds that section 189 of the LGA only authorized Electoral Commission to apply such provisions in conduct of elections.

**(Kwoba Herbert vs Ssebugwawo Tadeo & EC and Kasirye vs Bazigatirawo Amooti & EC)**



2. Appeals from interlocutory rulings during trial of election petitions; in a surprising departure from pre 2021 jurisprudence, the COA held in **Kasule Ismail vs Ruyonga Joseph** and **Annet Soobi vs Mukhaye Miriam & 2 Others** that a party must appeal an interlocutory decision of the High Court within 14 days of ruling or else later appeal after judgment renders complaints on interlocutory rulings out of time. The earlier position in **Returning Officer Kampala & another vs Naava Nabagesera** and **Nelson Gagawala vs Lubogo** was that appeals on interlocutory rulings could be made with the rest of the other matters in final judgment. This position creates numerous practical challenges (filing interlocutory appeals) and backlog risk for the Court of Appeal.



3. Time lines for filing of affidavit evidence in election matters; no specific provision regulates timelines for filing and serving of affidavit evidence hence all affidavits filed prior to scheduling are validly on record; only affidavits filed contrary to timelines imposed by the trial Judge or court can be expunged. See **Mpanga Farouq vs Ssenkubuge Isaac, Kayanja Vincent de Paul vs Fabrice Rulinda & EC (2021)** , then **Namboowa Rashida vs EC & anor 2016, Betty Muzanira vs Winnifred Masiko & others**. It is time for the bar to let objections on this point rest. The court has made its position clear for well over 20 years.



4. Affidavits commissioned by a Commissioner for Oaths without a valid practicing certificate remain valid despite this defect and should not be expunged (**Lokeris Samson vs Emmauel Komol & EC, Ossiya Solomon vs Kulou Joseph Andrew & EC**). The court's intervention in this regard is spot on but room for caution remains. As is evidently clear, the Court has propensity to depart from its earlier precedents every electoral cycle.



5. Failure to comply with Section 15 of the Electoral Commission Act and raising of pre-polling complaints in a petition after elections is fatal;

In a surprising disregard of binding supreme court precedent of **Abdul Balingirira Nakendo vs Patrick Mwendha**, the court of appeal held that failure to raise prepolling complaints with EC is fatal and such complaints cannot later own be brought in an election petition (**Nandagire Christine vs Katushabe Ruth, Komakech Christopher vs Odong Otto, Gaddafi Nasur vs Sekabira Denis**). These 2021 precedents are clearly erroneous and ought to be overruled



6. Affidavits of illiterate witnesses must comply with the Illiterates Protection Act and default is fatal but manner is compliance is a matter of form, **Betty Sentamu vs Sylvia Nayebare & EC, Fred Turyamuhweza vs Jim Muhwezi & EC.**



7. Only certified election related documents are admissible save for exceptional circumstances (**Betty Sentamu vs Nayebare, Tamale Julius Konde vs Senkubuge**)



8. It is legally permissible for a court to take evidence viva voce where affidavits are expunged or have not been filed.  
**(Kayanja Vincent De Paul & Ogwari Polycarp)**



9. A preliminary objection at trial should not require consideration of any evidence and if that is the case, then it should be canvassed after trial of the facts (**Nabadda Ritah vs Nantaba**).



**10.** An award of costs should be judiciously made and litigants should not be penalized with costs if the complaints they have brought before the court, albeit unsuccessfully, serve the public interest or protest genuine errors or omissions in the electoral process (**James Owebeyi vs EC & Eddie Kwizera, Sumaya Balunywa vs Odoi Bernard & ors**)



**THE END**

**THANK YOU**

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