**Besigye v Electoral Commission and another**

**Division:** Supreme Court of Uganda at Mengo

**Date of judgment:** 6 April 2006

**Case Number:** 1/06

**Before:** Odoki CJ, Oder, Tsekooko, Karokora, Mulenga, Kanyeihamba

and Katureebe JJSC

**Sourced by:** LawAfrica

**Summarised by:** H Kibet

*[1] Constitutional law – Annulment of presidential elections – Whether section 59(6)(*a*) of the*

*Presidential Elections Act was inconsistent with article 104(1) of the Constitution – Constitution –*

*Article 104(1) – Section 59(6)(*a*) – Presidential Elections Act.*

*[2] Election petition – Conduct of presidential elections – Electoral irregularities – Whether the*

*provisions of the Presidential Elections Act, the Electoral Commission Act and the Constitution had been*

*complied with – Whether failure to comply with provisions affected the results – Constitution –*

*Presidential Elections Act 2006 – Electoral Commission Act.*

**Editor’s Summary**

The petitioner was one of the candidates in the Ugandan Presidential Election held on 23 February 2006.

On 25 February, the first respondent declared the second respondent the winner of the election with

59.28% of the valid votes cast. On 7 March 2006, the petitioner lodged a petition in the Supreme Court registry seeking*, inter alia*, orders that the second respondent was not validly elected. In his petition, the petitioner argued that the first respondent had not validly declared the results in accordance with the

Constitution and the Presidential Elections Act, that the election was conducted in contravention of the provisions of the Constitution, the Electoral Commission Act and the Presidential Elections Act, and that the provisions of section 59(6)(*a*) of the Presidential Elections Act were contrary to the provisions of article 104(1) of the Constitution. He also alleged against the second respondent that he had committed several illegal practices and offences while campaigning including making abusive, insulting and derogatory statements against the petitioner and his party. Further, he contended that the second respondent through his agents had committed acts of bribery of the electorate.

In reply, both respondents denied the allegations contained in the petition. When the hearing of the suit commenced on 22 March 2006, the counsel for the petitioner applied to have the question whether section 59(6)(*a*) of the Presidential Elections Act was inconsistent with article 104(1) of the Constitution referred to the Constitutional Court for interpretation. The application was rejected with reasons for the ruling to be given in the course of the Court’s judgment.

**Ruled** – Regarding the application to refer the interpretation of the Constitution issue to Constitutional

Court:

1. Article 137(5)(*a*) of the Constitution was inapplicable to the application as the question as to the interpretation of the Constitution had arisen prior to the proceedings and not during the course of the proceedings.

2. Proceedings concerning the election of the President had to be completed within 30 days of filing the petition. It would therefore be difficult to hear and determine the petition in the Constitutional Court, deal with a possible appeal and dispose of the petition within the stipulated period.

3. The enquiry being concerned with the petition, the Supreme Court would itself deal with the question in the course of its judgment.

4. Section 59(6)(*a*) of the Presidential Elections Act was not inconsistent with article 104(1) of the Constitution as the subsection had been enacted by Parliament to provide the grounds for annulment of presidential elections pursuant to powers granted to it by article 104(*a*) of the Constitution.

**Held** – Regarding the petition:

There had been non-compliance with the provisions of the Constitution, Presidential Elections Act and Electoral Commission Act by the first respondent with regard to the disenfranchisement of voters and in the counting and tallying of results.

There had been non-compliance with the principles laid down in the Constitution, the Presidential

Elections Act and the Electoral Commission Act in that the principle of free and fair elections had been compromised by bribery and intimidation and the principles of equal suffrage, transparency and secrecy of the ballot had been undermined by multiple voting and vote stuffing.

(Three Justices dissenting) The petitioner had failed to prove that the failure to comply with the provisions and principles affected the results of the presidential election in a substantial manner.

(Two justices dissenting) No illegal practices or other offences had been proved to have been committed by the second respondent or by his agents with his knowledge and consent or approval.

*Per curiam* – Certain provisions of the electoral laws such as sections 24(5) and 59(6)(*a*) of the

Presidential Elections Act and section 25 of the Electoral Commission Act were contradictory and inadequate and in need of review.

Detailed findings and reasons to be provided at a later date.

Petition dismissed.

**No cases referred to in judgment**