

IAN M MAKONE  
v  
BEATA NYAMUPINGA

ELECTORAL COURT OF ZIMBABWE  
BHUNU J  
HARARE 13 November 2013 and 20 November 2013

*T Mutangi, for the petitioner*  
*Mazhindu, for the respondent.*



### **Electoral Petition**

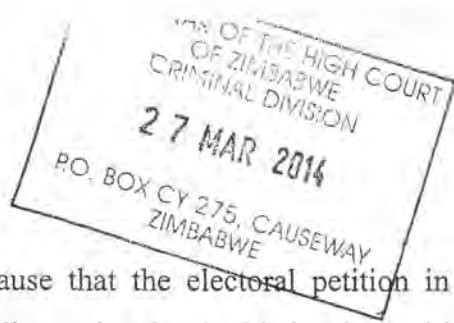
BHUNU J: The petitioner Ian Muteto Makone is the losing candidate in the National Assembly harmonised elections for the Goromonzi North Constituency whereas, the respondent Biata Nyampinga is the winning candidate.

Dissatisfied with the outcome of the electoral results the petitioner filed an electoral petition seeking the setting aside of the electoral results on the basis of irregularity. The respondent has countered with an exception alleging that the petition is fatally defective for want of compliance with s168 (1) (b) of the Electoral Act [*Cap: 2:13*] which requires that an election petition be signed personally by the petitioner himself.

The section reads:

#### **“168 Provisions governing election petitions**

- (1) An election petition shall be—
- (a) presented by lodging it with the Registrar of the Electoral Court; and
  - (b) signed by the petitioner or all of the petitioners if more than one”



It is common cause that the electoral petition in question was signed not by the petitioner himself according to law but by his legal practitioner from Donsa-Nkomo contrary to law. It is clear that the section is devoid of any ambiguity and is couched in peremptory terms admitting of no exception. The use of the word 'shall' indicates that the law maker was issuing a compulsive command that must be obeyed leaving no room for any discretion on the part of the petitioner.

It is therefore self evident that the only person qualified to sign a petition in terms of s168 is the petitioner himself or where there is more than one petitioner, all the petitioners concerned. The rationale for that strict requirement is easy to discern. An electoral petition is a serious legal procedure aimed at impugning rights already acquired by the winning candidate after a rigorous process presided over by neutral eminent officials. This is spelt out by the need to provide substantial security in the form of cash or recognisance currently set at US\$10 000.00.

The nature of politics is that there are many interfering fingers particularly from interested members of the public fighting from the losing candidate's corner, the majority of whom he might not even know. The danger is that if it was left free for every Tom and Dick to file an electoral petition by proxy then, the electoral Court would be in danger of being flooded with frivolous and vexatious petitions from unauthorised persons. The same considerations apply to lawyers. It is common judicial experience that litigants often accuse their lawyers of having acted without their instructions or outside their mandate. Thus from the language employed in crafting the section in question it is clear that the intention of the law maker was to make the decision to file an electoral petition a grave personal matter signified by the petitioner's own signature.

The requirement for personal signatures is a common experience in all serious endeavours such as marriage or the banking industry. That requirement in electoral petitions does not raise any eye brows considering that an electoral petition may have far reaching social consequences or even social strife.

The Latin maxim *expressio unis est. exclusio alteris* that is to say, the express mention of one thing excludes that which is not mentioned, is a useful legal adage in aiding the interpretation of s168 (1) (b) of the Act. The net result is that the express mention of the petitioner or all other petitioners excludes and disqualifies any other person not specifically mentioned from signing an electoral petition in terms of s168 (1) (b) of the Act.

In the result it is ordered:

1. That the electoral petition filed by the petitioner in this case is a nullity, void and of no force or effect for want of compliance with s 168 (1) (b) of the Electoral Act [Cap: 2:13].
2. That the petition is accordingly dismissed with costs.
3. That the respondent Beata Nyamupinga be and is hereby declared duly elected member of the National Assembly for the Goromonzi North Constituency.
4. That the Registrar be and is hereby directed to proceed in terms of s 171 (3) (b) (ii) of the Electoral Act [Cap, 2:13]

*Donsa-Nkomo & Mutangi, the legal practitioners for the applicant.  
Mugomeza & Mazhindu, the respondent's legal practitioners.*

A handwritten signature in black ink, appearing to be 'M. Donsa-Nkomo', written in a cursive style.