

IN THE SUPERIOR COURTS OF THE GAMBIA



IN THE HIGH COURT OF THE GAMBIA

MISC. APPL. NO: HC/682/21/MF/202/F1

IN THE MATTER OF AN APPLICATION FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHT
BROUGHT PURSUANT TO SECTION 26, 37(1) & 5(a) of the 1997 CONSTITUTION

AND

IN THE MATTER OF REJECTION OF THE NOMINATION OF ISMAILA CEESAY, THE
PRESIDENTIAL CANDIDATE OF THE CITIZENS' ALLIANCE FOR THE 2021 PRESIDENTIAL
ELECTION SCHEDULED FOR THE 4TH DAY OF DECEMBER 2021

BETWEEN:

ISMAILA CEESAY.....1ST APPLICANT

CITIZENS' ALLIANCE.....2ND APPLICANT

AND

INDEPENDENT ELECTORAL COMMISSION.....1ST RESPONDENT

THE ATTORNEY-GENERAL (AS INTERVENER
BY ORDER OF COURT)2ND RESPONDENT

TUESDAY THE 23RD DAY OF NOVEMBER 2021 BEFORE THE HON. MRS JUSTICE AS CEESAY, JA
SITTING AS A JUDGE OF THE HIGH COURT BY VIRTUE OF A FIAT BEARING REFERENCE NUMBER
ZA 43/227/02/P.2(118) ISSUED BY THE HONOURABLE CHIEF JUSTICE PURSUANT TO SECTION
133(1)(c) OF THE CONSTITUTION OF THE REPUBLIC OF THE GAMBIA, 1997

Case Called

Parties:

1st Applicant – Present representing the 2nd Applicant

Respondent's Rep: Present

Representation:

C.E. Mene Esq for the Applicants with him are S. Sillah (Ms) and P. Bakurin (Ms)– Present

K. Sanyang Esq for the 1st Respondent with him are M.H.B Jallow Esq, F.M Jawo (Ms) and M.
Sanyang (Ms) – Present

K. Tah Esq for the 2nd Respondent Attorney-General with him is B. Samura (Ms)

JUDGMENT

Introduction

- 1) Ismaila Ceesay, the 1st Applicant in this action is the Flag Bearer of the 2nd Applicant, Citizens' Alliance, a registered political party, for the impending Presidential Election slated for the 4th December 2021, whose nomination as a presidential candidate was rejected by the 1st Respondent Independent Electoral Commission ('IEC' hereafter) a body established under the Constitution vested with the responsibility of the conduct and supervision of the registration of voters for all public elections and the conduct and supervision of all public elections and referenda.
- 2) It is upon the said rejection of nomination that the Applicants seek redress from this Honourable Court by way of enforcement of a fundamental human right pursuant to sections 26, 37(1) & (5)(a) of the Constitution of the Republic of The Gambia, 1997. The action is grounded upon the following reliefs:
 - (1) A Declaration that the Respondent failed to comply with the provisions and spirit of the Elections Act Cap 3:01 Laws of The Gambia in the procedure adopted by the Respondent in rejecting the nomination of the 1st Applicant as the Presidential Candidate of the of the 2nd Applicant in the 2021 Presidential Election of The Republic of The Gambia scheduled for the 4th day of December 2021.
 - (2) Pursuant to relief 1 above, a declaration that the rejection of the 1st Applicant's nomination as the Presidential Candidate of the 2nd Applicant in the circumstance is null, void and of no effect for being in violation of the
 - (3) provisions and spirit of the Elections Act Cap 3:01 Laws of The Gambia and therefore tantamount to a denial of the 1st Applicant's Constitutional right

to contest the 2021 Presidential Election as guaranteed under Section 26 of the 1997 Constitution of The Gambia.

- (4) An order that the Applicants are entitled to submit an additional list of names and signatures of Registered voters for the Banjul Administrative Area, having regard to the fact that the 1st Applicant only had notice of the rejection of his nomination contrary to the spirit of Section 47(3) of the Elections Act Cap 3:01; which invariably amounts to a denial of the 1 Applicant's right to deliver a fresh nomination paper and/or cure any defect in his nomination form which is in consonance with all known rules of fairness, equity and natural Justice as envisaged in Section 47(3) of the Elections Act Cap 3:01.
- (5) A declaration that upon the Applicants' submission of the additional list of names and signatures of Registered voters for the Banjul Administrative Area, the 1st Applicant shall be at liberty to continue to participate in the election process leading up to the Presidential Election scheduled for the 4th day of December 2021 in enjoyment of his Constitutional right under Section 26 of the 1997 Constitution.
- (6) Further or other reliefs as this Honourable Court shall deem just in the circumstance.
- (7) Legal and Administrative cost of D200,000.00.
- (8) Cost.

AND FOR THE DETERMINATION OF THE FOLLOWING QUESTIONS:

- (1) Whether the Respondent complied with the provisions and spirit of the Elections Act Cap 3:01 Laws of The Gambia in the procedure adopted by the Respondent in its rejection of the nomination of the 1st Applicant as the Presidential Candidate of the 2nd Applicant in the 2021 Presidential Election Scheduled for the 4th day of December 2021.
 - (2) If not, whether the rejection of the 1st Applicant's nomination as the Presidential Candidate of the 2nd Applicant contrary to the provisions of the Elections Act Cap 3:01 Laws of The Gambia is tantamount to a denial of the 1st Applicant's constitutionally guaranteed right to contest the 2021 Presidential Election as guaranteed under Section 26 of the 1997 Constitution of The Gambia.
 - (3) Whether this Honourable Court ought not to permit a legal wrong to be without a remedy in accordance with the well-known latin maxim *ubi jus, ibi remedium*.
- 3) On Tuesday the 16th day of November 2021, I afforded counsel for the parties to this contest the occasion to address me on the propriety or otherwise of joining the Honourable Attorney-General, as the only person recognised by public law as being entitled to represent the public interest in a court of law, in these proceedings. The joinder as intervener was for him to address the Court on matters of law only. Upon hearing counsel for the parties, I subsequently ordered the joinder of the Attorney-General in these proceedings on the grounds aforesaid.

The Applicants' case

- 4) The factual matrix of this case can be outlined in a relatively short compass. It is the case of the Applicants that upon the 1st Applicant being chosen as the Flag bearer of the 2nd Applicant for the Presidential Election scheduled for the 4th day of December 2021, he duly obtained the relevant nomination form for the same from IEC.
- 5) The IEC subsequently issued two documents to the 1st Applicant, headed "**SUMMARY REQUIREMENT FOR THE NOMINATION OF A PRESIDENT**" and "**GUIDELINES FOR THE SUBMISSION OF NOMINATION PAPERS FOR THE PRESIDENTIAL ELECTION TO THE OFFICE OF THE PRESIDENT**" respectively.
- 6) Subsequently, IEC released a nomination schedule by which the Applicants claim it arbitrarily allocated dates and times for the various candidates to submit their nomination forms and accompanying documents.
- 7) IEC scheduled the Applicants for Tuesday the 2nd of November 2021 between 12:30pm - 1:00pm for the submission of the 1st Applicant's nomination documents. At the appointed date and time, the 1st Applicant and other officials of the 2nd Applicant duly submitted their nomination papers which they claim included the Names and Signatures over 5000, registered Voters with at least 200 drawn from each Administrative Area.
- 8) The Applicants also claim that the said papers satisfied the requirements listed in the document entitled "Summary requirement for the Nomination of A President" exhibit "IC3" by delivering all the prescribed documents to the IEC at their office.
- 9) The said documentation were submitted to IEC at 12.46 pm. IEC in turn duly issued a receipt dated the same day with the time of receipt stated as 12:46pm (exhibit "IC6").

- 10) In the case of the city of Banjul, Applicants submitted the names and signatures of more than 290 Registered voters to the Respondent. Notwithstanding that they had far more than the over 290 names and signatures of Registered voters in Banjul that they submitted, they considered it unnecessary to submit all of them as the requirement was only 200 and they were certain that we had more than satisfied that requirement.
- 11) The nominations were closed by IEC on Friday the 5th day of November 2021 at 4pm; at least 3 (three) days after the submitted their nomination documents. However, IEC never gave them notice of any defect or insufficiency of the documents submitted to them or in the names and signatures of Registered voters submitted to enable them to tender the additional list or submit a fresh nomination paper as envisaged by Section 47(3) of the Elections Act ('the Act' hereafter).
- 12) In the absence of any issue or complaint raised by IEC with regard to the Applicants' nomination papers before the close of nomination, the Applicants state they were entitled to assume and in fact assumed that all their papers were in order.
- 13) After the close of nomination on Friday the 5th day of November 2021 at 4pm, IEC held a Press Conference at their office on Saturday the 6th day of November 2021, and to the Applicants' utter shock and disappointment, its chairman announced the rejection of the 1st Applicant's nomination papers and his disqualification to stand in the impending Presidential Election. The rejection was grounded on the 1st Applicant not submitting the required number of signatures of 200 Registered voters for the Banjul Administrative Area in support of his nomination.
- 14) The Applicants then filed a Petition dated the 7th day of November 2021 wherein they appealed against the decision to reject the 1st Applicant's nomination after the close of nomination on several grounds which encompassed the following:

- (a) That the Applicants in fact submitted more than 290 names and signatures for the Banjul Administrative Area with a capacity for more if it was necessary.
- (b) The 1st Applicant's nomination was rejected in a Press Conference without the delivery of a duplicate of the Rejection of Nomination Form (From 3, part A) to his representative contrary to Section 47(2) of the Elections Act Cap 3:02.
- (c) IEC's rejection of the 1st Applicant's nomination which was communicated at a Press Conference held on the 6th day of November 2021, after the close of the nomination period is inconsistent with Section 47(3) of the Elections Act.
- (d) The rejection of the 1st Applicant's nomination after the close of the nomination period is an act of impunity because it denies and/or curtails his right to submit a fresh nomination and/or cure any purported defect in his nomination form which is against all known standards of fairness, equity and natural justice as envisaged in section 47(3) of the Elections Act.
- (e) That considering the fact that this is a high-stake election in a politically tense environment, it is imperative that the IEC is fair and just in its treatment of all candidates and not to disqualify the 1st Applicant's candidature arbitrarily and prematurely. This, the Applicants aver, would be grossly unfair, undemocratic and a violation of the 1st Applicant's constitutionally guaranteed right under Section 26 of the 1997 Constitution of The Gambia and all applicable Election Laws and international best practices.

(f) That the Applicants have expended irretrievable time and huge resources in preparation for the 1st Applicant's participation in the 2021 Presidential Elections. The action of IEC is oppressive and draconian considering that they failed to inform the 1st Applicant or his representative of any irregularities in time and before the closure of nomination.

(g) Finally, that the 1st Applicant accordingly offered to submit additional signatures from the Banjul Administrative Area if required.

15) It is furthermore the Applicant's case that the appeal was received by the IEC on the 8th day of November 2021 at 9.00 am. The IEC in turn served the Applicants with Form 3 at 11.00 am on that day, two days after the rejection of the candidature of the 1st Applicant was announced. The Applicants' received a response to their appeal on 9th day of November 2021 at 11:23 am which letter was dated the 8th November 2021.

16) The said response concluded thus:

"Your submission of support nomination for Banjul Administrative Area attracted only 115 valid support. The rest were either lost to the nomination form that were delivered before yours or as a result of nullification because of the improper manner some of the forms were administered."[sic]

17) The Applicants aver that they never received any notice of any issue with any of their documents, not to talk of nullification because of the improper manner some of the forms were administered.

18) In finality, the Applicants aver that that the rejection of the 1st Applicant's nomination in the circumstance is an act of impunity and that IEC seems to hold the erroneous

view that they are above the law and that the legality of their actions cannot be challenged in court.

IEC's case

- 19) It is IEC's case that it conducted nominations for election to the office of President of The Republic of The Gambia from Saturday the 30th October to Friday the 5th November 2021, both dates inclusive.
- 20) Prior to that, it served all candidates with guidelines for the submission of nomination papers for Election to the office of President and the summary of requirements for the nomination of a president.
- 21) The 1st Applicant backed/sponsored by the 2nd Applicant filed nomination papers on the 2nd November 2021. However in the list for Banjul Administrative Area, there was an improper administration of the electoral forms.
- 22) Its finding during the scrutiny of all the nomination papers submitted by the Applicants revealed the following: -
 - (a) There were names entered on the list without surnames.
 - (b) All voter's card numbers issued by IEC for 2021 Presidential election have fifteen (15) digits. There were a lot of entries not satisfying this requirement.
 - (c) The Applicants submitted names of voters who had subscribed to more than one nomination paper.

(d) The number of voters not showing which constituency in Banjul they are drawn from as that portion of the form was also not properly administered.

- 23) Due of the anomalies in A to C above, it is further IEC's case that they did not accept those defective/improper entries of the 1st Applicant's submission in Banjul. Consequently, only 115 valid entries remain in the list t provided by the Applicants.
- 24) These issues of non-compliance were all brought to the notice of the Applicants. The Applicants appealed and the rejection of the Applicant's nomination was upheld.
- 25) IEC also avers that the list submitted by the Applicants i.e., document marked "IC7" was never submitted by the Applicants to them for the purpose of the 2021 Presidential nominations and that in effect, the Applicants did not equally satisfy the requirements of submitting the names of five thousand (5, 000) voters supporting the 1st Applicant's candidature at the said Presidential nominations.
- 26) IEC applied the same rules for the nomination of all Presidential candidates and the Applicants did not before or after submission of nomination papers and during the nomination period consult IEC to satisfy themselves that their documents are in order contrary to advise from IEC.
- 27) In finality, IEC avers that it made it clear to all candidates/ parties to consult before or after submission of nomination papers during the nomination period to ascertain whether all the documents they intend to submit or in fact submitted were in order. Some parties/ candidates complied. The Applicants and others did not.

The submissions of the parties

- 28) CE Mene Esq of Counsel for the Applicants in moving the originating summons contends that the gravamen of the Applicants' complaint from the totality of the affidavit evidence they have filed before this court is as follows:
- 29) Firstly, the absolute lack of transparency and arbitrariness of the process which makes the entire process a game of chance or try your luck, some kind of transaction shrouded in secrecy and that the process was unfair and draconian in the result.
- 30) The Applicants, he posits, submitted all the required documents for their candidature on Tuesday the 2nd Nov 2021 at 12.46 pm as evidenced by the receipt issued by IEC. Up to the close of nominations on Friday the 5th November 2021, when IEC closed the nomination, the Applicants did not receive any complaints in respect of their documentation.
- 31) It was only at the press conference held on Saturday the 6th day of November 2021, after the close of the nomination, that IEC announced the disqualification and the rejection of the nomination paper of the applicants. It is Mr. Mene's submission that this is clearly contrary to what is envisaged under section 47(3) of the Act.
- 32) It is Mr Mene's contention that even after the press conference of the 6th November 2021, after the nomination period, when it was announced that the Applicants were rejected, the Applicants still did not know the reason underlying the same. It was only after IEC received the 1st Applicant's appeal against his rejection, and after they had seen the grounds of the Applicants' complaints, that they proceeded to serve Form 3 to the Applicants. This was after the fact and only because one of the grounds of appeal was nonservice of Form 3.

- 33) Mr Mene also contends that in IEC's response to the appeal exhibit "IC10", it did not dispute that the Applicants submitted over 290 names and signatures for Banjul. IEC in response is saying that the difference between the 115 valid subscriptions and 290 submitted were either lost to candidates who submitted their forms before the Applicants or lost as a result of nullification by the IEC due to the way the forms were administered.
- 34) Mr Mene argues that this presents two very unfair scenarios, the first being that if the Applicant had been the first that submitted, he would have had the full benefit of the names they now said he has lost to others. As such, some people are at an advantage depending on the order they appear on the list. Mr Mene argues that IEC must have a fair and transparent process of determining the order in which the submissions are made.
- 35) The second challenge it is submitted, is from IEC's nullification of some of the names because of the way some of the forms were administered. Nullification is a form of punishment he argues, and before one imposes some form of punishment, one must ask the person who is going to suffer to make representation in compliance with the principles of fair hearing as a punishment cannot be imposed unless it is prescribed by law or by regulation.
- 36) It is Mr Mene's further submission that the only provision in the law is section 42(5) and (6) of the Act dealing with losing names. There is no other law which allows IEC to nullify names because of the manner the forms were administered. This is very arbitrary and draconian he argues. He draws reference to **Article 7(2) of The African Charter on Human and Peoples' Rights** ('the Charter' hereafter) in that regard.
- 37) Mr Mene further posits that IEC also did not indicate in their response how many names have been nullified, the reasons for nullification apart from the general

statement “because of the manner in which the forms were administered” which lacks specificity and violates the Applicants’ rights to fair hearing.

- 38) It is his submission further, that the rejection of the nomination without giving the 1st Applicant an opportunity to be heard, to make representation before the names were nullified, and having regard to the fact that the order in which the submissions were made were determined arbitrarily by the respondent, makes the rejection in the circumstance sheer out of impunity, arbitrary and unfair. And the effect is to deny the Applicant of their right to stand for the December 4th Election contrary to **section 26(b) of the Constitution and Article 13 of the Charter.**
- 39) He furthermore posits that this proposition is not novel. That even though in this jurisdiction we have a nascent democracy that is still developing, it is important that we deepen the democratic culture and for the IEC to think that they can operate without transparency and without fairness of the process is a fallacy. They are not above the law and the constitution. Every right that is conferred by the Constitution must be respected.
- 40) It is Mr. Mene’s further contention that even though there is no binding precedent that is on all fours with this case where the issue of rejection of the nomination of the candidate is in issue, there are however persuasive decisions that give an insight as to how such issues should be addressed. In this regard, he commends to me the judgement of the **European Court of Human Rights** (‘EHCR’ hereafter) in **SOLTANOV AND ORS V AZERBAIJAN APPLICATION NUMBERS 30362/11, 30581/11, 30728/11, 30799/11 AND 66684/12.**
- 41) Mr Mene furthermore argues that section 37(1) of the 1997 Constitution gives the Applicants the right to apply to this Honourable Court to seek redress in the circumstance because section 26 of the Constitution is one of the fundamental rights provisions of the constitution. Section 37 (5)(a) makes it mandatory that the court

shall determine any application made by any person pursuant to 37(1) or (2). Additionally, under section 132(1)(a) and (b), this Honourable Court is conferred with jurisdiction to determine all civil and criminal proceedings and expressly conferred with original jurisdiction to interpret and enforce the fundamental rights and freedoms as prescribed in sections 18-33 and 36(5) which includes section 26 of the Constitution. In this regard he commends to me the decisions of the Supreme Court of The Gambia in **BAKARY BUNJA DARBO & 4 ORS V ATTORNEY GENERAL & ANOR SC/001/2020** judgement delivered in the 17th March 2021.

42) He also commends to me the Supreme Court decision in **THE STATE V YANKUBA TOURAY SCCR/001/2020** which judgement was delivered on the 19th day of March 2021 and where the Supreme Court pronounced that in determining matters that have to do with Human Rights violations, the court must interpret and apply those laws in a manner that is consistent with The Gambia's treaty obligations including the provisions of the African Charter. In finality, Mr. Mene urges that I grant this application so that the right standards can be set moving forward.

43) K. Sanyang of Counsel for IEC on the antithetical submits that the nomination schedule was highly publicised well before the nomination period itself without consultation with any of the parties or candidates because that is the IEC's administrative function. Therefore, IEC was not under a legal obligation to discuss the timelines for nomination.

44) Mr. Sanyang contends that the Applicants having received the nomination schedule from IEC, proceeded to submit their nomination papers on the 2nd November 2021 between 12.30 – 1.00 pm and that is precisely the fourth day of the nominations. In consequence, his submission is that assuming without conceding that IEC was wrong in the way and manner it prepared the nomination schedule, the Applicants consented to it. In this regard he posits that it is trite law that a party who consents to a wrong procedure cannot be heard to complain subsequently of the wrong

procedure, as such a party will be taken to have waived his right to complain. He placed reliance on **ANTOINE BANNA V OCEAN VIEW RESORT (2002-2008) GLR VOL 1 PG 2.**

45) Mr Sanyang also refers me to sections 39(1) & (2) and also section 42 (2)(a) of the Act and submits that in the Banjul administrative area, the Applicants submitted a list which was improperly administered exhibit **"SN2"** and that IEC's findings during the scrutiny were that:

1. There were names entered on the list without surnames.
2. The constituency where these names were drawn from where not indicated.
3. Some of the entries in respect of the voter card numbers were wrong as a result, the Applicants did not satisfy the requirements imposed by law.

46) In response to the allegations that IEC acted in an arbitrary manner in rejecting the names contained in **"SN2"**, Mr Sanyang argues forcefully that IEC did not act arbitrarily in rejecting those names, it acted in accordance with the law as contained in sections 42(2)(a) and section 42 (6) of the Act.

47) It is Mr, Sanyang position that the Applicants should have exercised due diligence in filling **"SN2"** which is in respect to the nomination for election of President of the Republic– which nomination papers are free of charge as provided in section 42(4).

48) Mr Sanyang submits respectfully that to allow the 1st Applicant an opportunity to correct his nomination paper would unnecessarily delay the whole process and it will defeat the whole purpose of the nomination process and that there is no evidence

before the court to the effect that the IEC acted in bad faith during the nomination process.

- 49) Continuing with the arguments on behalf of IEC, co-counsel MHB Jallow submits that the purport of section 49(5) of the Act that once there is an appeal emanating from the nomination process, the authority vested to determine that appeal is the Returning Officer. And once the returning officer makes a decision, the decision is final and in the words of the statute itself, it cannot be called into question in a court of law. In this regard he referred me to the **Yankuba Touray Case (supra)** at page 16.
- 50) He further submits that with regards to the pre-election process, there is no law that categorically and emphatically states that a decision made by a returning officer can be subjected to review before the courts.
- 51) Mr Jallow argues that fundamental rights are not absolute, that they can be limited and drew attention section 17(2) of the Constitution in that regard. He argues that section 26(b) is not absolute and can be restricted. The only caveat being that the restriction must be reasonable.
- 52) Mr Jallow urges that I exercise the powers reposed in me by section 37(5) and hold that the Applicants had obtained redress from the Respondent by way of appeal. He requests that I hold that I have no jurisdiction to grant the prayers sought by the Applicants.
- 53) K. Tah Esq of Counsel for the Attorney-General as intervener posits that he appears on behalf of the public interest and having listened to the submissions of the Applicants and IEC, but for two issues, it is his view that their submissions are centred either on the rights of the Applicants or obligations of IEC which do not warrant the intervention or the views of the Hon. Attorney-General.

54) Accordingly, he addressed the court on two issues, the first being the issue of jurisdiction and the second being that of timelines. On jurisdiction, it is Mr Tah's submission that although the wordings of section 49(5) are unambiguous, it is his position and one he believes to be the position of the law and constitutional norms—that any provision of law which seeks to oust the courts' authority in determining issues of law are repugnant to the constitution and to the powers granted to the courts by section 120 of the Constitution.

55) Nonetheless, when issues of fundamental rights are concerned, he states, an argument may be made that when it concerns issues of fundamental rights, this section contradicts the Constitution and might have been made in excess of the National Assembly's powers because this is a multi-faceted issue. Perhaps, section 49(5) of the Act at its very core, is in direct contradiction to chapter 8 part 1 of the Constitution which lays out the powers of the judicature.

56) He postulates that whilst being mindful and alive to the fact that any such challenge may only be made to the Supreme Court, it is important however, to reiterate the Attorney-General's stance with regards to provisions of law that seek to oust the Courts' authority.

57) On the second issue of timelines, he states that his submissions in this regard are conditional on the outcome of this court's ruling. He however is of the belief that it is in the public interest to draw my attention to section 40(2)(b) of the Act. Mr Tah in conclusion urges me to take these potential timelines into consideration should I opt to rule in favour of the Applicants.

58) Replying on points of law, Mr Mene reiterates his stance that this court has the jurisdiction to entertain this application and that jurisdiction is not in any doubt contrary to the arguments of Mr Jallow for IEC. He referred me to section 4 of the Constitution and postulates that they are not urging that I declare any law void. When

It comes to interpretation and enforcement of the fundamental human rights provisions, that jurisdiction has been expressed vested in this Honourable Court by the Constitution. So, any law that purports to take that jurisdiction, there is no need to declare it void because section 4 has effectively made it so by operation of law.

59) Mr Mene gave an exposition on the historical origins of section 49(5) of the Act and submits forcefully that the courts are enjoined to guard their jurisdiction zealously and jealously. He contends that where the court is faced with two scenarios, one that guards the jurisdiction of the court and one that purports to rob the jurisdiction of the court, one should give preference to the scenario that gives the court jurisdiction. There is no doubt that the Constitution expressly confers jurisdiction on this court to determine this case, he submits.

60) On the issue of timelines, Mr Mene urges as an emollient to his opposition that where the law recognises that the right of the 1st Applicant has been violated in relation to section 26 of the Constitution, as well as article 13 of the Charter, and particularly with regard to the persuasive authority from the EHCRC in **Soltanov & ors v Azerbaijan** (where the court recognised that the rejection of the applicant's nomination to stand for election in similar circumstances amounted to a violation of their right to stand as candidates in a free election) the Applicants will have no remedy if the court is constrained by the issue of timelines.

61) Finally, it is Mr Mene's contention that it is not correct that the court will have to reopen the nomination, whatever order the court makes is going to apply to Applicants only and that will not warrant the opening of the entire process. It is just a limited step since the Applicants were denied the opportunity that is provided under section 47(3) of the Act by the way and manner the entire process was handled.

62) That having been said and before going any further, I find it imperative to give commendation where it is due. I commend Counsel on both sides and indeed that of the Attorney-General for the lucidity, aptness and industry put into the arguments proffered before me. The arguments were succinct statements of the proposition of law or fact or both, which the parties wish to establish together with reasons and authorities to sustain them. I remain much obliged.

Issues for determination

63) I have carefully considered the issues formulated by the respective parties to this contest. At the outset of this judgement, I set out the questions for determination by the Court as formulated by the Applicants. I wish to adopt them as the issues for resolution in this case with slight modifications. Mr Sanyang, for IEC, in his submissions to the Court, canvassed three issues for determination to wit:

- i) Whether the Applicants have submitted the requisite number of voters in support of the 1st Applicant's candidature or nomination to the 1st Respondent?*
- ii) Whether the 1st Respondent acted in a discriminatory manner against the Applicants in the nomination process?*
- iii) Whether this Honourable court has jurisdiction to entertain this matter?*

64) Regarding issue number 1, I am of the belief that it is not germane to this application and therefore a non-issue for resolution. I so reason because its determination will lead the court outside the realms of this application and into uncharted territory. It is not the function of the court to delve into the merits of whether the Applicants have submitted the requisite number of voter signatures in support of the 1st Applicant's candidature. That is a function that is purely within the purview of the IEC.

65) I believe issue number 2 is subsumed in the questions formulated by the Applicants and will be dealt with accordingly. I will however adopt issue number three, which is a jurisdictional challenge that must be taken first and foremost before anything else.

66) Correspondingly, the issues that stand for resolution by the Court are thus:

- 1) *Whether this Honourable court has jurisdiction to entertain this matter?*
- 2) *Whether the Respondent, in rejecting the nomination of the 1st Applicant, as the Presidential Candidate of the 2nd Applicant in the 2021 Presidential Election Scheduled for the 4th day of December 2021, complied with the provisions and spirit of the Elections Act Cap 3:01 Laws of The Gambia?*
- 3) *If not, whether the rejection of the 1st Applicant's nomination as the Presidential Candidate of the 2nd Applicant contrary to the provisions of the Elections Act Cap 3:01 Laws of The Gambia is tantamount to a denial of the 1st Applicant's constitutionally guaranteed right to contest the 2021 Presidential Election as guaranteed under Section 26 of the 1997 Constitution of The Gambia?*
- 4) *Whether this Honourable Court ought not to permit a legal wrong to be without a remedy in accordance with the well-known latin maxim ubi jus, ibi remedium?*

67) I will deal with the first issue in solitary, the second and third issues in tandem and in finality, the fourth issue.

Analysis and decision

Issue number 1:

Whether this Honourable court has jurisdiction to entertain this matter?

68) Now, averting to the principal issue– the jurisdictional challenge, one of the seminal cases in this regard is the case of **ATTORNEY GENERAL V PAP C.O.SECKA (2002-2008) 2 G.L.R. 85** where the Court of Appeal held that:

*"Jurisdiction is the bedrock of adjudication. Jurisdiction must therefore be vested in the Court before it can determine the rights of the parties before it no matter the merit of the case." [See also **EDWARD GRAHAM V LUCY MENSAH (2002-2008) G.L.R. 22 AT 135**].*

*"Where the issue of jurisdiction is raised, it is trite law and one that is hallowed in antiquity that same must be determined before any further steps are taken in a matter. Although the High Court exercises wide powers vested upon it by the Constitution– its provisions and that of statute limit the extent of its jurisdiction. [**Cham (No. 2) v Attorney General (No. 2) (1997-2001) GR 617; ATTORNEY GENERAL OF THE FEDERATION & ORS V SODE & ORS (1990) 1 NWLR (PT 128) 500; MALICK LEIGH & ORS V ATTORNEY GENERAL (UNREPORTED) JUDGMENT OF CA/22/2001 REFERRED TO**]."*

69) The constitutional prescription in section **132 (1)(a) & (b)** of the Constitution states the jurisdiction of the High Court thus:

"Except as provided in section 127, the High Court shall have original jurisdiction:

a. To hear and determine all civil and criminal proceedings.

b. To interpret and enforce fundamental rights and freedoms as provided in section 18-33 and section 36 (5).

And in the exercise of such jurisdiction, the Court shall have all such powers and authority as may be conferred by this Constitution or any other law."

70) Clearly, from the preceding, this Honourable Court is undoubtedly reposed with unlimited original jurisdiction to hear and determine all civil and criminal proceedings and to *interpret and enforce fundamental rights and freedoms as provided in section 18-33 and section 36 (5)*; but for **section 127** thereof which bestows on the Supreme Court with exclusive original jurisdiction to hear and determine the specie of matters contemplated therein.

71) Having specified this Honourable Court's jurisdiction in no uncertain terms, it now behooves me to determine whether section 49(5) of the Act ousts such authority or jurisdiction. The courts have held ad nauseum that jurisdiction is the bedrock of adjudication. Jurisdiction must therefore be vested in the Court before it can determine the rights of the parties before it no matter the merit of the case [**I.E.C. V NATIONAL ALLIANCE FOR DEMOCRACY (2008)1 GLR 250** cited].

72) The gravamen of the jurisdictional challenge raised by IEC to the competence of this court to hear this suit is anchored on section 49(5) of the Act which provides thus:

"(5) The decision of a Returning Officer on a nomination paper or any objection may be appealed against in writing presented to the Commission within two days of the decision, and the decision of the Commission on the appeal shall be final and shall not be called into question in any court of law."

73) In the interpretation of ouster clauses, it is well established that the attitude of the courts to guard their jurisdiction jealously so that any clause ousting the jurisdiction of the court will be construed narrowly. In **CHAM (NO. 1) V ATTORNEY-GENERAL (NO. 1) (1997-2001) GR 454**, Justice Gelaga King (of blessed memory) aptly enunciated this position thus:

*“It is the overriding duty of a court to guard its jurisdiction jealously. The court will, therefore, not allow its jurisdiction to be taken away except by plain, clear, unambiguous, and positive words in the disabling Decree, statute, or constitutional provisions. In performing that duty, the court will strictly construe any legislation which purports to oust the court's jurisdiction and also construe it strictly against those who claim the benefit of the ouster. Therefore, where the ouster provisions are capable of having more than one meaning, then the meaning which preserves the court's jurisdiction will be preferred, adopted and applied. Dicta of Scrutton J in *Re Boaler* (1915) 1 KB 21 at 36, CA; of Evershed MR in *Goldsack v Shore* (1950) 1 KB 708 at 712; of Romer LJ in *Lee v Showmen's Guild of Great Britain* (1952) 1 All ER 1175, CA; of Lord Reid in *Anisminic v Foreign Compensation Commission* (1962) 2 AC 147 at 170, HL; and of Obaseki Ag CJN in *Nwosu v Imo State Environmental Sanitation Authority* (1990) All NLR 379 at 417 cited.”*

74) In the instant case, the Applicants in my opinion are not asking the court to sit on appeal over or inquire into the administrative decision making of the IEC on the nomination paper of the 1st Applicant pursuant to s49(5) of the Act. Rather, the Applicants seek for a declaration that IEC failed to comply with the provisions and spirit of the Act in the procedure it adopted leading up to the rejection of the nomination of the 1st Applicant as a Presidential Candidate. The Applicants also seek a declaration that the alleged non-compliance of the IEC with the provisions of the Act

was an infringement of 1st Applicant's fundamental right as enshrined in section 26(b) of the Constitution to contest for the impending presidential election.

75) I have laid down the jurisdiction of this court in no uncertain terms in paragraphs [69] and [70] above such that I would be on the superfluous side to restate it again. Suffice it to say that His Lordship Gelaga King in the **CHAM case (supra)** stated at page 463 that:

“if a person aggrieved by the decision of a commission seeks to show that a decision or order is a nullity, he is not questioning the purported decision or order; he is merely maintaining that it does not exist as a decision.”

76) Further at 463 His Lordship re-iterated that:

*“The courts have no jurisdiction to sit on appeal over the decision or orders of a commission on the merits, but have jurisdiction to determine whether a commission was properly constituted or **had exercised its functions in accordance with the statute establishing it.**”* [Emphasis mine].

77) As rightly submitted by Mr Tah for the Attorney-General, the position of the law and constitutional norm is that any provision of law which seeks to oust the courts' authority in determining issues of law are repugnant to the Constitution and to the powers granted to the judicature by Chapter 8 Part I thereof.

78) Another point that behoves me to elucidate on is the stance espoused by Mr Mene for the Applicants that when it comes to interpretation and enforcement of the fundamental human rights provisions, that jurisdiction has been expressly vested in this Honourable Court by the Constitution. So, there is no need to declare void any law that purports to oust that jurisdiction (a power that this court undoubtedly lacks), owing to the fact that by section 4 thereof, the supreme law of the land has effectively made it so by operation of law. I could not agree with him more.

79) In any event, this application is brought under section 5 of the constitution which provides under (a) & (b) as follows:

"A person who alleges that-

- (a) any Act of the National Assembly or any thing done under the authority of an Act of the National Assembly, or*
- (b) any act or omission of any person or authority, is inconsistent with; or is in contravention of a provision of this constitution, may bring an action in a court of competent jurisdiction for a declaration to that effect."*

80) The 1st Applicant also alleges an infringement of his rights under section 26 of the Constitution more particularly paragraph (b) thereof which provides:

"That every citizen of The Gambia of full age and capacity shall have the right, without unreasonable restrictions-

.....

- (b) to vote and stand for elections at genuine periodic elections for public office which elections shall be by universal and suffrage and be held by secret ballot."*

81) This Court by section 37(1) of the Constitution is indeed reposed with the power to hear and determine the contravention of the provisions of sections 18-33 and 36(5) of the Constitution. It seems to me appropriate at this point to respectfully refer to IEC as having the proverbial 'Albatross around its neck' in respect of their jurisdictional challenge. I say so because in my view, no matter from which angle one looks at it, the jurisdiction of this court to hear and determine this application is unimpeachable and I so hold. I therefore resolve issue number one in the affirmative.

82) This brings me to issues numbers two and three to wit:

Whether the Respondent, in rejecting the nomination of the 1st Applicant, as the Presidential Candidate of the 2nd Applicant in the 2021 Presidential Election Scheduled for the 4th day of December 2021, complied with the provisions and spirit of the Elections Act Cap 3:01 Laws of The Gambia?

If not, whether the rejection of the 1st Applicant's nomination as the Presidential Candidate of the 2nd Applicant contrary to the provisions of the Elections Act Cap 3:01 Laws of The Gambia is tantamount to a denial of the 1st Applicant's constitutionally guaranteed right to contest the 2021 Presidential Election as guaranteed under Section 26 of the 1997 Constitution of The Gambia?

83) To do justice to the determination of these issues it is worthwhile that I lay down the procedure for nomination and rejection of a nomination paper as laid down by law.

84) By section 37(1) & (2) of the Act, a candidate for election to the office of President, member of the National Assembly, etc and such other offices as the Commission may designate under section 3 shall be nominated in accordance with the Act. A person who desires to be nominated as a candidate for any elective office shall, before the acceptance of his or her nomination papers, satisfy the qualifications stipulated for that office in the Constitution, the Act, and any other law.

85) By section 42(1) & (2)(a) of the Act, on the date and at the place appointed for the receipt of nominations, the Returning Officer shall attend between the hours of eight o'clock in the forenoon and four o'clock in the afternoon receive the nomination of any duly qualified candidate for any vacancy to be filled. In respect of a candidate for election to the office of President, same shall be nominated in the prescribed Form 1 of Part A of the Fourth Schedule by not less than five thousand voters whose names appear in the register of voters, with at least two hundred voters being drawn from

each Administrative Area. And at (3), every nomination under subsection (2) shall be subscribed by the candidate who shall make the declaration contained in the relevant Form and by the persons nominating him or her.

86) The nomination papers are obtained free of charge from the appropriate Returning Officer at any time before the close of nominations (4) of section 42. However, by (5) & (6) the law states in mandatory terms that a person shall not subscribe to more than one nomination paper in respect of an office for which elections are to be held and further where a person subscribes to more than one nomination paper, his or her subscription shall only be effective in the case of the one which is first delivered.

87) I wish to pause here and dilate on the foregoing provisions. The Applicants aver that they submitted in excess of 290 subscriptions to their nomination paper for the Banjul Administrative Area— which is the substratum of their rejection. They aver that IEC in response to their petition stated that the difference between the 290 names that were submitted and the 115 names it alleges to be valid were either lost to candidates who submitted their forms before the Applicants or lost as a result of nullification by the IEC because of the way the forms were administered.

88) Mr Mene's position on this is that it presents two very unfair scenarios, the first being that if the 1st Applicant had been the first to submit, he would not have lost those names. Whilst he submits that the Applicants do not have any quarrel with section 42(5) or (6), he contends that if the 1st Applicant had been the first to submit, he would have had the full benefit of the names IEC said he lost to others. As such, it is his position that this implies that some candidates were at an advantage depending on the order they appear on the list.

89) Mr Sanyang for IEC on the antithetical argues that the IEC is not under any legal obligation to consult the candidates in its allocation of the dates and times of the nomination and that it prepared same without consultation with any of the parties or

candidates as this process is strictly an administrative function. Furthermore, it is not under any legal obligation to consult. Mr Sanyang contends that none of the parties or candidates raised an objection to the nomination schedule which was served on them in advance and highly publicised.

90) Now, I must say that I fail to appreciate the allegations of arbitrariness of IEC's nomination schedule. I agree with Mr Sanyang that IEC is not under any obligation imposed by law to consult the candidates or parties during the process of scheduling for nominations.

91) I say so reason because Section 42 (2)(a) prescribes the number of registered voter subscriptions needed for nomination to the Office of President. I believe this section is in existence for a reason. In my view, it pursues the legitimate aim of reducing the number of eccentric and fringe candidates vying for the highest and most important office of the land. In plain language, it means that candidates for the highest office have to be nominated by 5,000 registered voters at the least with a minimum of 200 voters being drawn from each administrative area.

92) Sections 42(6) & (7), provide for the requirement that a person shall not subscribe to more than one nomination paper and further, the effect of double subscription. Nonetheless, I am of the view that the law prescribes safeguards for any candidate that is affected by double subscription and as a consequence loses subscriptions to the candidate whose nomination paper was first delivered i.e. by the combined effects of Sections 42(6) & (7), as in this case.

93) The law avails them an opportunity to cure any defect or deficiency or non-compliance by operation of the following provisions: Section 47 of the Act under the rubric '**Rejection of nomination paper**' at sub-section (1) provides that where a Returning Officer finds, after examination of the nomination paper and other

documents that there is non-compliance with the legal requirements for the nomination of a candidate, he or she shall reject the nomination paper.

94) Thereafter, the Returning Officer is under a bounden duty to complete the form entitled '*Rejection of Nomination for Election of President*' Form 3 which is to be found at Part A to the Fourth Schedule to the Act. I deem it imperative at this stage to reproduce the said form as it appears in the Part A of the Fourth Schedule the import of which, I hope will become apparent in the course of this judgment thus:

FORM 3

Rejection of Nomination for Election of President

[Section 47 (1) (a).]

I,....., Chairperson, Independent Electoral Commission for thePresidential

Elections, hereby certify that Mr/Mrs/Miss/..... has not fulfilled all the requirements prescribed in the Constitution and Elections Act, Cap 3:01, to contest in the.....Presidential Elections.

Reasons(s) for rejection:.....
.....
.....
.....

Date

Signature of Chairperson, Independent Electoral Commission

95) Subsection (2) of section 47 in mandatory terms directs that the Returning Officer shall deliver the duplicate of the afore-reproduced Form 3 to the candidate or his or her representative.

96) The law thereafter crucially and in mandatory terms provides at section 47(3) that the rejection of a nomination paper shall be without prejudice to the delivering of a fresh nomination paper, provided that the subsequent nomination paper is delivered before the close of nominations.

97) The non-compliance with this section is the whole gamut of the Applicants' complaint before this court. The Applicants cry foul at the way and manner in which the rejection of the 1st Applicant's nomination was communicated by IEC— in a press conference, which they argue is inconsistent with section 47(3) of the Act.

98) The Applicants further aver that following the disappointing announcement of the rejection of the 1st Applicants nomination at the said Press Conference, by a Petition dated the 7th day of November 2021 (which was received by the Respondent on the 8th day of November 2021 at 9.00 am) they lodged an appeal against the decision to reject the 1st Applicant's nomination after the close of nomination on the several grounds I have reproduced herein before.

99) The Applicants furthermore aver that the rejection of nomination after the close of nominations is an act of impunity because it curtails the 1st Applicant's right to submit a fresh nomination paper and/or cure any purported defect in his nomination form which is against all standards of fairness, equity and natural justice as envisage in section 47(3) of the Act.

100) The Applicants make these averments at paragraphs 19 – 20 of the affidavit in support of the originating summons. IEC does not deny the fact that they communicated the rejection of the 1st Applicant's nomination in the manner that they did. Its justification for its alleged vagrant disregard for the procedure laid down by law as can be gleaned from their counter affidavit is mainly anchored on the fact that it made it clear to all candidates/parties to consult before or after submission of nomination papers, some parties/candidates did, the Applicants and others did not.

101) IEC also aver that It applied the same rules for the nomination of all presidential candidates and the Applicants did not before or after submission of nomination papers– during the nomination period consult to satisfy themselves that their nominations were In order.

102) With respect to IEC, these averments are of no moment and legal consequence in my considered view and cannot, by any fig of the Imagination, justify their dismal failure to comply with the spirit and letter of the Act. The law is clear and unambiguous by section 47(3) that IEC were under a bounden duty to serve the 1st Applicant with Form 3 informing him of the rejection of his nomination paper before the close of nominations on Friday the 5th day of November 2021; not at a press conference a day after the nominations had closed– thereby curtailing the 1st Applicant’s inalienable right to deliver a fresh nomination paper before the close of nominations.

103) In fact, the Applicants aver at paragraph 22 of the affidavit in support that IEC only served them with Form 3 exhibit “IC9” after the receipt of their appeal, exhibit “IC8” by 9.00 am on the 8th day of November 2021. This was after the fact and two days after the rejection of the 1st Applicant’s nomination and only because it was one of the grounds of appeal contained in their petition. IEC’s response to these averments are bare denials without more. It is trite law that bare denials without more are deemed admissions.

104) As such, I am left with no option but to surmise and find as a fact that it is as sure as the sun rises from the East and sets in the West that IEC acted against all known standards of fairness, equity and natural justice, when it the contravened sections 47(1)a), (2) and (3) by:

- I. Failing to complete in duplicate Form 3 immediately after examining the nomination paper and other documents of the 1st Applicant and finding that

same did not comply with the legal requirements for the nomination of a candidate to the office of President.

- II. Failing to deliver the relevant duplicate of the Rejection of Nomination, Form 3 in this case, to the 1st Applicant or his representative.
- III. And in consequence of I & II above, infringed upon 1st Applicant's right to deliver a fresh nomination paper before the close of nominations and I so hold.

105) It seems to me noteworthy at this point to draw attention to IEC's own document entitled **"GUIDELINES FOR THE SUBMISSION OF NOMINATION PAPERS FOR ELECTION TO THE OFFICE OF PRESIDENT"** exhibited as "IC3" to the affidavit in support of the Originating summons. IEC by paragraph 5 of their affidavit in opposition admit that they served the Applicants with this document. This guideline at page three of paragraph 8 reproduces mutatis mutandis the prescriptions contained in section 47 (1) of the Act (so far as it relates to nomination for the Office of President) and sections 47(2) & (3).

106) I will take the liberty and the pain of reproducing the said paragraph 8 of the guideline for the avoidance of doubt and the purposes of clarity:

"Where, in accordance with Section 47 of the Elections Act, a nomination paper is rejected by the Returning Officer, he will complete the form: Rejection of Nomination, specifying the reason(s) for the rejection. A duplicate of the form will be delivered to the candidate or his/her representative. The rejection of a nomination paper shall be without prejudice to the delivery of a fresh nomination paper provided that the subsequent nomination paper is delivered before the close of nominations. (See paragraph 2 above)."

107) In my judgment, the cumulative effect of IEC's wonton disregard and non-compliance with the prescription of the law and their own guidelines profoundly infringes upon the 1st Applicant's fundamental right as guaranteed under section 26(b) of the Constitution and I so hold. That is the right to stand for elections at genuine periodic elections for public office, without unreasonable restrictions. The unreasonable restrictions being the denial of the 1st Applicant his right to deliver a fresh nomination paper upon receipt of Rejection of Nomination Form (Form 3) and before the close of nomination.

108) I also find and hold that IEC's rejection of the 1st Applicant without following the due process of the law is in violation of **Article 13 of the Banjul Charter** which provides that:

"Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. "

109) I am guided on this matter by the decision of the European Court of Human Rights in the **Sultanov case (Supra)** rendered by the Court in Strasbourg on the 16th June 2016, a case of persuasive authority, commended to me by Mr. Mene. In that case, whose facts are similar to the one instant, the Applicants lodged with the Court, under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention) complaints against the Constituency Electoral Commission of in Azerbaijan which applications were consolidated. The Commission had rejected the candidacy of the applicants. The grounds of the rejection being that all candidates whose nominations as candidates for parliamentary elections were to be supported by 450 names of voters, did not meet that threshold because some of the voter signatures were invalid and the rest were lost to other candidates.

110) At the municipal courts in Azerbaijan, the Applicants failed to get redress. The European Court found that it was wrong to invalidate their candidature without availing them the opportunity to be heard. The Court held that there was a violation of Article 3 of Protocol No. 1 to the Convention which provides that *“the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”* The Court also held that the respondent State had failed to comply with its obligations under Article 34 of the Convention and ordered redress in the form of monetary damages in favour of the Applicants.

111) It is for all the reasons ante that I also resolve issues numbers 2 and 3 in the affirmative and favour of the Applicants.

112) This brings me to the fourth and final issue to wit:

Whether this Honourable Court ought not to permit a legal wrong to be without a remedy in accordance with the well-known latin maxim ubi jus, ibi remedium?

113) The well-known Latin maxim *Ubi jus, ibi remedium* – meaning ‘where there is a right, there is a remedy’, postulates that where the law has established a right there should be a corresponding remedy for its breach. The right to a remedy is one of the fundamental rights historically recognized in all legal systems. *‘The principle that rights must have remedies is ancient and venerable’*. [Donald H. Zeigler, ‘Rights, Rights of Action, and Remedies: An Integrated Approach’ (2001) 76 *Washington Law Review* 67 at 71 cited].

114) Remedies, thus, are an institutional guarantee that an obligation will be observed and enforced. Chief Justice Marshall in **MARBURY V. MADISON (1803) 5 U.S. 1**

Cranch 137, 163–66, quoting William Blackstone, Commentaries on the Laws of England, vol. 3 (1723–1780) 23 enunciated thus:

“It is a general and indisputable rule that where there is a legal right, there is also a legal remedy by suit or action at law whenever that right is invaded.... [F]or it is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper redress.”

115) A statement on this subject of respectable antiquity is to be found in the case of **ASHBY V WHITE (1703) 92 ER 126** per Lord Holt thus:

“If the plaintiff has a right, he must of necessity have a means to vindicate and maintain it, and a remedy if he is injured in the exercise or enjoyment of it, and indeed it is a vane thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal...”

116) The credibility of any legal system thus, depends on the efficacy of its remedial mechanisms through which rights and obligations are upheld. Therefore, every legal system, whether domestic or international, provides for a remedial mechanism to implement rights and obligations.

117) The Supreme Court of The Gambia in **THE YANKUBA TOURAY(Supra)** after relying on some of the articles in the Banjul charter held that:

“The Universal Declaration of Human Rights, adopted and proclaimed by the UN General Assembly Resolution 217 (A) 111 of 10th of December 1948 as a non-binding instrument but as "a common standard of achievement for all peoples and nations" and which is now widely regarded as having acquired the status of customary international law-and thus become part and parcel of the common law-was indeed the fons et origo of fundamental rights and freedoms in modern terms. The Declaration proclaims that: -

.....

And that;

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or law "(Article 8).

Like the Constitution of The Gambia, these two instruments recognize these fundamental rights and freedoms, create an obligation for the State to ensure their observance and with remedies also for violations."

- 118) I am well guided by the wisdom of the Supreme Court. Consequently, I hold that they are entitled to a remedy. However, before I proceed any further I wish to avert my mind to the issue of timelines brought to my attention by K. Tah for the Attorney General in the event I am minded granting the Applicants' third relief. His submission to that effect is well captured at paragraph [57] above.
- 119) I am however of the view that section 40 of the Act which provides for a notice to be published in the Gazette by IEC stating the date, the place for nomination of the candidates and the date of the election will not be affected by any remedy granted to the Applicants as the law does not prescribe that it should include the names of the candidates that are to contest at the same.
- 120) In the result, I resolve the final issue in favour of the Applicants. As such reliefs 1, 2 and 3 automatically succeed. However, I respect of relief number 4, its grant will be contingent upon the Returning Officer satisfying him or herself that the 1st Applicant complied with all the legal requirements and his acceptance of the fresh nomination paper.

121) On the claim for legal and administrative costs of D200,000, exhibits 'IC11' and "IC12" are an invoice and a receipt issued for half of the amount on the invoice by Applicants' Legal Practitioners. The invoice indicates the sum of D200, 000 (One Hundred Thousand Dalasi) as the total due in respect of legal fees. Legal fees are necessary expenses incurred by any litigant in the process of bringing a suit to court unless the legal services are offered pro bono. The Applicants in my view are entitled to recover the same in the circumstances.

122) Before I close the curtains in this judgment, it is it is worthwhile emphasising that the decision of this Court should not be seen as re-opening the nomination process at all or delaying the Presidential Election slated for the 4th December 2021, it is not and should not be construed as such. This court has no power or authority to postpone the impending elections in these proceedings.

In the final analysis I hereby grant the following reliefs

- (1) It is declared that the Respondent failed to comply with the provisions and spirit of the Elections Act Cap 3:01 Laws of The Gambia in the procedure it adopted in the rejection of the nomination of the 1st Applicant as the Presidential Candidate of the 2nd Applicant in the 2021 Presidential Election of The Republic of The Gambia scheduled for the 4th day of December 2021.
- (2) It is also hereby declared that the rejection of the 1st Applicant's nomination as the Presidential Candidate of the 2nd Applicant in the circumstance is null, void and of no effect for being in violation of the provisions and spirit of the Elections Act Cap 3:01 Laws of The Gambia and therefore tantamount to a denial of the 1st Applicant's Constitutional right to contest the 2021 Presidential Election as guaranteed under Section 26 of the 1997 Constitution of The Gambia.

- (3) It is ordered that the Applicants are entitled to submit an additional list of names and signatures of Registered voters for the Banjul Administrative Area, having regard to the fact that the 1st Applicant only had notice of the rejection of his nomination contrary to the spirit of Section 47(3) of the Elections Act Cap 3:01; which invariably amounts to a denial of his right to deliver a fresh nomination paper and/or cure any defect in his nomination form which is in consonance with all known rules of fairness, equity and natural justice as envisaged in Section 47(3) of the Elections Act Cap 3:01.
- (4) It is hereby directed that the Applicant be permitted to submit the additional list of names and signatures of Registered voters for the Banjul Administrative Area (**exhibit "IC7"**) to the Returning Officer who shall first be at liberty to satisfy himself or herself that all constitutional and other legal requirements have been met in accordance with section 46 of the Act.

It is only thereafter and upon service of Form 2 of Part A of the Fourth Schedule to the 1st Applicant or his representative that the 1st Applicant shall be entitled to continue to participate in the election process leading up to the Presidential Election scheduled for the 4th day of December 2021 in enjoyment of his Constitutional right under Section 26 of the 1997 Constitution.

(5) I award Legal fees of D200,000.00 in favour of the Applicants.

(6) I make no order as to costs.

This is my judgment. I remind the parties of their right to appeal.

.....
HON. JUSTICE AMINA S. CEESAY
JUDGE

23rd day of November 2021

ISSUED AT BANJUL UNDER THE SEAL OF THE COURT AND THE HAND OF THE PRESIDING
JUDGE ON THE 23rd DAY OF NOVEMBER 2021


.....
REGISTRAR