

the appellant appealed to this Court. The memorandum of appeal contained 15 grounds of appeal which were condensed into 2 grounds as follows:

1. *Whether or not the appellant was denied the opportunity to provide all the evidence in support of the petition.*
2. *Whether or not the first respondent had the minimum academic qualifications to be elected a Member of Parliament at the time of nomination.*

At the hearing, the first ground of appeal was however reframed as follows:

The learned trial Judge erred when he did not take into account the evidence of Mukonyezi Paul and Akugizibwe Mary in the determination of the petition..

Representations

Mr. Ngaruye Ruhindi Boniface represented the Appellant while Mr. Geoffrey Kandebe Ntambireweki & Ms Christine Ntambireweki represented the Respondents.

Duty of the Court

This is a first appeal. Rule 30 (1) (a) of the Judicature (Court of Appeal Rules) Directions (S.I. 13-10 hereinafter referred to as “the Rules of this Court”) provides:

- “... (1) *On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may—*
- (a) *reappraise the evidence and draw inferences of fact; and in its discretion, for sufficient reason, take additional evidence..”*

This provision was further amplified in the election petition of **Mugema Peter V Mudiobole Abedi Nasser Election Petition Appeal No. 30 of 2011** where it was held that:

5 *“... on first appeal, an appellant is entitled to have the appellate court’s own consideration and views of the evidence as a whole and its own decision thereon. The first appellate court has a duty to re-hear the case and to consider the materials before the trial judge. The appellate court must then make up its mind by carefully weighing and considering the evidence that was adduced at trial...”*

10 It is also necessary to bear in mind that in an election petition, the bulk of the evidence is adduced by affidavit. In this regard the Justices in the **Mugema Peter case (supra)** further held:

15 *“...The duty of a first appellate court to re-appraise or re-evaluate the evidence applies to both oral testimony of a witness as well as to affidavit evidence where the deponent is not cross-examined on the evidence in court, the issue of demeanor of a witness does not arise...the court ought to have cautioned itself that in re-appraising and re-evaluation the evidence adduced at trial, regard must be had to the fact that witnesses, though not necessarily always, tend to be partisan in supporting their candidates against the rivals in the election contest. This may result in deliberate false testimonies or exaggerations and to make the evidence adduced to be subjective. This calls upon*
20 *court to have the authenticity of such evidence to be tested from an independent and neutral source by way of collaboration...”*

Burden and Standard of proof

The **Mugema Peter case (supra)** also sets out what the burden and standard of proof is in election petitions as follows:

“...the burden of proof lies on the petitioner to prove the assertions in the election petition and the standard of proof required is proof on a balance of probabilities according to Section 61 (1) and (3) of the Parliamentary Elections Act...Though the standard of proof is set by the statute to be on a balance of probabilities, because of the public importance of an election petition, the facts in the petition must be proved to the satisfaction of the court. A petitioner has a duty to adduce credible and/or cogent evidence to prove the allegations to the stated standard of proof...”

With the above position of the law in mind, we shall now proceed to resolve the grounds in this election appeal.

10 Ground 1:

The learned trial Judge erred when he did not take into account the evidence of Mukonyezi Paul and Bamukugize Mary in the determination of the petition.

Arguments for the Appellant

15 Counsel submitted that the trial Judge failed to pronounce herself on an application made by the appellant seeking orders that the appellant’s two witnesses namely, Mukonyezi Peter and Bamukugize Mary be brought for cross-examination and an order for leave be granted to submit into evidence, certified copies of the baptism register from Ntuntu catholic
20 Arc-deaconary.

Counsel further submitted that failure to consider the said evidence on record prejudiced the appellant because the trial Judge did not wholly evaluate the appellant’s evidence.

It is the case of the appellant that the first respondent was not who she
25 claimed she was because she had in reality been baptized Kazirwemu

Doreka in the Protestant church not the Catholic Church as she claimed. That the first respondent was not therefore Azairwe Dorothy as she claimed.

5 Counsel argued that it was important that the court issues summons to have the said independent witnesses produced in court and examined in order to properly identify the identity of the first respondent.

10 It is the case for the appellant that the production of the baptism register from the parish would contradict the contents the second page of the Baptism card attached to the affidavit of the first respondent and show that it was not genuine.

Counsel also submitted that through the application that was denied by the Trial Judge, the appellant had intended to compel the first respondent to produce the original document which was in her possession and show that the copy annexed to the affidavit was forged.

15 Counsel submitted that the probative value of the baptism register would have been that one Azairwe Dorothy was an entirely different person from the first respondent. Counsel for the appellant submitted that the real Azairwe Dorothy had studied at Kitagwenda High School where she obtained an O' level certificate.

20 Counsel for the appellant submitted that court should have disposed of the said application regardless of whether it thought that the application was flimsy, frivolous or otherwise; instead of just ignoring it.

He prayed that this ground as reframed be allowed.

Arguments for the Respondents

Mr. Kandebe, counsel for the respondents opposed the appeal first on behalf of the Independent Electoral Commission, (the 2nd respondent) submitting that this appeal raises no cause of action against the 2nd respondent and so there was no reason why the 2nd respondent should have been joined to this appeal.

Counsel argued that the 2nd respondent's mandate during the election was to look only at the A' level certificate of the first respondent, (the minimum academic qualification), which it did and found the certificate to be genuine. It was therefore misconceived for the appellant to allege that the 2nd respondent nominated a person who didn't possess the minimum academic qualifications to contest for election of the Parliamentary seat for Woman Member of Parliament for Kamwenge District.

Counsel for the respondent further argued that it had even been agreed in the lower Court that the first respondent's A' level certificate from her school at Kampala SSS was genuine and not disputed.

He therefore submitted that the appeal against Electoral Commission be dismissed with costs since there is no issue that arises against the 2nd respondent.

With regard to the said application for additional evidence, Counsel for the respondents submitted that the application was unknown to them right up to the time the said hearing in the High Court ended on 22nd May 2016.

He further submitted that the Notice of Motion referred to by counsel for the appellant was never served upon them or fixed for hearing. In this regard, Counsel further pointed out that the lawyers who had drawn and

filed the said Notice of Motion M/s KRK and Co. Advocates are strangers to these proceedings and were never on Court record.

It was also submitted that under the rules for professional conduct for advocates a new advocate could not take over the conduct of a matter
5 handled by another lawyer without first giving notice of change of instructions or instructions; and there was no evidence of such change on record in this case.

Counsel further submitted that the affidavit of Bamukigize was naturally struck out for lack of cross examination because she was not availed before
10 close of proceedings. Counsel then prayed that this amended or consolidated ground by counsel should be rejected since it is so unfair.

Court Resolution

We have studied the record of appeal about the said application. At page
15 214 & 215 of the record of proceedings in the High Court, Mr. Musana then counsel for the petitioner, at the close of the petitioner's case orally made the application to consider Mukonyezi's affidavit. The record reads as follows:

“*Mr. Musana: I close my case. I have a request that one Mukonyezi has sworn an
20 affidavit in respect of that affidavit (sic) that affidavit was filed and served. I pray for late service so that the witness is called to testify.*

Mr. Kandebe: I object. first respondent was not served.

*Court: The order is made that the first respondent be served and is hereby served with
25 the said affidavit. Any rejoinder be filed but in event there is a rejoinder, cross examination proceeds.*

Mr. Kandebe: I will put the witness in the dock in the next 20 minutes. I seek short adjournment.

Signed (Judge)

21/5/2016

5 *21/5/2016 - 4:30*

Court as before

Court: The petitioner allowed to call a witness who was not earlier cross examined because the affidavits were never served to the respondent. In the interest of justice, to conclusively solve the case the petitioner is allowed to call the witness.”

10 The record also shows at pages 215-217 the detailed testimony of PW5 Mukonyezi Paul given upon cross-examination and re-examination. Essentially, the evidence of the said witness was to the effect that he is related (cousin) to the first respondent and so, he knew her as Kazairwemu Doreca and not Azairwe Dorothy.

15 However, in his evidence Mukonyezi Paul denied knowledge of many vital facts which in our view rendered his evidence unreliable. For instance, he states that he did not know the surname of the first respondent’s husband and how the first respondent had come to use the name Nshaija or Dorothy. Mukonyezi also stated that he did not know by what names the
20 first respondent was baptized in 1984 and that he was not the one who investigated if the first respondent ever completed her school at Kitagwenda. That he did not know by what names the first respondent was admitted at Kitagwenda S.S.S. Mukonyezi also admitted that the some contents of his affidavit were added in it by the petitioner and her
25 lawyers and he noted stated as such.

We find therefore that the trial Judge admitted and properly considered the affidavits of Mukonyezi Paul and Bamukigize Mary and weighed their evidence against other evidence on record. At page 5 of the Judgment, the trial Judge held:

5 *“...It appears that two of the affidavits in support Mukonyezi Paul dated 11th April 2016 and Bwomezi Elizeusi dated 11th April 2016 were never effected onto the respondents. This notwithstanding, upon persistent instance of the petitioner herself, the court reluctantly allowed the petitioner’s witness, deponent Mukonyezi Paul to be cross examined in order to conclusively resolve all matters in dispute. The said*
10 *Mukonyezi Paul had sworn an affidavit in the matter and besides, the respondents had no objection to the said petitioner’s witness being called for cross examination as it turned out to be the case...”*

We find that notwithstanding the procedural defects surrounding Mukonyezi’s affidavit, the trial Judge admitted his affidavit and allowed
15 him to be cross-examined and re-examined upon his affidavit. We also find that the trial Judge rightly evaluated Mukonyezi’s evidence in relation to other evidence on record and decided against it. It is therefore erroneous and strange for the appellant to allege that the trial Judge disregarded Mukonyezi’s evidence.

20 In evaluating the evidence of Bamukugize Mary, the trial Judge held thus:

“M/s Bamukugize Mary deponed an affidavit on behalf of the petitioner in the capacity of a friend of Winfred Kihembo. Deponent Bamukugize Mary averred in paragraph 6 & 7 that she was informed by Winfred Kihembo that her mother was Azairwe Dorothy who has since passed on. On the other hand, Winfred Kihembo
25 *deponed an affidavit on behalf of the first respondent whereby she disputes paragraph 8 (ix) of the petitioner’s affidavit in rejoinder above.*

According to paragraph 8 of Winfred Kihembo's affidavit, *'it is not true that my mother was known as Azairwe Dorothy as the Azairwe Dorothy I know is my paternal aunt, the current Woman Member of Parliament, Kamwenge District.'*

5 'What is more, in paragraph 4, Kihembo states that,

"I don't know the said Bamukigize Mary and she is neither my friend nor my relative"

For yet unexplained reasons, the petitioner could not present the purported Bamukigize Mary for cross-examination of the respondents, upon request thus
10 rendering the affidavit evidence of Bamukigize Mary significantly unreliable."

During the hearing of this appeal, counsel for the appellant informed this Court that on the day Bamukugize Mary and Mukonyezi Paul were supposed to appear in Court to be cross examined on their affidavits, they were arrested and detained. There is another affidavit on record by
15 Bamukugize Mary outlining these events. This seems to be the affidavit the appellant's counsel claims was not taken into consideration by the trial Judge.

In the same vein, we find that notwithstanding failure of Bamukigize Mary to appear for cross- examination, the trial Judge rightly took into
20 consideration the contents of Bamukigize's affidavit as she was obliged to do. The trial Judge tested it against the evidence of Kihembo only to find that Bamukigize's evidence was watered down by Kihembo's evidence disputing allegations that Kihembo was the biological daughter of the first respondent whom she conceived while at school while at Kitagwenda
25 S.S.S. this forcing her to drop out and fail to complete her studies.



We answer this ground of appeal in the negative and find no merit in it. It thus stands dismissed.

Ground 2:

The appellant had alleged that the first respondent did not have an O' level certificate and that therefore the documents that were
5 *subsequently obtained were wrongfully obtained.*

Arguments for the Appellant

Counsel for the appellant contended that the evidence as presented by the appellant and all her witnesses were pointing to the fact that the first
10 respondent didn't possess an O' level certificate and therefore there was no basis upon which she would have been admitted to the other academic institutions to further her education. Counsel further contended that although the first respondent was claiming that she is the Azairwe Dorothy who studied at Kitagwenda High School, the O' level certificate
15 that was paraded belonged to Azairwe Dorothy who is someone else.

Counsel referred to the first respondent's evidence during cross-examination where she stated that she joined Kitagwenda High School in Senior Two in the year 1988 and argued that if she joined in senior two in 1988, she would be expected to be in senior four in 1990 and to have done
20 the "O" Level exam of 1990 not 1991.

Counsel argued that since the first respondent's academic qualifications were being questioned by the appellant, the evidential burden to prove that the documents were genuine had shifted to the first respondent but that she had failed to discharge the said burden. She for example failed to
25 explain whether she had repeated a class or dropped out of school for whatever reason to account for the lost year, which raises doubt as to the authenticity of the O' level certificate.



Counsel further questioned two different documents showing two different set of subjects for the same year referring to the same person and pointed out that there is controversy regarding the two documents because one referred to the school as **Kitagwenda High School** and the
5 other **Kitagwenda Secondary School**.

Counsel also submitted that there is evidence that Azairwe Dorothy is deceased and that the first respondent dropped out in senior three when she became pregnant and did not complete Senior Four (O' level). Counsel for the appellant further submitted that notwithstanding the
10 contradiction that her academic certificates show that the first respondent sat her O' levels at **Kitagwenda Senior Secondary School** while her identity card shows that she attended **Kitagwenda High School**, the first respondent went to none of the two schools.

Counsel also submitted that it is impossible for the first respondent to
15 have been born on 15th of December 1974 as seen from the birth certificate of 2010 and be baptized on 20th of August 1984 when she was 13 years old according to the baptism card on record.

Regarding the inconsistency in the first respondent's names, counsel submitted that at A' level, the first respondent abandoned the name
20 Azairwe Dorothy and introduced a new name Kabaraitnya. In this regard she swore about five different statutory declarations which are very contradictory.

Counsel argued that when a witness gives an oral testimony that contradicts his or her own affidavit, then the evidence of that witness
25 should be rejected and in this regard he invited this Court to reject the evidence of the first respondent as a whole for being contradictory. In particular, he pointed to the evidence relating to religion and academic

qualifications. Counsel stressed that the evidence of the first respondent cannot be relied upon since her academic certificates are completely suspect and prayed that this appeal succeeds.

Arguments for the Respondents

5 In reply, counsel for the respondent submitted that in the High Court, the only contentious issues were the identity and presence of the first respondent at Kitagwenda High School but not the genuineness of the A' level certificate from Kampala SSS. Counsel for the respondent however submitted that was resolved by a letter dated 26th March 2016 from the
10 Examination Board UNEB through CID attached to the first respondent's petition which confirmed that the UCE and UACE certificates submitted by Azairwe Dorothy (1991) and Azairwe K. Dorothy (1995) are authentic documents with genuine results.

Counsel alluded to para 5 of the affidavit of one Nuwamanya Sunday, the
15 Deputy Headmaster and teacher at Kitagwenda High school where he states that he knew the first respondent Azairwe Dorothy the Woman MP for Kamwenge District as a former student at Kitagwenda High school having first met her in 1994 while she was studying A' level at the same school. Counsel added that this witness appeared in court for cross
20 examination but the petitioner's counsel declined or found no use to cross examine him notwithstanding that he had applied and obtained leave to do so.

Counsel elucidated that according to the O' level results printout of the year 1991 attached to the first respondent's affidavit in rejoinder, all results
25 coming from UNEB showed school index number 148 as Kitagwenda High School. He further explained the first appellant's school name all along

was Kitagwenda High school notwithstanding that the results slip showed Kitagwenda Secondary School.

Counsel also referred to the print out of results of 1994 where the first respondent was in A' level with another witness Hon. Choma (who appears on the same sheet of results) who also swore an affidavit in support of her. Hon. Choma was cross examined in court and confirmed that the first respondent was her classmate in 1994 at Kitagwenda High School. Counsel also pointed out that although the school was referred to as Kitagwenda Secondary School and at other times as Kitagwenda High School, the School's Deputy Headmaster testified that centre number U0148 for the two names is the same namely U0148.

Regarding the first respondent's presence at Kitagwenda for O' level, counsel for the respondent, referred to the affidavit of Abenaitwe Andreda, currently the headmistress of Bishop Barya Girls Secondary School Kamwenge which was to the effect that she was a classmate of the first respondent from 1989-1991 at Kitagwenda High school. Counsel also pointed to the affidavit of Busingye Crescent who taught both at Buryasunge SS and Kitagwenda High School in 1988 which was to the effect that the first respondent studied both O' level and A' level at Kitagwenda High school and continues to interact with her to date.

Counsel argued that even Mukonyezi Paul, an adverse witness states in para 4 of his affidavit that in the late 1980's and early 90's the first respondent enrolled for O' level at present day Kitagwenda High school which was then known as Kitagwenda SS.

Counsel for the respondent submitted that the question as to whether there was another Azairwe Dorothy who purportedly gave birth to a daughter named Kihembo (leading to Azairwe dropping out from school),

there is the evidence of Kihembo herself disputing this claim by the petitioner's and Bamukigize'.

Counsel also discredited the evidence/ affidavit of one, Bitariho who claimed to have gone to Ntutu Archdeaconry Church of Uganda to verify the baptism of the first respondent as an Anglican. That in cross
5 examination Bitariho denied ever inspecting the records at Ntuntu since it was not his church. In same vein, counsel submitted that the documents of Ntutu Church of Uganda which had been attached to Bitariho's affidavit as a result of this cross examination remained hanging because there was
10 no witness who could testify as to their authenticity and what they were trying to attest to.

Counsel relied on the case of **Matsiko Winifred Komuhangi Vs Winie Babihuga Election Petition Appeal No. 9 of 2002** where it was held that where a witness denies the contents of his own affidavit, such evidence
15 cannot be taken as credible and where two witnesses of the same side are contradicting each other, none of the witnesses should be believed.

Counsel also cited the case of **Col. (Rtd) Besigye Kizza vs. Museveni Yoweri Kaguta & Electoral Commission, Supreme Court Election Petition No. 1 of 2001**, it was generally agreed and accepted by the Court
20 that a petitioner in filing a petition cannot rely on hearsay evidence but he is under duty to bring the direct witnesses who could prove directly those statements. However in this case the affidavit in support of the petition and the affidavits in rejoinder are all hearsay. Counsel then submitted that the appellant failed to bring credible witnesses to support her case as to
25 what she was alleging in the petition.

As to the change of names, counsel for the respondent submitted that the first respondent explained how the initial "K" became part of her name.

She testified that was an addition of her father's name Kabaraistya and the appellant has not cited any rule to that at A' level one cannot add another name. Counsel submitted that the law governing registration of births and deaths is to the effect that where one has not registered their birth, a deed
5 poll is unnecessary as this only applies where a name had already been entered in the register. In his view, there is no evidence to show that the first respondent would have needed to go through the processes of change of names.

Counsel for the respondents submitted that the appellant failed to prove
10 her petition since it was speculative and that the first respondent proved that she is the true owner of the O' level certificate obtained from Kitagwenda High School known in UNEB as Kitagwenda SS.

Counsel therefore prayed that this ground and consequently the appeal be dismissed with costs.

15 **Court's resolution**

We are grateful for the submissions of both counsel and the authorities cited.

Like the trial Judge rightly stated, in a nutshell, the contention by learned
20 counsel for the appellant (petitioner) is that Azairwe Dorothy who completed UCE and UACE from Kitagwenda High School is not the same person as Azairwe K. Dorothy who subsequently completed A' level and obtained the UACE certificate of March 1995 from Kampala Secondary School.

We find that this contention stems from the disparity in names used by
25 the first respondent in her UCE and UACE Certificate. However, the actual authenticity of her A' level certificates from Kitagwenda High School and Kampala Secondary School are not in contention and the

genuineness of the UCE “O” Certificate from Kitagweda High School is also not disputed. The identity of the first respondent is therefore put to test as to whether she was the same person who sat for and obtained a UCE (O’ level) Certificate in 1991 from Kitagwenda Secondary School as
5 Azairwe Dorothy under Index No. U0148/015.

It is a legal requirement under Article 80(1) of the Constitution and Section 4 (1) of the Parliamentary Elections Act, No. 17 of 2005 that a candidate vying for election as a Member of Parliament must possess a minimum formal education of Advanced Level standard or its equivalent.

10 According to the record, the petitioner and her witnesses alleged among others the following:

- i. That the first respondent was given the name Kazairwemu Doreca at birth and baptized in the Catholic Church with those names.
- ii. That the first respondent got pregnant in Senior three at Kitagwenda
15 High School and dropped out of school and failed to complete her studies. That she gave birth to a one, Winfred Kihembo.
- iii. That the first respondent used another person’s UCE papers in the name of Azairwe Dorothy who attended Kitagwenda High School but is since deceased.

20 In our view, the trial Judge considered all of this evidence and weighed it against the first respondent’s evidence and came to the conclusion that there was no merit in the appellant’s allegations. We note that the petitioner herself could not support her very averments, for instance, the death of the other “Azairwe Dorothy” and admitting not to personally
25 know the “Azairwe Dorothy” alleged to be the true owner of the UCE Certificate from Kitagwenda.

In view of the evidence on record, the first respondent joined Kitagwenda High School indicated in the “O” level certificate as Kitagwenda SS in 1989.

The record also shows that the first respondent sat “O” level as Dorothy Azairwe together with Ms Abenaitwe Adreda (who deponed an affidavit that she sat the exam in the same year as the first respondent at
5 Kitagwenda High School). As pointed out by counsel for the respondent, there were two teachers who placed Azairwe Dorothy at Kitagwenda High School.

Her alleged daughter said to have been born of the first respondent named
10 Kihembo herself swore an affidavit to the effect that her mother was Ms Stella Maris Kushemererwa commonly known as “*Kajanjabi*” who was a daughter of Mr. and Mrs. Mutabazi, an uncle of the first respondent. Kihembo also stated that she was born on first October 1985 long before the first respondent went to Senior One. The trial Judge also took judicial
15 notice of the fact that the first respondent could not be the biological mother of Kihembo at the apparent age of 12 years. This evidence was corroborated by the Rev. Baryabuza Leo (who also baptized her), a neighbour and knew the families of the two brothers (namely the father to *Kajanjabi* and first respondent’s father).

20 The first respondent on the other hand during cross examination satisfactorily explained that she was the same person who studied from Kitagwenda High School and later went to Kampala Secondary School in August 1994 and repeated her “A” Levels in Senior 6 because she had not performed well at “A” Level while at Kitagwenda (so she did not use those
25 results).

In her judgment, the trial Judge went on to consider and evaluate each witness’ evidence as submitted by counsel for the respondents. We agree

with her findings. Ultimately, the burden of proof lay on the appellant to prove to the satisfaction of court that the said Azairwe Dorothy lacks the requisite academic qualifications which is minimum of "A" level because the academic certificate she possessed in this regard, belonged to
5 somebody else.

We find that the evidence adduced by the appellant was insufficient to satisfactorily discharge the above burden of proof which rested upon her.

Regarding the disparity in names, the first respondent swore statutory declarations explaining that the addition of the name "Kabaraistya" and
10 the name "Nsaija". The first name was that of her father and the second was that of husband. As rightly submitted by counsel for the respondents on the issue of her husband's name, there is no requirement that a person should swear a deed poll upon marriage. We agree that use by the first
15 appellant of her husband's name does not amount to changing her name but rather adopting her husband's name.

In the case of *Mutembuli Yusuf vs Nagwomu Moses Musamba & Electoral Commission, Court of Appeal EPA No. 43 OF 2016*, this Court had to occasion to decide upon a similar issue. In that case, the appellant's (petitioner) contention was that the first respondent therein
20 could not have obtained valid qualifications at A' level and/ or University because the same were based on an O' level certificate that belonged to someone else. The only factual evidence before Court to prove this fact was the disparity in names between the names on that "O" level certificate and those now being used by the first respondent. The "O" level certificate bore
25 the name *Musamba Moses* whereas he was currently known as *Nagwomu Musamba Moses*. This Court held that:

“In our humble view, interchanging of names, that is, writing of the same name in a different order cannot affect one’s qualifications. That in itself cannot be proof that, because the order of names on one certificate differ from another certificate therefore, that certificate is invalid or the holder must be a different person. That would be
5 absurdity that the law cannot permit. In this particular case the first respondent did not change his name but simply added his father’s name on his own names.

In Supreme Court Election Petition No. 1 of 2001 the names of the parties were set as follows:

Col (Rt) Dr. Besigye Kizza (Petitioner) -vs- Museveni Yoweri Kaguta
10 (Respondent)

This is how the order of the names were written upon nomination and the same order was used through the 2001 election. In 2011 elections the same person’s names were set as follows Besigye Kifefe Kiiza, Yoweri Museveni Kaguta. In 2016 the presidential elections, the above person’s names were set out as follows: Kizza Besigye Kifefe and
15 Yoweri Kaguta Museveni

We now know that the order of the names of those parties have been changing almost on every election at the instance of the Electoral Commission. We do not agree with the proposition that the order of names would have any effect on the candidate’s academic qualifications on their own. More evidence must be adduced to prove to the
20 satisfaction of the Court, that a person who sat and obtained certain academic qualifications is not the same person who was nominated for election. In this case the only evidence presented was that of discrepancy in names. That discrepancy was ably explained away by the first respondent when he proved that he had only added his father’s name onto his own names.

This is what Shakespeare wrote in his book *Romeo and Juliet* “what is in a name? A rose by any other name would smell just as sweet!””

As to the alleged change of names, we agree with counsel for the respondents that the first respondent ably explained how the initial “K.”
5 was an addition of her father’s name Kabaraistya. Therefore, this is not a change of name, but a simple addition.

The law governing registration of births and deaths is to the effect that where one has not registered their birth, a deed poll is unnecessary as this applies where a name had been entered in the register.

10 Counsel for the appellant relied on the case of *Hon. Otada Sam Amooti vs. Taban Idi Amin, EPA No. 93 of 2016* where the disparity in the first respondent’s name was held to amount to a change of name which required that such change ought to have been done in accordance with the law. In that case, the first respondent was nominated as *Taban Idi Amin*, the
15 academic documents relied on at the time of nomination bear the name *Taban Idi Amin*, the National Voters’ Register bears the name *Idi Taban Amin Tampo*, he was declared and gazetted as *Tabani Idi Amin*, the Result Tally sheet indicates the name *Tabani Idi Amin*, the National ID bears the name *Idi Taban Amin Tampo* and his passport bears the name *Idi Taban Amin*. The
20 Court then held that if he (first respondent) intended to adopt the name *Idi Taban Amin Tampo*, who was the Registered Voter, then he should have followed the requirements of Section 36 of the Registration of Persons Act.

The *Hon. Otada Sam Amooti* case (*supra*) cited by counsel for the appellant however does not apply to the instant case since the
25 circumstances differ. We have already held that the disparity in the first respondent’s name is not a change of name, but a simple addition of the

name *Kabaraistya* initialed as “K.” on the A’ level certificate from Kitagwenda High School and Kampala Secondary School.

It is our finding, having re-evaluated the evidence on record, the appellant failed to prove that the disputed UCE certificate in the names of Azairwe
5 Dorothy from Kitagwenda High School belong to someone other than the first respondent.

We thus dismiss this ground having found no merit in it.

FINAL RESULT

Before we pronounce ourselves on the final result, we need to express
10 concern on the filing of election petitions where the petitioners only raise discrepancies after an adverse result and not before the election is held. It is equally disheartening to file an election petition when there is a clear explanation for the basis and or the cause of action for the election petition. We in particular commend counsel for the respondent for his
15 courtesy to court and thoroughness in proving clear explanations to each and every allegation against his client.

Having dismissed all the grounds of appeal, we hereby as a result also dismiss this appeal with costs to the respondent in this Court and the Court below.

20 We so order.

Dated at Kampala, this29..... day ofNovember..... 2017.

HON. JUSTICE KENNETH KAKURU

Justice of Appeal

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HON. JUSTICE GEOFFREY KIRYABWIRE

Justice of Appeal

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HON. JUSTICE F. M. S. EGONDA NTENDE

Justice of Appeal

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29/11/17

Counsel for both parties are absent.

Appellant is in court.

1st Respondent is in court.

2nd Respondent is absent.

de Matsang^a Melisa

Court Judge read out the

Court to the parties by

D/12 Eska Nambagg.



29/11/17