

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

ELECTION PETITION APPEAL NO.0050 AND 102 OF 2016

ARISING FROM ELECTION PETITION NO. 004 OF 2016

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1. WAKAYIMA MUSOKE NSEREKO }
2. ELECTORAL COMMISSION }APPELLANTS

VS

KASULE ROBERT SEBUNYA:.....RESPONDENT

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CORAM: HON. MR. JUSTICE S. B. K. KAVUMA, DCJ

HON. MR. JUSTICE BARISHAKI CHEBORION, JA ✓

HON. LADY JUSTICE HELLEN OBURA, JA

JUDGEMENT

15 **Introduction**

This is a consolidated Election Petition Appeal arising out of the Judgment of Vincent Okwanga, J, delivered on the 20th day of July, 2016 in which he nullified the election of the 1st appellant as the Member of Parliament, Nansana Municipality, **WAKISO DISTRICT** and made the following orders;



1. The petitioner having polled a total of 23,415 (twenty three thousand four hundred fifteen) votes as against the first respondent's 25,053 (twenty five thousand fifty three votes) and coming second (runner up) in that election is hereby declared duly elected as directly elected
5 Member of Parliament for Nansana Municipality Constituency.

2. All other claims of the Petitioner's agents being chased away from polling stations, not being allowed to sign the Declaration of Results Forms, or being required to sign the same before vote counting and
10 closure of polling and alleged alteration and falsification of results, I do not find any plausible evidence of such claims. They are accordingly disallowed.

3. The petition is hereby allowed with costs, which shall be borne out
15 equally between the 1st respondent and the Electoral Commission the 2nd respondent.

4. A certificate of two Counsels is hereby granted in respect of the
Counsels who appeared for the petitioner.

20 **Background**

The facts giving rise to this Appeal as set out before the trial Judge are that the Petitioner, Kasule Robert Ssebunya, was one of the six candidates who contested for the Nansana Municipality Constituency, Wakiso District in the February 18th 2016, parliamentary elections in which the 1st respondent

(now 1st appellant) emerged winner with 25,053 votes. The 2nd respondent (now 2nd appellant) declared and gazetted the 1st appellant as the winner with 25,053 votes and the respondent was the runner-up with 23,415 votes after the final tally.

5 During the tallying process, the Declaration of Results (DR) Forms for twenty four (24) polling stations within the constituency were found missing from the respective tamper proof envelopes and sealed black boxes. The Returning Officer, Wakiso District canceled the results from the twenty four (24) affected polling stations and their results were not included in the final
10 tally.

The petitioner filed the Petition challenging the election of the 1st appellant alleging that the 1st appellant was nominated irregularly because he was not a registered voter as his name did not appear on the voter's register and he
15 did not possess the formal minimum educational qualifications of Advanced Level Standard or its equivalent. To him, the election was null and void or invalid as it contravened **Article 80(1) (b) & (c)** of the Constitution. He paraphrased his grievances thus;

- i. That the first respondent, who was nominated as **Wakayima Musoke Nsereko** is not a registered voter and that his name does not appear
20 on the voter's register.
- ii. That the first respondent does not have the required formal minimum education of Advanced Level Standard or its equivalent.



iii. That the first respondent presented academic papers of another person, **Musoke Hannington** issued to him on 14/10/2015 by the Uganda National Examinations Board (UNEB).

iv. That the first respondent was nominated as **Wakayima Musoke Nsereko** and the academic documents presented in support of his nomination are in the names of **Musoke Hannington**.

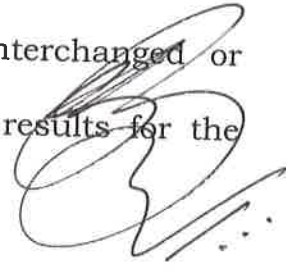
v. That the first respondent who is known as **Wakayima Musoke Nsereko** is impersonating **Musoke Hannington** and fraudulently trying to assume another person's name in order to use his academic results and qualifications for the Ordinary and Advanced levels education.

The Petitioner further contended that the 2nd appellant who is a body duly mandated to conduct elections in compliance with the law, breached its mandate when it failed to bar the 1st appellant from participating in the elections of 2016 as required by the Constitution, the Electoral Commission Act and the Parliamentary Elections Act and detailed his complaints before the trial court as follows;

a) That the electoral process in Nansana Municipality Constituency during the voting, counting and tallying of votes was unfair, lacked transparency and contrary to the provisions of the Constitution, Electoral Commission Act and the Parliamentary Elections Act.



- b) That, contrary to section 12(1)(e) and (f) of the Electoral Commission Act, the 2nd respondent failed to ensure that the electoral process was free and fair and conducted under secure conditions, when;
- c) The petitioner's agents were chased away from the polling stations; and they were not allowed to sign Declaration of Results (DR) forms after the elections.
- d) The Presiding officers (PO) required agents to sign before vote counting and close of polling, contrary to the law.
- e) The Presiding Officers altered and falsified results they had declared at polling stations on the DR Forms in favor of the 1st respondent.
- f) The Returning Officer (RO) tallied different results from those on the DR Forms in favor of the 1st respondent.
- g) The 2nd respondent hired incompetent persons to preside over the elections and the election results were entered in the Luganda language instead of English.
- h) That the 2nd respondent employed the 1st respondent's employees at the Nansana Town Council as Presiding Officer(s) in the constituency.
- i) That contrary to Sections 51, 53, 76, and 78 (a) of the Parliamentary Elections Act, 2005, the 2nd respondent's officers did not transparently tally the results and some of the results were interchanged or switched, altered or falsified by different or wrong results for the candidates on the DR Forms.



j) That the Returning Officer used the first respondent's DR Forms which had been falsified and claimed that over thirty (30) DR Forms were missing.

k) That different and falsified results were entered on the result tally sheet and DR Forms have continued to change as follows (sic); at the time of declaration of the 1st respondent, he was declared winner with 22,292 votes (initially) and in the Gazette of 03/03/2016 the 1st respondent has 25,053 votes.

l) The Returning Officer failed to declare or include results of over 24 polling stations and failed to give any explanation for the non-inclusion of the said results, which wrong, falsified results tallied, gave the 1st respondent victory unfairly, and he should not have been declared a winner, and above all, he is not a registered voter, nor possess the minimum academic qualifications. (Sic)

In his Answer to the Petition filed on 04/04/2016, the 1st respondent denied the claims by the petitioner challenging his nomination as a candidate and subsequent declaration as the winner by the 2nd respondent as having been made without any basis and not substantiated by evidence. He denied allegations of irregularities and non-compliance by the 2nd respondent in the conduct of such election saying that he was validly and lawfully declared as the winning candidate on the basis of the results that were ascertained and properly reflected in the DR Forms where he had a clear majority of the




votes. That this was a true reflection of the will of the people of Nansana Municipality Constituency.

5 The Electoral Commission (EC) and the 2nd respondent denied allegations of irregular and improper nomination of the 1st respondent and stated that the elections in that constituency were carried out in compliance with the electoral laws and lawfully. That the 1st respondent was validly declared the winner, having polled a majority of the valid votes cast and the petitioner had no legal basis seeking to be declared the winner of the said election.

10 Judgment was entered in favor of the respondent in the terms enumerated above. Being dissatisfied with the decision, the appellants appealed to this Court.

Grounds of Appeal

15 During the joint conferencing, the parties agreed that the grounds of appeal be framed into the following four issues;

1. Whether the 1st appellant was nominated in error

a) whether the 1st appellant is a registered voter

b) whether the 1st appellant has the minimum academic qualifications of A level or its equivalent

20 **2. Whether there was non-compliance with electoral laws, when the results of the 24 polling stations were not tallied.**



a) *whether the trial Judge erred in rejecting the evidence of the results in the 24 polling stations*

b) *whether the cancellation of the results of the 24 polling stations affected the outcome of the election in a substantial manner*

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3. *Whether the trial Judge erred to declare the respondent as the duly elected MP for Nansana Municipality*

4. *Whether the trial Judge erred to award a certificate of 2 counsel*

Representation

10 The 1st appellant was represented by Mr. Edmond Wakida, Mr. Joseph Kyazze and Mr. Richard Latigo Komakech, the 2nd appellant was represented by Mr. Brian Kabayiza while the respondent was represented by Mr. Musa Ssekana and Mr. Lule Kennedy Ben.

Submissions by counsel

15 Counsel for the respondent raised a preliminary objection regarding annexure "C5" to the Supplementary Record. He contended that it differs from what was on Court record. Further, that the respondent's
20 Supplementary Record of Appeal should be disregarded because it did not bear a certificate of correctness by the lower Court and annexure "C" to the affidavit of Wakayima did not bear the seal of a commissioner for paths.

Regarding issue No.1 as to whether the 1st appellant was nominated in error, counsel for the 1st appellant submitted that the trial Judge did not properly

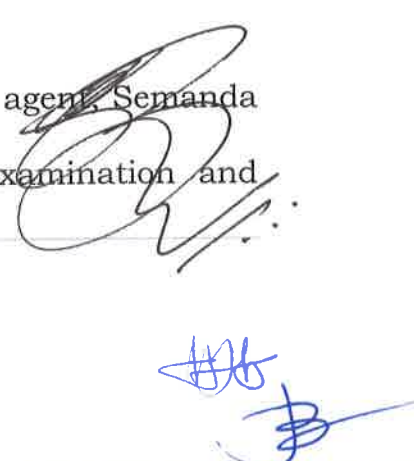


evaluate the evidence on record and invited Court to look at the following pieces of evidence;

5 First, the 1st appellant's copy of his baptism certificate, passport and National ID. Counsel submitted that the trial Judge was enjoined to take judicial notice of the said documents as provided by S.3 of the Registration of Persons Act (RPA) which considers them to be identification documents. Counsel argued that the National ID in the name of Musoke Hannington Nsereko bears the same date of birth (4/7/1974), national identification number and photograph. Further, he argued that the 1st appellant's 10 Passport, baptism certificate and marriage certificate bear the name Wakayima. He contended that marital status is valid information under S.3 (a) of the RPA.

Secondly, that the respondent personally identified the 1st appellant in Court during cross examination and conceded that the photographs on the 15 national register and national ID were the same. Further, that the respondent conceded that he did not know any other Wakayima Hannington Nsereko. Counsel submitted that the details in the voter card were the same as the details in the 1st appellant's application form albeit the name Wakayima was inadvertently omitted in the national ID. Counsel conceded 20 that the 1st appellant did not take steps to rectify but attributed it to limited time before elections.

Thirdly, counsel submitted that the respondent's campaign agent, Semanda Umaro, also identified the 1st appellant during cross examination and



testified that he stood for elections in 2006 as a councillor for Nansana. Counsel contended that court did not address the issue of how the 1st appellant could participate in 2 previous elections (2006 and 20011) if he was not a registered voter.

5 Fourthly, counsel submitted that the respondent complained to Police to investigate a case of impersonation against the 1st appellant but no report had been issued in respect of the same. Counsel argued that the allegation of impersonation was speculative and not supported by any evidence.

Fifthly, counsel submitted that the 1st appellant was biometrically registered
10 and verified at the time of voting but the trial court overlooked this evidence.

Sixthly, counsel submitted that the Returning Officer swore an affidavit confirming that the 1st appellant is a registered voter and gave his voter registration number. Counsel argued that court did not address itself to S.39(1) (a) and (b) and S.12(2)(b) of the PEA which gives a Returning Officer
15 discretion to reject the nomination of an aspiring candidate for a parliamentary seat if he/she deems that there is a major variation in the candidate's name. He submitted that by the Returning Officer proceeding to nominate the 1st appellant, it implied that she was satisfied that the discrepancy in name was minor. Counsel contended that the respondent
20 also had variation in his names and academic documents but Court overlooked the same. He argued that the 1st appellant did not cross petition on the said issue but the question had been extensively investigated by Court and that this Court should address it. He relied on *Okabe Patrick vs.*

Opio Joseph Linos & The Electoral Commission Court of Appeal Election Petition No.87 of 2016 to support his submissions.

Lastly, counsel submitted that the respondent did not bring any other person to Court bearing the names of the appellant. He referred to the cases
5 of ***Yeri Ofwono Apollo vs. Tanna Sanjay EPA No.9 of 2011, Ongole James Michael V The Electoral Commission and Ebukalin Sam EP No.0008 of 2006 and Waligo Aisha Naluyati vs. Sekindi Aisha and E.C Court of Appeal Election Petition No.29 of 2016.***

Regarding issue 1(b) on academic qualifications, counsel prayed that Court
10 reappraise the evidence adduced in the lower court and come to its own conclusion. In doing so, counsel submitted that Court should consider the following;

- a) The 1st appellant's O' level certificate and the verification letter from
15 UNEB confirming to the Electoral Commission (EC) that he sat for O' level examinations at Old Kampala SSS using index number U0023/266.

- b) The 1st appellant's A' level pass slip, certificate and the verification
20 letter from UNEB confirming to the Electoral Commission (EC) that he sat for A' level at Namagabi SSS. He argued that in addition, the Headmaster of Namagabi SSS, Mr. Siraje Lwanga, in his evidence identified the 1st appellant as the person who sat for his UACE examinations at Namagabi SSS in 1997.



c) The testimony of the director of studies, Mr. Odwol Peter who taught the 1st appellant and identified him in Court.

d) Mulumba Noah, a former schoolmate at Namagabi SSS led evidence to show that he joined the school and studied with the 1st appellant.

5 Counsel submitted that these witnesses were not cross examined by the respondent.

e) The unchallenged certificate of the 1st appellant, a Diploma in secondary education from Kyambogo issued in 2000. Further, counsel argued that a fellow student at Kyambogo gave evidence that he joined
10 NTC Nkozi and studied with the 1st appellant there.

f) Lastly, counsel submitted that the respondent's academic qualifications also had variations in them. Counsel relied on ***Mashate Magomu Peter vs. Electoral Commission & Anor Election Petition Appeal No.47 of 2016*** for the proposition that letters of verification
15 from UNEB are relevant documents for court to consider and that academic documents remain in one's original names despite change of name. Counsel prayed that this Court clarify the position of change of name before and after the enactment of the RPA.

Counsel for the 2nd appellant while submitting on issue No.2 as to whether
20 there was non-compliance with the electoral laws when the results of the 24 polling stations were not tallied, argued that the irregularity was capable of mitigation and did not warrant nullification of the election. He faulted the

trial Judge for rejecting the authenticity of the 24 DRFs despite the failure of the EC to find them in the ballot boxes because court had an opportunity to consider and tally the results when the 24 DRFs were presented in evidence by the respondent and verified by 22 Presiding Officers from the affected
5 polling stations. He relied on **Hon Oboth Markson Jacob V Otiam otaala Emmanuel, EPA No. 38 of 2011** to support his submission.

Counsel contended that the 24 DRFs were authentic because they were all signed and endorsed by the agents of the respondent and he did not contest that fact and 22 of the Presiding Officers who are qualified to testify on their
10 authenticity, verified them. He relied on **Sekigozi Stephen v Sematimba Simon Peter, EP No.10 of 2016** to support his submissions.

Counsel submitted that if the results of the 24 DRFs were included, the 1st appellant would still have won and the effect of the DRFs would not have been substantial so as to nullify the elections. He argued that when results
15 in the 24 DRFs were computed the respondent Sebunya Robert would have a total of 2,203 while the 1st appellant's total would be 2,996 votes.

He submitted further that the trial Judge erred in rejecting DRFs signed by Agalan (Presiding Officer) on the ground that Nabweru West Parish was crossed out and replaced with Nabweru North K-J. Counsel conceded that
20 the said Presiding Officer did not counter-sign against the crossing but contended that he swore an affidavit to verify what transpired.

Regarding the DRF for Nansana West II B (N-N), counsel submitted that the evidence of the Returning Officer clarified that at the time of collecting the

original DRFs, she inadvertently missed out the original of the said polling station and made a photocopy of it from the respondent after verifying that its results were similar to what she had tallied.

As for Nabweru South1 (NAL-NAMO) playground, counsel submitted that the trial Judge erroneously omitted its DRF among the 24 because it was a photocopy. He contended that the trial Judge misdirected himself in evaluating evidence in regard to the said DRF.

Counsel submitted that the trial Judge evaluated the evidence regarding the irregularity in cancellation in isolation of the fact and the law in Section 50 (3) (g) of the PEA. He argued that the trial Judge faulted the Returning Officer, Bukirwa, for not clarifying the circumstances surrounding the cancellation of the results. He contended that the trial Judge misdirected himself in evaluating Bukirwa's evidence on the mistaken belief that DRFs are kept in the report book and the ballot box whereas not.

To counsel, the cancellation of results was lawful under Section 12(1) (e) of the Electoral Commission Act which allows the commission to take measures for ensuring that the entire electoral process is conducted under conditions of freedom and fairness and that the cancellation did not substantially affect the outcome of the results of the parliamentary elections for Nansana Municipality. He relied on ***Acheng Sarah Opendi & E.C vs. Ochwo Nyaketcho Keziah, EPA No. 39 of 2011, Hon. Oboth Marksons Jacob (supra), Mbaghadi Freddrick Nkayi & E.C vs. Dr. Nabwiso Frank Wilberforce, Election Petition Appeal No.14 and 16 of 2011.***



On issue No.3, counsel submitted that while Section 63(4) of PEA provides for Court to declare that a candidate other than the candidate declared elected was validly elected, that remedy was not the most suitable in the circumstances of the case and the evidence before Court. He contended that the declaration of results and the winners in an election where there are several candidates can only be based on the numerical consideration of votes cast for each contestant. Counsel relied on ***Mwiru Paul V Igeme Nathan Samson Nabeta & E.C EP No.3 of 2016*** to support his argument. He concluded, on this issue, that the Court decision had disenfranchised voters in Nansana Municipality contrary to **Articles 59(1) and 1(1)** of the Constitution and the best remedy in the circumstances was to order a bye-election.

On the issue of costs and the grant of a certificate for 2 counsel, he submitted that this had no legal and factual basis because there was no prayer for the same in the Petition. Counsel argued that from the record, the respondent only instructed Ms. Kabega Bogezi and Bukenya Advocates to represent him and Mr. Musa Ssekana held brief for Mr. Kabega Musa. Counsel submitted that there was no notice of change or notice of instructions filed by any other firm on the instructions of the respondent.

Counsel argued that a prayer was made for a certificate for 2 counsel in the submissions by Ms. Ssekana Associated Advocates without justification and the trial Judge granted the prayer equally without justification. Counsel contended that there was no finding by the learned trial Judge that this was

such a complicated matter raising any novel issues for determination and neither did the respondent's advocates submit on it. The decision and order of the trial Judge was, to counsel, erroneous and should be reversed by this Court. He relied on **Commissioner General, URA vs. Meera Investments Ltd, SCCA No. 22 of 2007.**

Counsel prayed that this Court should exercise its mandate under Section 11 of the Judicature Act as the 1st appellate Court and grant the reliefs sought in the Appeal, reverse the judgment of the lower Court and declare the 1st appellant as the winner of the election of Nansana Municipality as gazetted by the EC and award costs in this Court and in the High Court.

Counsel for the respondent opposed the appeal and supported the findings of the trial Judge.

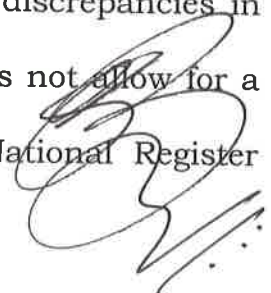
On issue 1, counsel submitted that the learned trial Judge properly evaluated all the evidence before him and correctly came to the finding that the 1st appellant was nominated in error and therefore not validly elected. The 1st appellant was nominated as Wakayima Musoke Nsereko whereas his national ID and the Voters Register bear the name Musoke Hannington Nsereko. Counsel argued that the number 1191230003L8A on the 1st appellant's application form differed from that in the National Voters Register. At the Electoral Commission, the particulars of the 1st appellant were Musoke Hannington Nsereko while in his passport, it is Musoke Nsereko Wakayima. Counsel argued that the 1st appellant countersigned against his name while other candidates merely signed against their names.



The Statutory Declaration which the 1st appellant swore was not the proper way to change one's name. Counsel submitted that the trial Judge dwelt on the question of whether the 1st appellant was a registered voter as envisaged under S.1 of the PEA and rightly found that he was not. He supported the trial Judge's finding that it was an error on the Returning Officer's part not to question the discrepancy in the 1st appellant's name.

Further, that by the time of national registration, the 1st appellant had abandoned the Statutory Declaration that he had sworn. As for authorities relied on by counsel for the appellants, he submitted that they were not applicable because they were under the Registration of Persons Act, not under the repealed law. Counsel submitted that what the respondent faulted was the change of the 1st appellant's name in the register from Musoke Hannington Nsereko to Wakayima Musoke Nsereko. He argued that if the 1st appellant desired a change in name, he should have done so under regulation 4 of the Registration of Persons Regulations SI 67 of 2015 by notifying the authority of the change of information in the register or under regulation 5 if he wanted to rectify an error. He argued that the 1st appellant should have proceeded under S.36 of the RPA and regulation 11(5) of the Registration of Persons (Births and Deaths) Regulations.

Regarding the allegation that the respondent himself had discrepancies in his name, counsel submitted that election petition law does not allow for a party to cross petition. The respondent's name in the National Register



tallied with his name on the national ID and thus, his case was distinguishable from that of the 1st appellant.

He supported the trial Judge's finding that the 1st appellant did not possess the minimum academic qualifications and submitted that the 1st appellant
5 had adduced a letter showing that he attended Nansana Catholic Primary School but the letter was written when the case was already before Court and it bore the 1st appellant's current photograph albeit he sat his PLE in 1988. To him, there was a discrepancy in the results of the 1st appellant in his PLE certificate issued by the Ministry of Education and Sports and his
10 personal file bio data from the school.

He further submitted that the 1st appellant's A' level certificate could not be relied on because the verification letter from UNEB clearly stated that it was not responsible for the identity of the candidate and that although the 1st appellant relied on a letter dated the 29th March, 2016 by the Head teacher
15 Mr Siraje, on 22nd March, 2016, the same Siraje had authored a letter to the effect that the true identity of the 1st appellant could not be availed since his files with photos could not be traced. Counsel submitted that the trial Judge properly came to the conclusion that the person who stood in the election and the owner of the results are different and thus the appellant did not
20 possess the academic qualifications to stand for a seat for Member of Parliament. He relied on **Arumadri John Drazu vs. Etauka Isaac Joackino and the Electoral Commission Election, Feticion Appeal No.37 of 2016 and The Chief Electoral Officer vs. The Electoral**

Commission, Case No. 4 of 2009 (South Africa) in support of his submissions.

On the claim that there was non-compliance with the electoral laws, counsel submitted that the learned trial Judge properly evaluated the evidence and found that the decision to cancel the results from 24 DRFs by the Returning Officer was irregular and that the respondent objected to tendering them in evidence at page 522-527 of the 2nd Supplementary Record of Appeal. That the contentious 24 DRFs were introduced by the 1st appellant in his supplementary affidavit on 6th June, 2016 and 22 of the DRFs were certified by the acting Secretary of the 2nd appellant. He argued that the certification raised doubt as to the authenticity of the impugned DRFs yet results of the affected polling stations had been cancelled because the DRFs were missing. Counsel submitted that the affidavits sworn by the said officers could not be relied on because they were filed late on 6th June, 2016 when the case was already proceeding in Court yet the Petition had been filed on 24th March, 2016. Counsel further argued that the Supplementary Affidavit was filed without leave of Court contrary to the law.

In reply to nullification of the election, counsel submitted that they were annulled because the 1st appellant was not a registered voter and not because of the 24 DRFs. He argued that the 1st appellant won by 32% and thus, did not win the majority vote and should therefore, not benefit from his own wrong. The trial Judge's decision to disregard them was informed by the fact that they had crossings which were not countersigned, others were



not signed by the agents of the respondents, one DRF was not signed by the Presiding Officer although it was certified by the 2nd appellant, none of the Presiding Officers named an agent to whom they alleged to have given the DRFs in their affidavits. Counsel contended that the authorities of **Hon.**

5 ***Oboth Marksons Jacob case (supra) and Muhindo Rehema v Winfred Kiiza & The Electoral Commission, Election Petition Appeal No.29 of 2011*** were distinguishable from the instant case because in both those cases the parties had consented to the admission of documents which was not the case here.

10 On issue number 3, counsel submitted that the trial Judge lawfully exercised his powers and discretion in declaring the respondent the validly elected candidate under S.63 (4) and (6) of the PEA. Furthermore, that the decision was not influenced by numeric numbers and referred to S.61 (1) (d) of the PEA as the basis of his decision.

15 On issue No.4, counsel submitted that he held brief for counsel Kabega who was representing the petitioner/respondent then before the main hearing of witnesses and that he had filed a notice of instructions in Court. According to him, counsel for the 2nd appellant had confirmed during his submissions that the petitioner was represented by two lawyers.

20 Counsel for the 1st appellant made submissions in rejoinder for both appellants. He reiterated their earlier submissions.

On issue No.1, counsel submitted that the 1st appellant's national ID, his application for national ID and national voter's register should be considered.

in light of section 39(1) of the PEA which is clear on the legal effect of omission of one of the names on the register. The trial Judge, according to him, did not address his mind on this aspect. He contended that the Returning Officer was duly satisfied as provided for under Section 12(2) (b) of PEA that the person being nominated is indeed the 1st appellant.

Regarding the objection to annexure C5 and the application for the national ID, counsel submitted that the record of appeal filed by the 1st appellant and its contents were certified as correct by the Registrar duly commissioned and sealed by the Commissioner for Oaths and the 1st appellant had signed it thus owning it. This was different from the one relied on by the respondent.

It was counsel's submission that since the respondent had put to issue the authenticity of the 2 documents, he bore the burden to produce certified copies from NIRA to prove the allegation but this was not done. Counsel submitted that since the Registrar of the lower Court had declined to pronounce herself on the authenticity of the documents which had been certified as correct, this Court should confirm that indeed annexure C5 was duly certified and the lower court was right to rely on it.

On the issue of the 1st appellant's Statutory Declaration explaining readopting of his Christian name and its appearance on his marriage certificate, counsel submitted that the question Court has to decide is what the law required the 1st appellant to do in 2013. He relied on *Namuffu*



***Dionizia Cissy & Anor vs. Martin Kizito Sserwanga, Election Appeal
No.62 OF 2016*** to support this proposition.

He further submitted that the burden of proof lay on the respondent to
5 adduce cogent evidence to prove that there existed another person other
than the 1st appellant claiming or owning the academic documents so
presented but no such evidence had been tendered.

Although he conceded that the 1st appellants' name, Wakayima, did not
appear on the Voter's Register, counsel contended that the trial Judge did
10 not draw his attention to the legal effect of the omission of one of the names
of a voter on the register when he actually included all his names in his
application for a national ID. He opined that such an omission is not fatal as
long as one's identify was verifiable as provided for under Sections 12(2) (b)
and 39(1) of the PEA.

15 Counsel submitted that the biometric registration system was not evidence
from the bar as alleged by counsel for the respondent since the 1st appellant
in his affidavit alludes to his registration under the biometric register system
and that he was duly verified.

In reply to the applicability of Section 36 of the Registration of Persons Act,
20 counsel submitted that Court should make a distinction between change of
name and omission of a name supplied by a voter to the registration
authority which was the crux of the matter. Counsel opined that the
omission by the registration authority did not change the identity of the 1st
appellant neither did it bar him from standing as a candidate in light of

Section 39(1) of the PEA. Furthermore, that under Sections 68(1) and (2), 69 and 66 of the RPA, the position of the law is that production of a national ID is prima facie evidence that the owner thereof is a registered voter and the 1st appellant presented the national ID to the satisfaction of the 2nd 5 appellant's Returning Officer.

Regarding discrepancies in the respondent's name, counsel submitted this Court should use the same yardstick in treating the respondent and the 1st appellant in line with the **Okabe Patrick** case (supra).

Regarding the 1st appellant's PLE results, counsel submitted that in 1998 10 when the 1st appellant sat for PLE it was not a requirement for one to join O' level or A' level that they must have passed PLE. He relied on **Butime Tom V Muhumuza David and E.C, Court of Appeal Election Petition Appeal No.11 of 2011** and **Waligo Aisha Naluyati vs Sekindi Aisha & E.C, Election Petition Appeal No.29 of 2016** to support his submissions.


15 Regarding the 1st appellant's A' level document, counsel submitted that confirmation letters were presented by both parties and if UNEB did not confirm the identity of the 1st appellant, then it did not confirm the identity of the respondent either. Counsel argued that the 1st appellant had adduced sufficient evidence to prove that he owned the documents presented. He 20 relied on **Mashate Magomu Peter vs. The Electoral Commission & Anor, Court of Appeal Election Petition Appeal No.0047 of 2016** to support his submissions. Counsel contended that **The Chief Electoral Officer v EC** (supra) was distinguishable from the facts of this case because the question

was the disparity of the identity number on the register as well as the ID which is not the case here.

Regarding the 24 DRFs, counsel supported the trial Judge's decision to admit them in evidence despite the respondent's objection. He however
5 faulted him for not relying on the results from the said DRFs yet the respondent was cross examined on their content and conceded to the results therein. Counsel observed that the respondent had not cross
10 appealed against the trial Judge's order to admit the DRFs arguing that the respondent had been given opportunity to rebut the affidavits introducing the DRFs and cannot at this stage argue otherwise.

On the allegation that the respondent's agents were chased away and failed to sign some of the DRFs, counsel submitted that if the respondent wanted to justify the decision of the Judge on any other ground, he had a duty to file a notice of affirmation of grounds under Rule 92 of the Rules of this
15 Court which he failed to do.

Regarding reliefs, counsel submitted that Sections 63(4) (b) and 61(1) (b) of the PEA should be considered together for circumstances under which court can declare another person other than the declared person the winner. Counsel submitted that it was erroneous for the learned trial Judge to
20 declare a candidate who had not won as the Member Parliament (MP) contrary to **Article 1(4)** of the Constitution on supremacy of the Constitution and **Article 2(1)** which provides that power belongs to the people.



Regarding the certificate of two counsels, counsel submitted that counsel for the respondent had not identified or been able to show court his alleged notice of instruction. Further that it was not correct to make the claim because at page 508 of the record of Appeal, it is indicated that he was
5 holding brief.

Court's consideration

We have studied the Record of Appeal and the judgment of the lower court. We have also considered the submissions of counsel for all parties' conferencing notes and the authorities that were availed to Court for which
10 we are grateful.

This being a first Appeal, our duty as rightly submitted by counsel for all the parties to the Appeal is to reappraise the evidence and come up with our own conclusions. Rule 30 of the Judicature (Court of Appeal Rules) Directions gives this Court power to reappraise evidence and to take
15 additional evidence.

In **Kifamunte Henry v Uganda, SCCA NO. 10 of 1997**, it was held that:

*"The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment
20 appealed from but carefully weighing and considering it."*

We shall bear the above principles in mind while resolving this Appeal. We find it necessary to first resolve the preliminary objection raised by counsel for the respondent regarding annexure C5.

We have carefully looked at the two annextures in question. We note that the two applications are evidently different raising suspicion as to their authenticity. There is discrepancy in enrollment location code, application ID No, father's name, mother's surname, mother's residence, parish chief's name, date of application and enrollment officer's name among others. We note that the application form in the Supplementary Record of Appeal was not signed while the one in the 1st appellant's Record of Appeal is signed. One other peculiar thing about the application form in the supplementary record is that at the back, it contains the phrase "*Not certified*". We do not accept counsel for the 1st appellant's submission that annexure "C5" in the Supplementary Record doesn't bear the seal of a commissioner for oaths. The seal therein shows that it was annexure "C5" to the affidavit of Wakayima Musoke which is the same information on the Record of Appeal.

We are of the considered view that the court Registrar in the Civil Division handled the matter with a lackluster attitude and thus, failed to conclude on it. This matter ought to have been investigated conclusively because court records are to be safeguarded to avoid such incidents. We cannot sweep such allegations under the carpet simply because the Registrar certified the 1st respondent's Record of Appeal and did not conclude ~~the issue~~ of tampering with the Record raised by counsel for the respondent. We find merit in the preliminary objection and uphold it.



Issue No.1

The main issue was whether the 1st appellant was nominated in error which was addressed under two distinct sub issues;

- 5
- a) whether the 1st appellant is a registered voter**
 - b) whether the 1st appellant has the minimum academic qualifications of A level or its equivalent.**

On issue No.1 (a), counsel for the respondent's contended that **Wakayima Musoke Nsereko** who stood, contested and won the Parliamentary elections in Nansana Municipality Constituency is not a registered voter in that constituency.

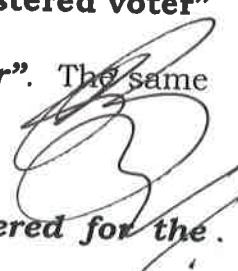
Section 4(1) of the PEA which is in *pari materia* with **Article 80(1)** of the Constitution provides;

"A person is qualified to be a Member of Parliament if that person;

- 15
- a) Is a citizen of Uganda;*
 - b) Is a registered voter; and*
 - c) Has completed minimum formal education of Advanced Level Standard or its equivalent."*

20 Section 1 (1) of the Parliamentary Elections Act defines a **"registered voter"** as **"a person whose name is entered on the voters' register"**. The same Section defines **"registered"** to mean;

"Registered", in relation to a voter, means registered for the purpose of voting at an election"



The national ID No. 018062370 that the 1st appellant attached to his pleadings bear the name **Musoke** as surname with **Hannington Nsereko** as the given names. It is the same name that appears in the National Voters' Register for Nansana Municipality Constituency, Nansana Division of Wakiso District, under reference number 63366459 under Nansana West II village. However, he was nominated as **Wakayima** as surname and **Musoke Nsereko** being other names.

Counsel for the 1st appellant submitted that it was NIRA that omitted **Wakayima** as part of his name when his national ID was produced. As we noted in the resolution of the preliminary objection above, annexure "C5" which was supposed to be the alleged application for a national ID raised suspicion as to its authenticity. Be that as it may, we have found no evidence that the 1st appellant brought the said error to the attention of NIRA to have it rectified as required by Section 51 of the Registration of Persons Act. The above notwithstanding, the inclusion of Wakayima would not make the 1st appellant have the same names as those in the National Voters' Register.

In **Hon. Otada Sam Amooti Owor v Taban Idi Amin, EPA NO.93 OF 2016**, this Court noted thus;

"By virtue of the provisions of Section 1 of the PEA, conclusive proof of a registered voter is by evidence of a person's name appearing in the National Voter's Register and not possession of a National Identity Card. Section 66 of the Registration of Persons Act 2015 provides for

mandatory use of National Identification Cards for purposes of identification of voters among others. Our understanding of this legal provision is that for national elections, the National Identity Card is used to cross check and confirm particulars in the Voters' Register before a voter can be allowed to vote. The National Identification Card did not replace or do away with the Voters' Register which is a special document prepared by the Electoral Commission. Section 66 of the Registration of Persons Act 2015 did not amend Section 18(1) of the Electoral Commissions Act CAP 140 which requires the Commission to compile, maintain and update, on a continuing basis, the National Voters Register which includes the names of all persons entitled to vote in any national or local government election.

The importance of the Voters' Register prepared by the Electoral Commission cannot be underscored because **Article 61** of the Constitution enjoins the Electoral Commission to compile, maintain, revise and update the Voters Register.

A general election is a very important exercise in every democratic country. It is the time when the people of a nation choose the leaders to govern them. They ought to be regarded very highly and handled with utmost diligence, for failure to do so can plunge the country into civil strife. In the same vein, election Petitions are regarded as special proceedings with special laws and rules of procedure which must be strictly adhered to. Failure to adhere to the rules can result in the .



'playing field being rendered unlevelled' or 'shifting of goal posts when the game is being played'. The rules of the game must be set before the game starts and strictly followed until the game ends".

We reiterate our position above.

- 5 We do not accept counsel for the appellant's submission that the respondent did not bring anybody claiming to be the 1st appellant. We are of the considered view that the fact that nobody has come up to claim the name does not permit the 1st appellant to adopt a set of names without following the legal requirements.
- 10 It is therefore our finding that the 1st appellant was not a registered voter and as such was not qualified for nomination and election as the Member of Parliament for Nansana Municipality Constituency. If he intended to use the name **Wakayima Musoke Nsereko**, who was not a Registered Voter, then he should have followed the requirements of Section 36 of the Registration of
- 15 Persons Act.

As to whether the 1st appellant possessed the minimum academic qualifications of "A" Level or its equivalent, the learned trial Judge held that;

20 *"The 1st respondent having relied on the various affidavits and statutory declaration filed in support and or annexed to his nomination paper as a basis for authenticating his Advanced Level Certificate in the name of **Hannington Musoke** as a basis for proof of his said qualification to the Commission as required under S. 4(5) of the*

Parliamentary Elections Act, 2005, he has not satisfied the requirement of establishing his qualification with the Commission as a person holding a minimum qualification of Advanced Level or its equivalent.”

5 We note that there was disparity in the name of the 1st appellant in the academic qualifications that he produced in evidence. He attached a letter of introduction and a certificate from Nansana Catholic Primary School to show that he sat for Primary Leaving Examinations in 1988 under the index number 24/150/035. In the said document, he used the name Musoke
10 Hanington. Hanington was spelt with a single “n” which is inconsistent with Hannington with a double “n” in his UCE and UACE certificate. This, in our view, is a minor variation or omission which the Returning Officer would not take into account. Secondly, the school used the 1st appellant’s recent passport size photograph to identify him which is inconceivable.

15 The 1st appellant attached a Uganda Advanced Certificate of Education in the name of **Musoke Hannington**, Index No. U0512/535; year of sitting 1997, centre name; Namagabi Senior Secondary School. We agree with the trial Judge’s observations about the Head teacher, Hajj Lwanga Siraje who
20 wrote two contradictory letters to the Director CIID and To Whom It May Concern regarding the identity of the 1st appellant when he held that *“Apart from going that extra mile of purportedly vouching for the identity of the 1st respondent by affixing the 1st respondent’s current passport size photograph, this same Head teacher goes ahead to certify the scores this candidate*



obtained in the 1997 'A' Level UNEB examinations, a thing the latter Board is the only one mandated to do so.

This Head teacher does not explain whether he later on traced this candidate's files and photographs, which a week earlier, when writing to the
5 Director of CIID, he could not commit himself to. It is also noteworthy that the telephone numbers this Head teacher appends below his names in the two letters respectively as his personal contact telephone are both different.

All those documents attached and accompanying the 1st respondent's
10 nomination papers show a lot of discrepancies regarding the true identity of the 1st respondent."

We accept counsel for the respondent's submission that the burden of proof lay with the 1st appellant to prove that his academic credentials were
15 genuine. This position was settled in **Abdul Bangirana Nakendo v. Patrick Mwondah, Supreme Court Election Petition Appeal No. 9 of 2006** where Katureebe JSC, (as he then was), pointed out that the duty to produce valid certificates to the Electoral Authorities lies with the intending candidate for elections. Where the authenticity of those certificates is
20 questioned, it can only be his burden to show that he has authentic certificates.

We accept counsel for the respondent's submission that the 1st appellant was nominated as "WAKAYIMA MUSOKE NSEREKO" while the academic
25 credentials (O and A' level certificates) presented bore the name

“HANNINGTON MUSOKE”. The disparity between the nomination papers and the academic papers, coupled with the two contradictory letters written by the Head teacher of Namagabi Senior Secondary School raise suspicion as to the authenticity of the 1st appellant’s academic qualifications. We find
5 that the 1st appellant failed to discharge the burden of proving that the questioned certificates were authentic.

We accept counsel for the 1st appellant’s submission that UNEB could not verify the identity of both parties to the suit because it is not its duty to do so.

10 Counsel for the 2nd appellant adverted that it was lawful for the returning officer to accept the 1st appellant’s academic papers despite variations in name as long as she was satisfied that the variation was not major. S. 12(2) (b) of the PEA provides:

15 *“A Returning Officer shall refuse to accept any nomination paper if there appears a major variation between the name of any person as it appears on the nomination paper and the voters’ roll”.*

We do not accept Counsel for the 2nd appellant’s submission that the variation in the name “WAKAYIMA MUSOKE NSEREKO” and “HANNINGTON
20 MUSOKE” was not major as they appeared in the nomination paper and the voters’ roll. We are of the view that the Electoral Commission should have done more than it did during the nomination of the 1st appellant and should have rejected his nomination.

We find that the 1st appellant was nominated in error and issue No. 1 is answered in the affirmative.

Issue No.2

The issue here was that there was non-compliance with the electoral law, when the results of 24 polling stations were not tallied. The trial Judge was faulted for rejecting the evidence pertaining to the results in the 24 polling stations. Corollary to the foregoing was **whether the cancellation of the results of the 24 polling stations affected the outcome of the election in a substantial manner**

We find it pertinent to first resolve the concern raised by counsel for the respondent that the appellants' Supplementary Affidavits were filed without the leave of court. Rule 17 of the **Parliamentary Elections (Interim Provisions) (Election Petitions) Rules** states:

"17. Procedure generally.

Subject to these Rules, the practice and procedure in respect of a petition shall be regulated, as nearly as may be, in accordance with the Civil Procedure Act and the Rules made under that Act relating to the trial of a suit in the High Court, with such modifications as the court may consider necessary in the interests of justice and expedition of the proceedings."

The CPR which is applicable to Election Petitions does not specifically provide guidance on the filing of Supplementary Affidavits, but rather provides for the filing of subsequent pleadings generally under Rule 18. The said Rule provides:



18. Subsequent pleadings.

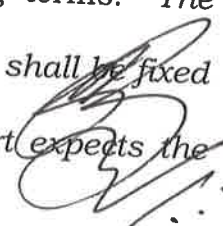
(1) A plaintiff shall be entitled to file a reply within fifteen days after the defence or the last of the defences has been delivered to him or her, unless
5 the time is extended.

(2) No pleading subsequent to the reply shall be filed without leave of the court, and then shall be filed only upon such terms as the court shall think fit.

We find at page 3 of the Record of Proceedings that when the Petition came
10 up for mention, Mr. Kabayiza Brian, counsel for the 2nd respondent submitted that their pleadings were not complete and prayed to file further affidavits. He stated thus;

“...We were served with further rejoinder affidavits for the petitioner. These affidavits may require us to file some supplementary affidavits
15 and further affidavits by the Returning officer and other witnesses as well as the relevant police officers mentioned who witnesses the opening of ballot boxes...We hope to file our further affidavits on 06/06/2016. We so pray.” (Sic)

Counsel for the 1st respondent (Mr Medard Ssegona) submitted thus; “We
20 would request for time to file about 3 more affidavits from some teachers and we do request for one week to enable us do that.”

Court made a ruling on the above prayers in the following terms: “The pleadings of the parties have not been completed yet this matter shall be fixed
for 12/06/2016 at 9:30a.m. for mediation. By that date Court expects the





parties who may wish to complete their pleadings to have done so. It is hereby directed.”

From the Record of Appeal, all Supplementary Affidavits were filed on 6/6/2016 in accordance with court’s directives. In effect, court granted the parties leave to complete the filing of their pleadings. Therefore, we do not find merit in the submission by counsel for the respondent on this issue.

As to whether the failure to take into account the results of the 24 polling stations affected the outcome of the election in a substantial manner, the trial Judge held thus;

“Accordingly, I do find and hold that the non-inclusion of the results from those 24 (twenty four) polling stations as enumerated under paragraph 13 of the supplementary affidavit of the 1st respondent sworn on 02/06/2016, was an irregularity caused by non-compliance with the electoral laws by the 2nd respondent. Any argument that even if all the 17,239 registered voters in all those 24 affected polling stations did vote for the petitioner, a practical impossibility in real life, the same would not alter the results substantially cannot stand. On the contrary I find that, there was non-compliance with the electoral law which substantially affected the results of the election in Nansana Municipality Constituency.”

Counsel for the 2nd appellant did not dispute that results from 24 polling stations were not found in the ballot box and were cancelled. He also conceded that such an incident was an irregularity. However, he contended

that the irregularity was negligible. Counsel argued that the results should have been considered because they came from the respondent who was considered a legitimate source under S.50 (1) (d) PEA. He therefore justified their verification by the 2nd respondent.

5 **Section 75 of the Evidence Act** deals with **certified copies of public documents** and provides that;

“Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees for the copy, together with a certificate written at the
10 *foot of the copy that it is a true copy of that document or part of the document, as the case may be, and the certificate shall be dated and subscribed by the officer with his or her name and official title, and shall be sealed whenever the officer is authorised by law to make use of a seal, and the copies so certified shall be called certified copies.*

15 *Explanation.—Any officer who, by the ordinary course of his or her official duty, is authorised to deliver such copies, shall be deemed to have the custody of those documents within the meaning of this section.*

76. Proof of documents by production of certified copies.

20 *Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.”*

From the above provisions of the law, the Electoral Commission could only certify DRFs which were in its custody. Since it was admitted that the 24
25 DRFs were missing, we find that the Electoral Commission had no legal

basis for certifying the said DRFs. We are cognizant of the provisions of S.50 of the PEA that entitle candidates to retain copies of DRFs, but are of the view that the Electoral Commission could not use candidate's copies for certification without any other copies for comparison. The 2nd appellant
5 should have called for copies from all the candidates or from their agents as the case may have been.

Further, we do not find merit in counsel for the 2nd appellant's submissions that the Presiding Officers verified the results and acknowledged their
10 signatures on the 24 DRFs. The affidavits of the Presiding Officers were sworn after the DRFs were certified by the Electoral Commission and were filed much later.

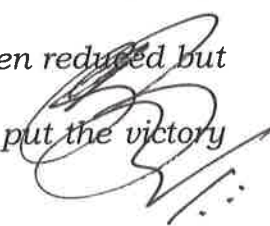
We also agree with the trial Judge's observation regarding irregularities in
15 some of the certified DRFs that the appellants relied on for reasons that the entries and results thereon all differed significantly and the names and signatures of the Presiding Officers thereon appeared clearly different and distinct from each other. These DRFs included Nansana WIIB(N-N)-
Nansana Church of Uganda under code 15, the crossing in Nabweru West
20 Ward and replacement with Nabweru North(A-J), certification of Nabweru South I (Nal-Namo) playground by a commissioner for oaths. We also note that in respect of the same DRF of Nansana WIIB(N-N)- Nansana Church of
Uganda under code 15 on page 225 of the 2nd respondent's Record of
Appeal, the total number of votes cast is shown as 363 as opposed to 524
25 and 438 that the trial Judge had pointed out. In addition, it does not

indicate the number of females and males that voted at the polling station. Nabweru South I (NAMP-NASA) - playground was also crossed out and replaced with North without any countersigning. All these raise suspicion as to the authenticity of the 24 DRFs and thus, we cannot fault the trial Judge
5 for rejecting them.

The circumstances in the present Appeal are distinguishable from those in **Hon. Oboth Markson Jacob** (supra). In the latter case, this Court was satisfied that the results before the trial court were legitimate while in this
10 Appeal, we are not satisfied about the authenticity of the 24 DRFs that the 2nd appellant certified and admitted in evidence. We therefore decline to consider the results in the 24 DRFs on Appeal.

In **Besigye Kiiza v Museveni Kaguta Presidential Petition No.1 of 2001**, Mulenga JSC (as he then was) had this to say on the same issue of
15 substantial effect;

*“To my understanding therefore, the expression “non-compliance affected the result of the election in a substantial manner” can only mean that the votes a candidate obtained would have been different in a substantial manner, if it were not for the non-compliance substantially.... That means to succeed, the
20 petitioner does not have to prove that the declared candidate would have lost. It is sufficient to prove that his winning majority would have been reduced but such reduction however would have to be Such that would put the victory in doubt.”*



We agree with the trial Judge that the total number of 17,239 registered voters in all the 24 affected polling stations whose results were cancelled affected the outcome of the elections in a substantial manner.

Therefore, issue No.2 of the Appeal is answered in the affirmative.

5

Issue No.3.

The trial Judge was faulted for declaring the respondent as the duly elected MP for Nansana Municipality. Section 63(4) of the PEA provides that *after due inquiry the court hearing an election petition may dismiss the*
10 *petition; or declare that a candidate other than the candidate declared elected was validly elected; or set aside the election and order a new election.*

5. *The High Court before coming to a decision under subsection (4), may order a recount of the votes cast.*

6. *At the conclusion of the trial of an election petition the court shall*
15 *determine whether the respondent was duly elected or whether any, and if so which person other than the respondent was or is entitled to be declared duly elected, and if the court determines that-*

(a) *The respondent was duly elected, the election shall be and remain*
20 *valid as if no petition had been presented against the respondent's election*

(b) *The respondent was not duly elected but that some other person was or is entitled to be declared duly elected-*

(i) *The respondent shall be ordered to vacate his or her seat and*

(ii) *The court shall certify its determination to the Commission and*

25 *the Speaker, and the Commission shall thereupon, by notice*

published in the Gazette, declare that other person duly elected with effect from the day of the determination by the court.

5 (c) *The respondent was not duly elected and that no other person was or is entitled to be declared duly elected-*

(i) *The seat of the respondent shall be declared vacant; and*

(ii) *The court shall forth with, certify its determination to the clerk to the Parliament and the Commission*

10 From our reading of the above provisions, we deduce that the High Court can declare that a candidate, other than that declared elected was validly elected. We do not accept the contention by counsel for the 1st appellant that by declaring the respondent the validly elected Member of Parliament for Nansana Municipality, the trial Judge disenfranchised the voters of the constituency.

15 In the instant case, our finding under issue 1 is that the 1st appellant was nominated in error because he neither possessed the minimum academic qualifications of "A" level or its equivalent nor was he a registered voter. That means the 1st appellant should not have been among the candidates the voters of Nansana Municipality, Wakiso District voted for as their Member of
20 Parliament. When he is removed from the scene, the respondent would be the person with the highest number of votes that the people of Nansana Municipality voted for as their Member of Parliament.

In accordance with Section 63 (6) (b), we find that the respondent was the person entitled to be declared the duly elected Member of Parliament for

Nansana Municipality, Wakiso District. We therefore cannot fault the trial Judge for having duly declared him so following his findings and in accordance with the law.

We agree with the conclusion of the trial Judge that the respondent was the
5 duly elected Member of Parliament for Nansana Municipality.

Therefore, issue No.3 is answered in the negative.

Issue No.4

Whether the trial Judge erred to award a certificate of 2 counsel

10 Regarding issue No.4, the trial Judge held that *“a certificate of two Counsels is hereby granted in respect of the Counsels who appeared for the petitioner”*.
(Sic)

From the Record of Proceedings, Kabega Moses appeared for the petitioner on 17/5/2016. On the 25/05/2016 and the 10/06/2016, Mr Ssekana Musa
15 held brief for Kabega Musa. On the 20/06/2016 and the 21/06/2016, Mr Ssekana Musa and Kabega Musa jointly represented the petitioner. On 22 /06/2016, Mr Ssekana Musa appeared for the petitioner assisted by Nalukwago Florence and Mr. Bogezi Ronald and he prayed for a certificate of 2 counsels; M/S Kabega, Bwogezi and Bukenya Advocates and M/S
20 Ssekaana Associated Advocates respectively. On 30/06/2016, Mr Ssekana Musa appeared alone for the petitioner.

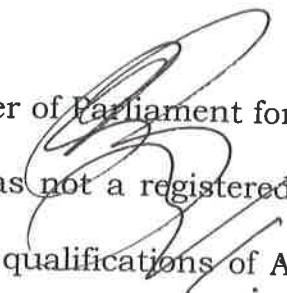
We have perused the Record of Appeal (Vol 2 page 675) and have found evidence that a notice of instructions was filed by M/S Ssekaana Associated
25 Advocates on 20th June, 2016 to jointly handle the Petition with M/S

Kabega, Bogezi and Bukenya. We are however of the view that having filed a notice of instructions for 2 counsel, the learned trial Judge cannot be faulted for granting a certificate for two counsel.

- 5 In the **Meera Investments Ltd** case (supra), the Supreme Court held that “*counsel for the respondent have not shown reasonable grounds for this Court to grant a certificate for two counsel either in this Court or those below. Moreover, in granting the certificate for two counsel, the Court of Appeal gave no reasons whatsoever.*”
- 10 The case of Meera Investments Ltd (supra) is distinguishable from the instant one in that in the former, a notice of joint instructions was never filed so the Justices of the Supreme Court found no reason to grant a certificate of two counsel while in the instant case M/S Ssekaana Associated Advocates filed a notice of instructions on 20th June, 2016 to jointly handle
- 15 the Petition with M/S Kabega, Bogezi and Bukenya.

Therefore, issue No.4 is answered in the negative.

In conclusion, based on our findings on the issues above, the Appeal substantially fails. We make the following orders;

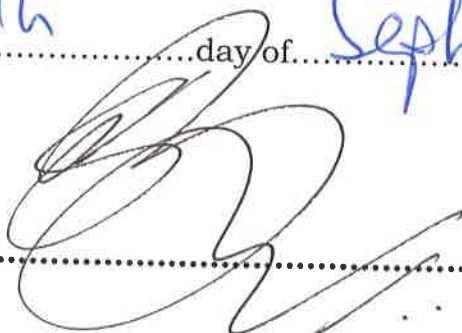
- 20 1. The 1st appellant was nominated in error for Member of Parliament for Nansana Municipality Constituency because he was not a registered voter and did not possess the minimum academic qualifications of A level or its equivalent.
- 

2. There was compliance with the electoral law when the results of the 24 polling stations were not tallied.
3. The respondent is the validly elected Member of Parliament for Nansana Municipality Constituency.
- 5 4. A certificate of two Counsel is granted in respect of the Counsel who appeared for the respondent.
5. The appellants shall bear the costs of the Appeal and the trial Court.

We so order.

Dated this.....15th.....day of.....September.....2017

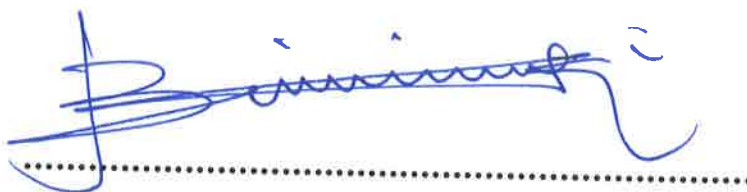
10



HON. MR. JUSTICE S.B. K. KAVUMA

DEPUTY CHIEF JUSTICE

15



HON. MR. JUSTICE BARISHAKI CHEBORION

JUSTICE OF APPEAL

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HON. LADY. JUSTICE HELLEN OBURA

5

JUSTICE OF APPEAL

15/9/2017

Sekanda Musa for Respondent.

Kyazze Joseph & Hatigo Richard

& Kenneth Enyin for 1st Appellant

Nakato Stella for 2nd Appellant

All parties present.

Cl. Judgment read in Court

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