THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

ELECTION PETITION APPEAL NO. 0047 OF 2016

MASHATE MAGOMU PETER::PETITIONER

VS

ELECTORAL COMMISSION & ANOTHER :::::::::::: RESPONDENTS

CORAM:

HON. JUSTICE S.B.K KAVUMA, DCJ

HON JUSTICE BARISHAKI CHEBORION, JA

HON. JUSTICE PAUL K. MUGAMBA, JA

JUDGMENT

Introduction

Mashate Magomu Peter brings this Election Petition Appeal against the Electoral Commission as the first respondent and Sizomu Gershom Rabbi Wambedde as the second, contesting the whole of the Judgment of the High Court at Mbale where the appellant's Petition against the two was, on 20th July 2016, dismissed with costs.

The Grounds of the Appeal

The Memorandum of Appeal comprises eleven grounds which read as hereunder:

1. The Learned trial Judge erred in law and fact when she ignored her interlocutory ruling on the 15th June 2016 allowing the Appellant to

rely on the Affidavits annexed to his affidavit in support of the amended Petition as well as the Appellant's rejoinders to the 2nd Respondent's Answer to the original Petition contrary to the terms, letter and spirit of the Consent *inter parties dated 11/05/2016*, thereby causing a miscarriage of justice.

2. The Learned trial Judge erred in law and fact when she held that the 2nd Respondent's academic qualifications especially the Letters of Verification of the Results purportedly obtained from UNEB were legitimate and authentic without being properly certified by UNEB and NKOMA SENIOR SECONDARY SCHOOL or even addressed to the 1st Respondent's Area Returning Officer to confirm their validity in light of the discrepancies in terms of the candidate cited, the years of examination centres as well as the nexus with the addressee thereof and thereby arrived at a wrong decision, causing a miscarriage of justice.
3. The learned trial Judge erred in law and fact when she held that the "Deed Pool" relied upon by the 2nd Respondent for his current name was valid, proper and legitimate in law notwithstanding the Birth and Death Act Cap 309 provisions and indeed the provisions of Sections 36 Registration of Persons Act, 2015 and thereby caused a miscarriage of justice.
4. The Learned trial Judge erred in law and in fact when she ignored the testimony of the 2nd Respondent admitting the dishonest and fraudulent intent of misrepresenting himself by the use of the title.

"Rabbi" as both a name and Title, thereby rendering his nomination as candidate as a misnomer thereby causing a miscarriage of justice.

5. The Learned trial Judge erred in law and fact when she ignored the testimony of Rashid Musinguzi DW1, as to his ineptness and partial consideration of the 2nd Respondent in nominating him as qualified to be a Member of Parliament on the basis of unauthentic and uncertified Letters of Verification of Results by the rightful authorities being UNEB and NKOMA S.S.S, thereby arriving at a wrong conclusion, causing a miscarriage of justice.
6. The Learned trial Judge erred in law and in fact when she failed to properly evaluate the evidence of Rashid Musinguzi DW1 in respect of the material admissions made as to the wide spread alterations, inaccuracies and discrepancies in the Declaration of Results forms relied upon in the final tally of results sheets of the impunged election and thereby arrived at a wrong conclusion, occasioning a miscarriage of justice.
7. The Learned trial Judge erred in law and fact when she misapplied Sections 73 (a) (iii) and 76 of the Evidence Act when she rejected the uncertified Declaration of Results Forms tendered in evidence by the Appellant notwithstanding the fact that the Appellant paid the 1st respondent for certified copies and attached thereto evidence of payment. Further she erred in law when she misconstrued the judgment of the majority of the Justices of the Supreme Court on the subject in Kakooza John Baptist Versus Electoral Commission and

Another S.C.Election Petition Appeal No. 11 of 2007, thereby arriving at a wrong conclusion a miscarriage of justice. (sic)

8. The Learned trial Judge erred in law and fact when she ignored the uncontroverted evidence of the appellant in the corroborating affidavits properly on Court record of CPL Peter James Okalang, George Wogwale, Mugulo Mubarak and Wadada Hussein and Bakusekamajja Aramadhan as to non-compliance, violence and intimidation of voters in the impunged election, thereby upholding an election which did not comply with the principles and provisions of the Parliamentary Elections Act, 2005 thereby causing a miscarriage of justice.
9. The Learned trial Judge erred in law when she held that the Petitioner's letters of complaint to the 1st respondent were not supported by affidavits of any of his agents contrary to the express averments of Bakuseka Majja Aramadhan affidavits dated 18/04/2016 and filed the same day thereby causing a miscarriage of justice.
10. The Learned trial judge erred in law and fact when she misdirected herself as to the law and evidence when she wrongly concluded that the 2nd respondent is not a cultural leader of the Abayudaya Community (Black Jews) who practice the culture, tradition, customs and aspirations of the Jews as set out in their constitution commensurate with article 246 of Uganda constitution and also as per evidence of Isa Sekadde affidavit dated 09/05/2016 thereby causing miscarriage of justice.

11. The Learned trial judge erred in law and fact when she failed to properly evaluate all the evidence on record and hereby arrived at a wrong conclusion causing a miscarriage of justice.

Representation

At the hearing of this appeal Mr. Richard Mwebembezi was counsel for the appellant, Mr. Kyazze Joseph and Mr. Nasser Serunjogi were counsel for the 2nd respondent. Mr. Yusuf Mutembuli was counsel for the 1st respondent.

Presentation and methodology

All counsel relied on their written arguments alongside their oral submissions. Indeed besides the written arguments and the oral submissions, court has considered the record of proceedings and, of course, the Judgment from which this appeal is generated. This being the first appeal in this matter, it behoves this court, under rule 30 of its Rules to re-evaluate the evidence before it and come up with its own conclusion. This court is alive however to the fact that it did not see or in any way perceive the witnesses as they testified in the court of first instance. In this connection we relate to **Kifamunte Henry V Uganda, Supreme Court Criminal Appeal No. 10 of 1997** as well as **Selle and Another V Associated Motor Boat Company Ltd and Others [1968] EA 123.**

Court's consideration of the Appeal

Ground 1

It was the argument of counsel for the appellant that the trial Judge erred in law and fact when she held that by amending the Petition, the appellant could no longer rely on the affidavits attached to the original Petition. Counsel's contention concerned the hearing of a Petition under the Parliamentary Election (Interim Provisions) Rules. Rule 15(1) provides that all evidence at the trial, in favour of or against the Petition shall be by way of affidavit read in open court. He stated that as such affidavits filed in court in support of the original Petition was evidence and that by amending the Petition, the appellant was not amending the evidence on record. He submitted that the rules apply not only to Petitions but also to supporting affidavits. Counsel was emphatic that amendment of the Petition in no way extended to the evidence on record which was contained in the affidavits originally filed. He argued that when Court directed counsel to file a written consent to the amendment and the same was eventually filed, the amended Petition filed on 20th April 2016 carried along with it the supporting affidavits in the original Petition which had been filed on 31st March 2016.

In the view of the appellant herein, the original affidavits were to remain relevant in spite of the amendment. He added that the consent was apparent on record even though it was not signed by the Judge.

Both counsel for the 1st and the 2nd respondents stated that once the Petition had been amended, it did not necessarily carry with it appendages which were originally attached to the discarded Petition and that in the event there was nothing to show that affidavits attached to the original Petition

applied to the Amended Petition. It was argued that the appellant should have utilized the opportunity to file fresh affidavits in support of the Amended Petition.

In her Judgment the trial Judge gave the background to this development and stated her position. She observed:

> *'By consent of all counsel the amended Petition was allowed whereupon the Petitioner's Counsel withdrew the Petitioner's original Petition which had been replaced by the amended one. In an unprecedented manner, in the Petitioner's affidavits in rejoinder to the Respondent's answers to the Petition, the Petitioner surprisingly attached as annextures thereto the affidavits in support of his original Petition. These include his own affidavit dated 31/03/2016 and the affidavits dated 11/03/2016 of Nagani Jalia, Magosha Mariam, Jamani Aramanzan and the affidavit dated 18/05/2016 of Mugulo Mubarak. These affidavits, in my view, had since been replaced by the said amended Petition that is accompanied by fresh affidavits. It is a cardinal principle of pleadings that "Parties are bound by their pleadings" see* ***Amama Mbabazi vs Musinguzi Garuga*** *Election Petition No. 12 of 2002. The Petitioner is bound by his amended Petition and the accompanying affidavits filed therein…'(sic)*

From the record, it is evident that the Appellant amended his Petition. During scheduling, counsel for the petitioner informed court that he intended to rely on the Amended Petition to argue his case. Court accordingly proceeded to hear the Petition based on the fresh pleadings which were the Amended Petition and its attachments. This was at the

preparation stage of hearing the Petition and it was these fresh pleadings which guided court and parties on what was to be relied on and followed. An amended pleading is one that replaces an earlier pleading and that contains matters omitted from or not known at the time of the pleading. See **Black's Law Dictionary 9th ed. at pages 1270 & 1271**. The intention of the amendment was clearly to replace the original Petition.

The court in addition to granting the amendment, directed that a written consent to the amendment be filed. The said consent was filed in the High Court Mbale on 11th/5/2016 and it stipulated that the Amended Petition would be fused with the affidavits in the original Petition. This consent order was however not signed by the Judge and also not considered in her Judgment. It was not part of the proceedings of the lower court. The orders sought to be relied on therein were never affirmed by court.

When considering the validity of a consent order or settlement, for such order to be valid needs to be signed and sealed. The fact of its registration at the Court Registry is not enough. See **British American Tobacco (U) Ltd V Sedrach Mwijakubi and 4 others** S.C.C.A No. 1 of 2012 wherein Odoki CJ (as he then was) concluded that there was no valid compromise settlement or consent order because the consent had not been signed and sealed by the Judge. In the same spirit, we find that, a consent order to be considered as valid ought to have been signed and sealed by the Judge. The mere fact that it is mentioned during the proceedings or filed at the Court Registry does not place it on court record. It is not for the court to speculate

the reasons why the consent order was never signed or sealed. It lacks the necessary endorsement and is therefore invalid.

Counsel for the appellant asked Court to consider the fact that the trial Judge did not sign the consent as a technicality envisaged under **Article 126 (2)(e)** of the Constitution and implored court to administer substantive justice without undue regard to technicalities.

We understand the necessity for the Constitutional provision above but observe that a major requirement was lacking. It is not a mere technicality that can be ignored. Upholding such would defeat the ends of justice. The consent order is invalid and ineffective. This scenario does not fall under the circumstances in which **Article 126(2)(e)** of the Constitution applies. See Supreme Court decision in **Kasirye Byaruhanga and Co. Advocates Vs Uganda Development Bank, S.C.C.A No. 2 of 1997.**

The Petitioner attached photocopies of affidavits of the original Petition to his Amended Petition and affidavits in rejoinder to the supplementary affidavit in support of the 1st respondent's Answer to the Petition, to wit his own affidavit dated 13/05/2016, affidavits of Nagami Jalia, Magosha Mariam and Jamani Aramanzan dated 11/03/2016 and of Mugulo Mubarak dated 18/05/2016. He sought to rely on them in support of his Petition. The trial Judge found that the affidavits were part of the original Petition which had been replaced and in the premises she rejected them relying on the authority of **Shah Hemraj Bharmal & Brothers Santosh**

Kumari [1961] EA at 679, holding that once a pleading ceases to be on court record, it cannot be restored in a Judgment.

We find that the defunct affidavits were part of the Petition the 2nd respondent departed from. He cannot therefore be seen to rely on them. Rule 15 of the Parliamentary Election Petitions Rules requires all evidence at the trial in favor of or against the Petition to be by way of affidavit read in open court. This in no way meant photocopies which would otherwise be secondary evidence and would deny the other party a chance to cross examine the witnesses. The record shows the persons that deponed the affidavits in question were available and as such counsel should have filed fresh affidavits in support of his Amended Petition. We uphold the trial Judge's finding and find no error on her part. Ground 1 fails.

Grounds 2, 5 and 10

These three grounds raise one basic complaint. Counsel for the appellant argued that the 2nd Respondent was not qualified for nomination and election as MP of Bungokho North Constituency because he lacked the requisite academic qualifications. The following contentions are raised:

1. That letters of verification of results are not academic qualifications or certificates and cannot be competently used for nomination and election.

2. That both the said letters for verification issued by UNEB were addressed to Mbale Progressive School which was not the examination centre.
3. That Mbale Progressive School and Mbale Senior Secondary School certified the said letters of verification which were not addressed to them and that the Letters lacked authentic certification either by UNEB or Nkoma S.S.
4. That the qualifications actually do not belong to the 2nd respondent.

In response counsel for the respondents submitted that the 2nd respondent presented valid documentation in proof of his academic qualifications and the trial Judge rightly found them authentic and sufficient. It was argued for the respondent that the 2nd respondent was correctly nominated and later on elected.

We shall re-state the position of the law for purposes of clarity. Section 61 of the Parliamentary Elections Act States:

"61 (1); The election of a candidate as a Member of Parliament shall only be set aside on any of the following grounds if proved to the satisfaction of court:-

a).....

b).....

c).....

d) that the candidate was at the time of his or her election not qualified or was disqualified for election as member of Parliament."

The standard of proof is stated under Section 61(1) and 61(3) of the Parliamentary Elections Act to be

"to the satisfaction of court" and "on a balance of probabilities".

The required academic qualifications for Member of Parliament are laid down under **Article 80(1)(c)** of the Constitution and Section 4(1) (c) of the Parliamentary Elections Act. Both provide for the minimum formal education to be Advanced Level or its equivalent.

The 2nd respondent in his statement under oath for nomination stated the following as his academic qualifications:

1. MA Rabbinic Studies/Theology
2. BA/ Education
3. A-Level
4. O-level
5. PLE

What is being questioned are the 2nd respondent's A' and O' level qualifications. The 2nd respondent attached to his answer to the Petition a Letter in verification of Results for O'Level and a Letter in verification of Results for A'Level, both issued by UNEB and marked annexture 'C'.

Counsel for the appellant alleges that the letters of verification of results are not academic qualifications and should not have been considered competent during nomination because they are not certificates.

The requirement is for the candidate to prove that he has the minimum qualification of A'level or its equivalent as provided for by **Article 80(1)(c)** of the Constitution and section 4(1) (c) of the Parliamentary Elections Act. This section is to be read together with section 4(14) which prohibits the use of statutory declarations or affidavits as evidence in proof of academic qualification.

The position of the law is that documents may be proved either by primary or by secondary evidence vide sections 60-62 of the Evidence Act. The 2nd respondent explains in his affidavit in reply to the Petition and during his cross examination that he lost his original certificates of both O' and A' level, reported to Police and eventually was issued with letters by UNEB verifying and confirming that he indeed sat and attained the qualifications in issue. He explained that he attached the Letters in Verification of Results in lieu of the lost certificates. UNEB as a matter of practice does not issue other certificates to replace the lost ones but rather issues a Letter in verification of Results, it was contended. The original copies of the letters in verification of results were presented both in court and for nomination. We consider such letters primary evidence and it suffices as proof of the required A'level qualification.

As to whether the qualifications do belong to the 2nd respondent, counsel for the appellant pointed to the difference in names on the Letters of Verification of Results which appear as 'Rabbi Gershom' and the names presented for nomination and subsequent election as 'Sizomu Gershom

Rabbi Wambedde' and argued that the results/qualifications presented by the 2nd respondent did not belong to him. It was argued also that the said letters for verification were both addressed to Mbale Progressive School which was not the examination centre but that Mbale Progressive School and Mbale Senior Secondary School certified the said letters of verification even if these were not addressed to them. It was because of those reasons that the appellant concluded that the results presented never belonged to the 2nd respondent.

The trial Judge considered the petitioner's allegations and the contents of the petitioner's affidavit in rejoinder to the 1st respondent's amended answer to the Petition and found the evidence to be no more than conjecture. In the trial court's view, the petitioner failed to discharge his burden of proof. We note that the trial Judge thoroughly scrutinized the documents attached as annextures (A-Q) to the 2nd respondent's affidavit dated 8/4/2016 in support of his answer to the Petition to wit, UNEB Letters of Verification of Results, letters from Mbale Progressive Secondary School and Mbale Secondary School, the Deed Poll and Notice thereof in the **Daily Monitor** newspaper, the 2nd respondent's degree of Bachelor of Arts in Education, the 2nd respondent's identification card and driving permit and the 2nd respondent's appointment letter and a letter of verification from Hamdan Girls' High School. Court found that the said qualifications and the events shown by the documents were well sequenced, in chronological order and were consistent with authenticity. The trial Judge was satisfied that the documents properly belonged to the

2nd respondent and that as such, the 2nd respondent possessed the requisite academic qualifications.

Looking at the appellant's efforts to discredit the 2nd respondent's qualification, other than making allegations and faulting the said Letters of Verification for lacking certification or for being certified by different schools or doubting that UNEB issued the Letters, we are unable to find any supporting evidence of the allegations. We find these allegations not proved. The appellant bore the burden to prove the allegations he fronted but never did so. It was the view of counsel for the appellant that he raised questions and inconsistencies that automatically shifted the burden to the 2nd respondent to prove the authenticity of his documents. We disagree. Mere allegations are not sufficient to cause the burden to shift as counsel wants court to believe. For the burden of proof to shift to the respondent there must be clear evidence creating doubt as to the authenticity of the document in question that demands explanation from the respondent. In the authority of **Rehema Tiwuwe Watongola vs Proscovia Salaamu Musumba, Election Petition Appeal No. 0027 of 2016,** the questionable document was a certificate in the equivalence of A'level. The respondent brought evidence to show that the certificate had been investigated by the issuing University and had been found false. Basing on such evidence, the University had gone ahead to revoke/recall all academic awards given to the appellant. The appellant was notified of this revocation. Court held, that:

...In view of the fact that questions were raised regarding the authenticity of the appellant's academic documents the appellant bore the burden of proving that the documents which she presented for nomination were authentic...

The appellant ought to have taken extra steps to prove his allegations. During his examination he admitted to taking no step in finding out whether or not the 2nd respondent went to those schools nor did he approach UNEB to verify the authenticity of the Letters or have it disown the said letters. The Original Letters were presented in court and for nomination and were accepted as valid proof of the academic qualifications. During cross examination the 2nd respondent informed court that he studied at Mbale Progressive School but sat his O'Level at Mbale S.S.S and sat A'level at Nkoma Secondary School. Thus he explained the examination centers. He explained that Mbale Progressive School did not have examination centers at the time. We have considered his explanation together with the actual Letters of Verifications and find them consistent. It is clearly stated Mbale S.S.S and Nkoma Secondary School were the examination centres, there is no confusion on that. The 2nd respondent is not claiming to have sat his exams elsewhere.

Another issue Counsel for the appellant contends is that UNEB should have changed the names on the 2nd respondent's academic documents to match the deed poll. In our view that is neither the practice nor was it necessary. Change/addition of names does not demand change on earlier documents where former names were used. The evidence of the returning

officer Musinguzi Rashid was that he received the documents from the 2nd respondent, scrutinized them and found them to be correct. He also looked at the 2nd respondent's National Identity Card together with the deed poll, compared them and proceeded to nominate the 2nd respondent. The 2nd respondent's explanation together with the evidence on record is satisfactory in settling that controversy. Like the trial Judge found, we are satisfied that the 2nd respondent owns the documents and possesses the requisite academic qualification.

The other aspect that we need to discuss under these grounds is the allegations that the 2nd respondent is a traditional/cultural leader barred from participating in partisan politics, a provision under **Article 246(3)(e)** of the Constitution.

Section 5(2)(c) of the Parliamentary Elections Act, 2001 prohibits a traditional or cultural leader so defined in **clause (6) of Article 246** of the Constitution from participating in elections for member of Parliament.

The 2nd respondent refers to himself as a leader of the Jewish community known as Abayudaya. The appellant argues that the Abayudaya community is a cultural community with the 2nd respondent as their leader. **Article 246** of the constitution defines a cultural leader as:

'…a king or similar traditional leader or cultural leader by whatever name called, who derives allegiance from the fact of birth or descent in accordance with the customs, traditions, usage or consent of the people led by that traditional or cultural leader'

The Amended constitution of the Abayudaya refers to the Abayudaya as a Congregation. In the preamble, it states that by the love of the Jewish religion, they are desirous to form an organization through which to meet several needs like needs of the youth, women and the poor. They vow therein to enter into a solemn covenant with God and each other to carry out their desired work.

They state their vision to be an organization to maintain a spiritually and morally upright community. The core values are that, the organization is a faith based organization which shall provide services to Abayudaya members.

The trial Judge upon perusal of the constitution of the Abayudaya congregation was persuaded that the Abayudaya is a faith based spiritual congregation rather than a cultural/traditional institution. She was satisfied with the uncontroverted explanation of the 2nd respondent that he derived his leadership of this congregation not from the fact of his birth or descent, but rather from his ordination as a teacher of the Jewish religion at Ziegler School of Rabbinic Studies, Los Angeles, USA in 2008 and that such source of leadership was inconsistent with the definition of a cultural/traditional leader prescribed by the **Article 246 (6)** of the Constitution. We are in agreement with the finding of the trial Judge. The Abayudaya congregation is indeed a religious congregation and has nothing to do with traditional/cultural communities. The 2nd respondent cannot be said to be a traditional/cultural leader thereof. Consequently grounds 2, 5 and 10 of appeal all fail.

Ground 3 and 4

Counsel for the appellant argued that the deed poll relied on by the 2nd respondent for his current name was invalid and not in accordance with the Birth and Death Act Cap 309 and the provisions of sections 36 of the Registration of Persons Act, 2015. He also faults the 2nd respondent for submitting the deed poll in proof of his academic qualification which offends section 4(14) of the Parliamentary Elections Act.

In her Judgment, the trial Judge held that:

"...the process under the law cited by the petitioner, viz, section 36 of the Registration of Persons Act, 2015 is not applicable to this matter. The 2nd respondent changed his name in 2010, five (5) years prior to the enactment of that Act which cannot be invoked retrospectively..." The Registration of Persons Act, 2015 cannot be applied to acts that occurred before its existence. The deed poll was obtained in 2010.

The deed poll was never presented by the respondent in proof of his academic qualification. It was only presented to explain the additional names and was part of the documents submitted for nomination. This allegation is misconceived and we disregard it as such.

Counsel for the appellant faulted the 2nd respondent for using the name rabbi on his certificates earlier than 2008 when he qualified as a Jewish teacher or Rabbi. In his evidence the 2nd respondent explains that he had the name Rabbi since his childhood, the reason it appears on his documents. In 2008 he became the spiritual leader of the Abayudaya. The

title of whose spiritual leader also happened to be 'Rabbi'. We have looked at the documents the 2nd respondent submitted in proof of his identity and found them consistent with his explanation. There is sufficient proof that 'Sizomu Gershom Rabbi Wambedde' and 'Rabbi Gershom' refer to the one and same person and that the 2nd respondent used the name Rabbi from childhood long before the year when he became a Jewish leader. In the circumstances grounds 3 and 4 of this appeal also fail.

Ground 7

The complaint in ground 7 is that the trial Judge erred in law and fact when she rejected the uncertified Declaration of Results Forms tendered in evidence by the appellant notwithstanding the fact that he paid the 1st respondent for certified copies and attached thereto evidence of payment.

The position of the law is that documents must be proved by primary evidence except as provided in section 64 of the Evidence Act, Cap 6 of the Laws of Uganda which is to the effect that a party wishing to rely on uncertified documents is required to give notice to the party in possession of the original.

DR Forms are public documents. A party wishing to rely on them ought to have them certified as per sections 75 and 76 of the Evidence Act. Without certification such documents cannot prove any fact they seek to prove. See **Kakooza John Baptist v EC and Anthony Yiga, Election Petition Appeal No. 11 of 2007 (SC).**

The exception in section 64(1) above refers to a scenario where the party seeking to rely on uncertified DR Forms gave notice to the party in

possession of the originals requesting for certification and they refused or failed to do as requested. On proving this, court accepts the uncertified copies. The appellant attached receipts showing payments made to the Electoral Commission for Certification. There is no notice or letter requesting for the certified copies. Receipts cannot be considered sufficient notice to the other party. The appellant should have taken an extra step to notify the commission. He cannot be covered under Section 64(1) of the Evidence Act. As such the trial Judge properly rejected the uncertified DR Forms. Ground 7 fails also.

Ground 6, 8, 9 and 11

Counsel for the appellant faulted the learned Judge for failing, neglecting and ignoring her duty to evaluate the evidence on record and thereby coming to wrong conclusions. He contends that there were inconsistences with the votes recorded for the 2nd respondent, for the appellant, invalid votes and excess votes.

He also pointed to the evidence of Rashid Musinguzi where as DW1 made admissions regarding the existence of alterations, inaccuracies and discrepancies in the Declaration of Results forms relied upon in the final tally of results sheets of the impunged election. He faults the trial Judge for not considering this evidence.

The trial Judge dealt with the allegations of falsified results from polling stations of Lumumba, Nabweya Primary School, Nankobe TC, Mbiko TC, Kilulu and Lubembe. She considered the petitioner's allegations of false recording of invalid votes, and excess voting. She held that she failed to

find a single DR Form certified by the Electoral Commission. Court rejected the DR Forms on that basis.

Rashid Musinguzi, DW1, was the returning officer for Bungokho North Constituency. During cross examination he was shown a DR Form (Annexture D) which was not certified by the Electoral Commission. Mr. Rashid Musinguzi in respect to this DR Form pointed to alterations which were not signed against. The trial Judge disregarded this particular evidence because the DR Forms being relied on were not certified.

Counsel for the appellant submitted that based on the controversies/inconsistencies pointed out, the 1st respondent should have nullified the results at the questionable polling stations and that the trial Judge erred by not finding that the irregularities had the effect of substantially affecting the result of the election.

Both at the Petition hearing and on Appeal, the appellant sought to reply on uncertified DR Forms in proof of his allegations. We earlier found while resolving ground 7, that the uncertified DR Forms presented by the appellant could not be relied on. Those DR Forms could not be considered in the exception under section 64(1) of the Evidence Act either. The trial Judge therefore did not err in disregarding that evidence.

The returning officer Mr. Rashid Musinguzi in his evidence stated that there were several copies of DR Forms in respect to polling stations and that there were two versions of that particular questioned DR Form, one with crossings and another without. With such contrasting documents, it

would be bizarre for court to rely on uncertified copies in proof thereof. There was need for certification of the questioned DR Forms by the Commission.

Mr. Musinguzi testified that alterations don't necessarily lead to cancellation of the DR Forms. They follow procedure such as calling the presiding officers and agents of the candidates so as to find a common ground. The alterations don't automatically lead to cancellation of the DR Forms, he stated.

The other issues raised by counsel for the appellant were in respect to allegations of noncompliance, violence and intimidation of voters in the impunged election. It was alleged the 1st respondent upheld an election which did not comply with the principles and provisions of the Parliamentary Elections Act.

The respondents refuted these allegations as false and submitted that the election was free of any violence and intimidation and that there was no Police Report or witnesses claiming to have been intimidated, harassed or attacked. The trial Judge found that those assertions were not supported by cogent evidence. They remained unproved allegations that were not within the personal knowledge of the Petitioner and were inadmissible by the trial court. We too are unable to find admissible evidence to support the appellant's allegations. There is no Police Report of violence or harassment and the evidence of the Presiding Officer, Musinguzi Rashid, during cross examination was that he never received any formal complaint from the

appellant regarding the allegations. The agents of the appellant signed on the DR Forms in effect agreeing with the results. Grounds 6, 8, 9, and 11 of appeal must also fail.

All the grounds of appeal lack merit. In the result we uphold the decision and orders of the High Court and dismiss the Appeal with costs to the respondents in this court and in the court below.

Dated at Kampala this 8th day of May 2017

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HON. JUSTICE S.B.K KAVUMA, DCJ

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HON MR. JUSTICE BARISHAKI CHEBORION, JA

.....

HON. JUSTICE PAUL K. MUGAMBA, JA

8/5/2017

Mwebembezi Richard for Appellant.

Muteesasira Yusuf for 2nd Respondent

Name Lemuyo for 1st Respondent

Anna c/c