



THE REPUBLIC OF UGANDA

**THE COURT OF APPEAL OF UGANDA
AT KAMPALA**

CORAM: MUSOKE, KIBEEDI AND MUGENYI, JJA

ELECTION PETITION APPEAL NO. 27 OF 2021

(Arising from Election Petition No. 6 of 2021)

GRACE NALUBEGA APPELLANT

VERSUS

- 1. JULIET K. SUUBI KINYAMATAMA**
- 2. ELECTORAL COMMISSION RESPONDENTS**

**(Appeal from the Judgment of the High Court of Uganda holden at Masaka
(Nambayo, J) in Election Petition No. 6 of 2021)**

JUDGMENT OF THE COURT

A. Introduction

1. Ms. Grace Nalubega ('the Appellant'), Ms. Juliet K. Suubi Kinyamatama ('the First Respondent') and three other candidates contested in the general election held in Uganda on 14th January, 2021, vying for the position of District Woman Representative for Rakai District. Upon conclusion of the election, the Electoral Commission ('the Second Respondent') declared the First Respondent the duly elected District Woman Representative for Rakai District, having garnered 30,253. The Appellant was the runner up with 19,682 votes.
2. The election result was subsequently published in the Uganda Gazette of 17th February 2021, whereupon the Appellant filed **Election Petition No. 6 of 2021** at the High Court of Uganda sitting at Masaka ('the Trial Court'). Finding no merit in the petition, it was dismissed by the Trial Court with costs. Aggrieved by that decision, the Appellant lodged the present Appeal, **Election Petition Appeal No. 27 of 2021**, in this Court. It is vehemently opposed by both Respondents.
3. At the hearing of the Appeal, Messrs. Lawrence Kabuye and Jonathan Erutu appeared for the Appellant; the First Respondent was represented by Mr. Joseph Kyazze and Ms. Evelyn Tumuhairwe, while the Second Respondent was represented by Mr. Eric Sabiti and Ms. Angella Kanyiginya.

B. Factual Background

4. The First Respondent was nominated to run for the office of District Woman Representative for Rakai District under the name *Suubi Kinyamatama Juliet K.* Submitted with her nomination papers was a colour photograph of herself; her academic certificates and National Identity Card No. CF88036109PUZF, both registered in the name *Kobusingye Juliet*, as well as a Deed Poll and Gazette Notice that sought to clarify that Suubi Kinyamatama Juliet K or Juliet Suubi Kinyamatama, whose maiden name was Kobusingye Juliet, is one and the same person. In addition, the First Respondent presented a statutory declaration explaining that the initial 'K' in the name *Suubi Kinyamatama Juliet K* was an initial for the name *Kobusingye* that appears on the National Voters Register.

5. The Appellant challenged the First Respondent's nomination and election on the premise that she was not qualified therefor since her given name for that purpose – Suubi Kinyamatama Juliet K – did not appear on the National Voters Register, the only name reflected thereon being *Kobusingye Juliet*. It was the Appellant's view, therefore, that the First Respondent was not a duly registered voter within the precincts of Article 80(1)(b) of the Constitution and section 4(1)(b) of the Parliamentary Elections Act, 2005.
6. Both Respondents contested the competence of the petition, the First Respondent proposing that the complaint in respect of the First Respondent's nomination papers should have been presented to the Second Respondent as a pre-election petition brought under section 15 of the Electoral Commission Act, Cap. 140, failure of which, the Appellant was estopped from raising it after the election. She further contended that the addition of the names *Suubi Kinyamatama* to the First Respondent's maiden name, *Kobusingye Juliet*, would not negate her name and identity.
7. In the same vein, the Second Respondent contended that the photograph against the name *Kobusingye Juliet* on the National Voters Register corresponded with the one submitted by the First Respondent at nomination, as well as the photograph in her National Identity Card, and they all bore a true likeness to her physical appearance at nomination. It was therefore opined that the First Respondent had been validly nominated and elected for the cited public office.
8. On its part, deferring to the view that issues to do with nomination should be resolved before elections, the Trial Court held that the Appellant was estopped from raising them thereafter. The trial judge further held that the addition of new names did not render the Appellant a different person; rather, having deposed a deed poll explaining the additional names, the Appellant was validly nominated and elected as the District Woman Representative of Rakai District. The petition was accordingly dismissed with costs.

C. The Appeal

9. The Appellant thereupon lodged an Appeal in this Court, contesting the Ruling and Orders of the High Court (Nambayo, J) dated 17th September, 2021 on the following grounds:

- I. *The Learned Trial Judge erred in law and fact in holding that the 1st Respondent's qualifications could not be challenged after elections thereby leading to a miscarriage of justice.*
- II. *The Learned Trial Judge erred in law and fact when she held that the 1st Respondent was a registered voter under Article 80(1)(b) of the Constitution of Uganda and Section 4(1)(b) of the Parliamentary Elections Act thereby occasioning a miscarriage of justice.*
- III. *The Learned Trial Judge erred in law and misdirected herself in holding that the 1st Respondent was qualified for nomination and election as a woman member of Parliament for Rakai District.*

10. She seeks the following remedies:

- I. *The Appeal be allowed and the Ruling and Orders of the Trial Judge be set aside.*
- II. *The Appellant be declared winner of the elections of woman member of Parliament Rakai District.*
- III. *The Appellant be awarded costs here and below.*

11. Scheduling conference notes in the matter were filed by the Appellant on 7th March, 2022, in response to which the Respondents filed their respective scheduling conference notes on 17th and 18th March, 2022. The First Respondent did also file a Supplementary Record of Proceedings on 17th March 2022. Submissions in rejoinder were subsequently filed by the Appellant on 29th March, 2022. At the hearing of the Appeal, the parties' respective scheduling conference notes were (upon their request) adopted as their written submissions.

12. The Appellant addressed the grounds of appeal chronologically albeit considering *Ground 1* of the Appeal separately and *Grounds 2 and 3* together. This was the approach that was adopted by the First Respondent too. We propose to determine the Appeal on the same basis given that *Ground 1* is a pure point of law that could

dispose of the entire Appeal, while the latter two grounds of appeal raise questions of mixed fact and law that are, in any event, inter-woven with the validity (or lack of it) of the First Respondent's nomination and election.

D. **Determination**

13. Rule 36 of the Parliamentary Elections (Interim Provisions) Rules, SI 141–2 adapts to election petition appeals '**any rules regulating the procedure and practice on appeal from decisions of the High Court to the Court of Appeal in civil matters.**' The duty of this Court sitting as a first appellate court from a decision of the High Court is encapsulated in Rule 30(1) of the Judicature (Court of Appeal Rules) Directions, SI 13–10 ('the Court of Appeal Rules'). The Court is enjoined to '**re-appraise the evidence and draw inferences of fact.**' In **Banco Arab Espanol v Bank of Uganda, Civil Appeal No. 8 of 1998** (Supreme Court), the duty to re-evaluate the evidence on record was held to be applicable to the re-appraisal of both oral and affidavit evidence save that the trial court's impressions on the demeanour of witnesses would be inapplicable to affidavit evidence. This duty does similarly apply to election petition appeals before the Court. Thus, in **Achieng Sarah Opendi & Another v Ochwo Nyakecho Keziah, Election Petition Appeal No. 39 of 2011**, the Court adopted the exposition of the same principle in **Father Nasensio Begumisa & Others v Eric Tibebaga, Civil Appeal No. 17 of 2002** (Supreme Court) in the following terms:

The duty of the first appellate court is to subject the evidence adduced at the trial to a fresh and exhaustive reappraisal, scrutiny and then decide whether or not the learned trial judge came to the correct conclusions, and if not then this court is entitled to reach its own conclusions.

14. It is on that premise that the present Appeal shall be determined.

Ground 1: *The Learned Trial Judge erred in law and fact in holding that the 1st Respondent's qualifications could not be challenged after elections thereby leading to a miscarriage of justice.*

15. It is conceded for the Appellant that she bore the burden of proof before the lower court, it being proposed that the standard of proof was '*to the satisfaction of the*

court, which in any event is opined to be tantamount to proof beyond reasonable doubt. Reference in that regard was made to the case of **Ret. Colonel Dr. Kiiza Besigye v Yoweri Kaguta Museveni & Another, Election Petition No. 1 of 2001** (per Odoki, CJ and Mulenga, JSC). We pause here to state that section 61(3) of the Parliamentary Elections Act has since been interpreted to confer a different standard of proof on parliamentary election petitions as opposed to presidential election petitions. The standard of proof applicable to the former is satisfaction on the balance of probabilities. See **Nanziri Kase Mubanda v Mary Babirye Kabanda, Election Petition Appeal No. 38 of 2016**.

16. In terms of the substantive ground of appeal, learned Counsel for the Appellant fault the trial judge for her finding that any misgivings about the First Respondent's status as a voter should have been raised with the Second Respondent under section 15(b) of the Parliamentary Elections Act, 2005. In their view, the upshot of that decision was that a person that does not proceed under that legal provision would be estopped from challenging the nomination of the candidate later thus rendering redundant sections 4(1) and 61(1)(d) of the Parliamentary Elections Act. Arguing that the petition before the Trial Court fell within the precincts of section 61(1)(a) and (d), and could only have arisen after the election; the Court is urged to abide the decision in **Durga Shankar Mehta v Thakur Raghuraj Singh & Others, 1954 AIR 520** that the election of a person that is not qualified for election must be declared void.

17. We reproduce below the cited legal provisions, as well as the decision relied upon. For completeness, section 4(2) of the Parliamentary Elections Act is reproduced as well.

The Parliamentary Elections Act

Section 4(1) and (2):

(1) A person is qualified to be a member of Parliament if that person—

- (a) Is a citizen of Uganda;
- (b) Is a registered voter, and
- (c) Has completed a minimum formal education of Advanced Level standard or its equivalent.

(2) A person is not qualified for election as a member of Parliament if that person—

- (a) Is of unsound mind;
- (b) Is holding or acting in an office the functions of which involve a responsibility for or in connection with the conduct of an election;
- (c) Is a traditional or cultural leader as defined in clause (6) of article 246 of the Constitution;
- (d) Has been adjudged or otherwise declared bankrupt under any law in force in Uganda and has not been discharged; or
- (e) Is under a sentence of death or a sentence of imprisonment exceeding nine months imposed by any competent court without the option of a fine;
- (f) Has, within the seven years immediately preceding the election, been convicted by a competent court of a crime involving dishonesty or moral turpitude; or
- (g) Has, within the seven years immediately preceding the election, been convicted by a competent court for contravention of any law relating to elections conducted by the Commission.

Section 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 the court –

- (a) Noncompliance with the provisions of this Act relating to elections, if the court is satisfied that there has been failure to conduct the election in accordance with the principles laid down in those provisions and that the noncompliance and the failure affected the result of the election in a substantial manner;
- (b)
- (c)
- (d) That the candidate was at the time of his or her election not qualified or was disqualified for election as a member of Parliament.

18. In Durga Shankar Mehta v Thakur Raghuraj Singh & Others (supra), it was held:

When a person is incapable of being chosen as a member of a State Assembly under the provisions of the Constitution itself but has nevertheless been returned as such at the election, it can be said without impropriety that there has been noncompliance with the provisions of the Constitution materially affecting the result of the election. There

is no material difference between "noncompliance" and "non-observance" or "breach" and this item in clause (c) of sub-section (2) may be taken as a residuary provision contemplating cases where there has been infraction of the provisions of the Constitution or of the Act but which have not been specifically enumerated in the other portions of the clause. When a person is not qualified to be elected a member, there can be no doubt that the Election Tribunal has got to declare his election to be void.

19. It is argued that sections 15 and 61 of the Parliamentary Elections Act should be read together, the proposition being that the former section is procedural and cannot oust the more substantive provisions of section 61. It is further argued that, despite the use of the word 'shall' therein, section 15(b) of the Act is not mandatory, therefore the Appellant had the discretion to decide which legal provision to invoke. The observation in **Sitenda Sebalu v Sam Njuba & Another, Election Petition Appeal No. 26 of 2007** (Supreme Court) that the use of 'shall' can also have a directional rather than mandatory effect is cited in support of this position.

20. Conversely, learned Counsel for the First Respondent support the conclusions arrived at by the trial judge, restating their legal arguments before the lower court that the petition was grounded in a pre-election complaint that should have been raised before the Electoral Commission. The Court is urged to distinguish between pre-election complaints that fall within Articles 61(1)(f) and 64(1) of the Constitution, section 15 of the Electoral Commission Act and section 15(a) and (b) of the Parliamentary Elections Act, on the one hand; and post-election complaints that are covered by section 61 of the Parliamentary Elections Act. The cases of **Fred Zzimula Kasirye v Francis Kibuuka Bazigatirawo Amooti, Election Petition Appeal No. 6 of 2020** and **Akol Hellen Odeke v Okodel Umar Election Petition Appeal No. 1 of 2018** are cited in support of their interpretation of those legal provisions.

21. The Appellant is faulted for waiting until the electoral process had been concluded and the electorate had expressed its will with regard to its District Woman Representative before belatedly lodging a nomination complaint that she has demonstrated no reason not to have lodged earlier. It is opined that section 61 of the Parliamentary Elections Act should only be invoked by a party whose pleadings clearly plead the particulars underlying a candidate's disqualification from

nomination, and demonstrate that s/he was not aware of the alleged disqualification nor could s/he have known about it before the election. In Counsel's view, **Durga Shankar Mehta v Thakur Raghuraj Singh & Others** (supra) does indeed support the view that pre-election disputes should be determined by an election tribunal and not a court.

22. In like vein, Counsel for the Second Respondent adopted its submissions before the Trial Court. In addition, it is argued that a complaint in respect of a candidate's nomination should be lodged with the Electoral Commission, which is vested with primary jurisdiction to determine the complaint, with room for an appeal from its decision to the High Court. In Counsel's estimation, permitting a party to wait until the end of the election to challenge any aspect of the nomination exercise has the effect of rendering nugatory Articles 61(1)(f) and 64(1) of the Constitution, section 15 of the Electoral Commission Act and section 15(a) and (b) of the Parliamentary Elections Act.

23. The case of **Fred Zzimula Kasirye v Francis Kibuuka Bazigatirawo** (supra) is cited in support of the proposition that a party that fails to avail itself to the remedies under the above legal provisions should be estopped from raising them after losing the election. It is argued that section 61 of the Parliamentary Elections Act should only be available to a petitioner who pleads that the disqualifying factors were not apparent on the face of the documents submitted for nomination, only being discovered after the election, such averments to be pegged on illegality and fraud that was discovered after the election. We were referred to the cases of **James Michael Ongole v Electoral Commission & Another, Election Petition No. 8 of 2006** and **Winnie Byanyima v Ngoma Ngime, Civil Revision No. 9 of 2001** for the rationale of pre-election dispute resolution.

24. The Court is urged not to render the foregoing provisions superfluous by allotting undue discretion to a petitioner to decide whether to raise a pre-election complaint before the Electoral Commission or defer it to be raised under an election petition filed before the High Court. For ease of reference, the invoked provisions are reproduced below.

Article 61(1)(f) of the Constitution

The Electoral Commission shall have the following functions:

- (a)
- (b)
- (c)
- (d)
- (e)
- (f) **To hear and determine election complaints arising before and during polling.**

Article 64(1) of the Constitution

Any person aggrieved by a decision of the Electoral Commission in respect of any of the complaints referred to in article 61(1)(f) of this Constitution may appeal to the High Court.

Section 15(1) and (2) of the Electoral Commission Act

- (1) Any complaint submitted in writing alleging any irregularity with any aspect of the electoral process at any stage, if not satisfactorily resolved at a lower level of authority, shall be examined and decided by the commission; and where the irregularity is confirmed, the commission shall take the necessary action to correct the irregularity and any effects it may have caused.**
- (2) An appeal shall lie to the High Court against a decision of the commission confirming or rejecting the existence of an irregularity.**

Section 15(a) and (b) of the Parliamentary Elections Act

Any voter registered on the voters' roll of a constituency may–

- (a) During office hours on the nomination day at the office of the returning officer, inspect any nomination paper filed with the returning officer in respect of the constituency;**
- (b) After the closure of the nomination time and during such period as may be prescribed, inspect any nomination paper in respect of the constituency at such time and subject to such conditions as may be prescribed; and lodge any complaint with the returning officer or the Commission in relation to any nomination in respect of the constituency challenging the qualifications of any person nominated.**

25. In a brief rejoinder, however, the Appellant maintains that she did have the discretion under section 15(b) of the Electoral Commission Act to either submit her complaint to the electoral body or to the High Court. Citing the Supreme Court's interpretation of sections 61(1) of the Parliamentary Elections Act in **Abdul Balingira Nakendo v Patrick Mwendha, Election Petition Appeal No. 9 of 2007**, it is argued that the High Court had the jurisdiction to hear and determine the question of qualifications of an electoral candidate.
26. The crux of the matter here is whether a party's failure to challenge its opponent's nomination before the Electoral Commission (or a lower authority thereunder) under section 15 of the Electoral Commission Act would bar it from challenging the nomination as an election petition before the High Court that is brought under section 61(1)(a) and (d) of the Parliamentary Elections Act. An interrogation of the electoral regime is pertinent.
27. Article 61(1)(f) of the Constitution delineates the Electoral Commission's broad functions to include the determination of election complaints arising '**before and during polling**.' It thus places a constitutional duty upon the Commission to hear and determine election complaints arising within those stages of the electoral process. Drawing from that constitutional mandate, section 15(1) of the Electoral Commission Act provides for the determination by the Commission of any written complaint in respect of '**any aspect of the electoral process at any stage, if not satisfactorily resolved at a lower level of authority**.' Reading section 15(1) together with Article 61(1)(f) of the Constitution, it becomes apparent that reference in the statutory provision to the Commission's dispute *resolution* function '*at any stage*' of the electoral process is subject to the delimitations in the constitutional provision that restrict the Commission's intervention to the stage *before and during polling*. In so far as the term 'poll' is defined by *Black's Law Dictionary*¹ as '**the act or process of voting at an election**,' *polling* as envisaged in Article 61(1)(f) would represent the actual voting exercise. Within that context, it would be absurd to suggest that irregularities to do with candidates' nomination would, should or may reasonably be envisaged to arise during polling. Clearly these would be pre-polling

¹ 8th Edition, p. 1197

issues that Article 61(1)(f) of the Constitution and section 15(1) of the Electoral Commission Act contemplate to be determined by the Electoral Commission.

28. In the instant case, it is the Appellant's contention that the use of the word 'may' in section 15(b) of the Parliamentary Elections Act would suggest that the said provision is directional rather than mandatory, leaving a complainant the choice as to whether to take his/ her complaint before the Electoral Commission (as stipulated therein) or to lodge it as a petition to the High Court. With respect, we do not share this view. In our judgment, the usage of that word in that context is permissive, granting registered voters the right to inspect nomination papers after the closure of nominations. The ensuing provision for the lodging of nomination complaints with the returning officer or Electoral Commission may very well be directional, as argued by Counsel for the Appellant, but we do not read anything in that legal provision that makes the said directions optional. Our construction of section 15(b) of the Parliamentary Elections Act, against the backdrop of Article 61(1)(f) of the Constitution and section 15(1) of the Electoral Commission Act, is that irregularities unearthed from a voter's inspection of a candidate's nomination papers should as a matter of course be submitted to the returning officer for determination, with the possibility of its escalation to the Electoral Commission.

29. We take the view that the provisions of section 61(1)(a) and (d) of the Parliamentary Elections Act do not necessarily provide an alternative avenue for complaints arising from a candidate's nomination either. We state as much for the following reasons. First, subsection (1)(a) of that provision would appear to be preoccupied with the actual election as opposed to nomination. The two processes are not tantamount to one and the same thing, the latter preceding the former in actualisation. This is underscored by the title to Part VI of the Act that, in providing for '**nomination of candidates for election as members of Parliament**,' draws a distinction between the nomination of candidates and their election as Members of Parliament. In our judgment, section 61(1)(a) anticipates election-related matters to mean factors that would disenfranchise voters from exercising their right to vote. These would include such polling issues as names missing from the voters' register, insufficient ballot papers etc. The substantial non-compliance with the provisions of the Parliamentary Elections Act that address those aspects of the

electoral process is what would form the basis for the setting aside of an election under that subsection. Nomination complaints may not be raised thereunder.

30. We now turn to the more controversial subsection (1)(d) of section 61. In **Jack Odur Lutanywa v Electoral Commission & Another, Election Petition Appeal No. 35 of 2021**, the disqualification referred to in that subsection was held to allude to the parameters of disqualification alluded to in section 4(2) of the Parliamentary Elections Act, as distinct from the parameters of qualification stipulated in section 4(1). The Court observed as follows:

Section 4 of the Parliamentary Elections Act draws a distinction between parameters that positively qualify a person to be a member of Parliament (MP) and those that render him/ her '*not qualified*' for election. Whereas section 4(1) outlines the qualifications of a member of Parliament to include academic qualifications, section 4(2) specifically demarcates the parameters that would disqualify a person from election to the office of MP. The fact that the term '*not qualified*' used in section 4(2) is replicated in section 61(1)(d) of the same Act would, in our view, suggest that it is the parameters outlined in section 4(2) that would form the basis for the non-qualification or disqualification of a candidate under section 61(1)(d) of the Parliamentary Elections Act. These include a person being of unsound mind, a traditional or cultural leader, an adjudged bankrupt etc.

31. This in itself would suggest that the parameters of qualification under section 4(1) of the Parliamentary Elections Act are not envisaged as grounds for setting aside an election under section 61(1)(d) of the same Act. Rather, they are the sort of nomination issues that a registered voter would (without much constraint) be at liberty to inspect under section 15 of the Act for possible advancement to the Electoral Commissions as a complaint under section 15(1) of the Electoral Commission Act. These parameters include a candidate's voter registration status, as is in issue presently. We find no reason to depart from this position. On that basis, the Appellant wrongfully lodged her petition under section 61(1)(a) and (d) of the Parliamentary Elections Act.

32. With respect, we do not find the case of **Abdul Balingira Nakendo v Patrick Mwondha** (supra) that we were referred to very helpful to the Appellant's case. In that case the Supreme Court invoked Article 86(1) of the Constitution to arrive at

the decision that the High Court does have jurisdiction to entertain any question as to whether a person has been validly elected a Member of Parliament. In so doing, the apex court considered the possibility of the National Council for Higher Education (NCHE) granting a certificate of equivalence in error, to hold that if the High Court was furnished with evidence that the decisions of such an administrative body had been irrationally arrived at, the court was clothed with the jurisdiction to declare so.

33. However, as observed by this Court in **Jack Odur Lutanywa v Electoral Commission & Another** (supra), the Supreme Court did not address itself to the corresponding constitutional functions of the Electoral Commission as stipulated in Article 61(1)(f) of the Constitution in coming to its decision, neither indeed were they in issue in that case. That notwithstanding, the apex court did recognize that where NCHE's issuance of a certificate of equivalence was after the nomination found to have been premised on falsehoods, then the High Court was justified to interrogate the validity of a nomination premised on the invalid certificate of equivalence. Thus, observing that the certificate of equivalence issued to the Appellant in that case by the NCHE was premised on the certificates presented to the accreditation body by the appellant in that case, the Supreme Court held:

There must be a basic presumption here that the above certificates must be genuine, and duly issued by the bodies named therein. If it were proved that those certificates upon which NCHE based its decision to issue its own certificate were not genuine, then it would follow that the NCHE Certificate would be a nullity as the person would not have the necessary qualifications.

34. Consequently, to the extent that the invalidity of the candidate's qualifications would have been realised after the election rather than at the time of the nomination, the **Nakendo** case illuminates the pertinent point that a challenge to an elected person's nomination on account of their academic qualifications may only ensue under section 61(1) of the Parliamentary Elections Act where the invalidity of the qualifications was not readily apparent to the party challenging them at the time of the nomination.

35. That articulation of the law resonates with the proposition herein that the structured nature of dispute resolution under Uganda's electoral regime is that pre-election complaints should be handled as such and strictly brought before the Commission under section 15 of the Electoral Commission Act, unless a party neither had knowledge of the matter being complained about nor could it have deduced it from the face of the nomination papers. This indeed is the position laid down by this Court in **Fred Zzimula Kasirye v Francis Kibuuka Bazigatirawo** (supra) as follows:

It appears to us that the intention of the legislature in enacting section 15 of the Electoral Commission Act was to ensure that all disputes arising prior or during nominations before voting are resolved with finality before the election date, except where the law otherwise specifically provides. Timely complaints will avoid undue expense and inconvenience to the parties inclusive of the electorate who do not have to vote where nomination is contested. Issues of nomination should be resolved before elections.

36. It is further reinforced by the earlier observation by the Court in **Giruli David Livingstone v Mulekwa Herbert & Another, Election Petition Appeal No. 76 of 2016** as follows:

It appears illogical in matters such as in these elections for one to contest the eligibility of another candidate in an election after the actual election has taken place and not before. Candidates appear to be willing to contest against others they consider ineligible to contest with in elections as long as they ultimately win the said election. However, in an apparent afterthought, when they lose the election they then contest the said illegibility. A period to contest such eligibility should be provided before the elections and where there is no contest then a candidate is estopped from raising the same issue again simply because he lost the election.

37. Having found that Article 61(1)(f) of the Constitution and section 15 of the Electoral Commission Act do make provision for contests to candidates' eligibility for election, it follows that a candidate would be estopped from raising nomination complaints after the election simply because s/he lost the election.

38. For present purposes, therefore, our construction of Article 61(1)(f) of the Constitution read together with section 15 of the Electoral Commission Act is that

nomination complaints or complaints pertaining to nomination should be submitted to the Electoral Commission for determination. Recourse may only be made to an election petition lodged under section 61(1)(d) of the Parliamentary Elections Act where an intending petitioner had no knowledge of and could not with reasonable diligence have had knowledge of such defects in the nomination papers at the time of nomination. That would be the rationale behind section 15(a) of the Parliamentary Elections Act that empowers a registered voter to inspect any nomination paper filed on the nomination day. That legal provision is intended to give registered voters, including candidates and prospective candidates, the opportunity to pick up any irregularities observed at the time of nomination. Such irregularities would be governed by section 15(1) of the Electoral Commissions Act and are subject to determination by the Electoral Commission, final appeals from its decision being made to the High Court under Article 64(1) of the Constitution and section 15(2) of the Electoral Commission Act.

39. In the instant case, we have adjudged the First Respondent's voter registration status to have been a nomination issue that should have been submitted to the Electoral Commission under section 15(1) of the Electoral Commission Act. It would be incumbent upon the Appellant, therefore, to establish that she only discovered the alleged non-registration of the First Respondent after the election so as to warrant its consideration as an exception to the general rule. We find no such evidence on record. Consequently, we find no merit in this ground of appeal and would therefore disallow it.

40. Our determination of *Ground 1* would conclusively dispose of the Appeal. That being so, we find no reason to consider the residual grounds of appeal.

Conclusion

41. Rule 27 of the Parliamentary Elections (Interim Provisions) Rules gives the High Court discretion in the determination of costs in election petitions. It reads as follows:

All costs of and incidental to the presentation of the petition and the proceedings consequent on the petition shall be defrayed by the parties to the petition in such manner and in such proportions as the court may determine.

42. That Rule is instructive on how costs in election petition appeals may similarly be addressed. We are also cognizant of the general rule that costs should follow the event unless the court for good reason decides otherwise. See section 27 of the *Civil Procedure Act*.

43. With the greatest respect, we do not find the instant Appeal to fall within the category of cases that warrant a departure from that general rule. We are appropriately cognizant of the principle advocated in *Petit, Dennis, 'Resolving Election Disputes in the OSCE² Area: Towards a Standard Election Dispute Monitoring System', OSCE & ODIHR³, 2000, p. 11* that the complaints procedure in electoral dispute resolution '**should be free of unnecessary obstacles, especially as regards the cost of bringing an action to court.**' There is, however, a corresponding duty upon this Court under Rule 2(2) of the Court of Appeal Rules to prevent the abuse of court process.

44. It seems to us that belated and unwarranted challenges to the pre-polling eligibility of candidates that have subsequently emerged successful in election contestations are brought in bad faith, constitute an abuse of the court process and should be discouraged. Particularly in matters, such as the present Appeal, where binding case law abounds on an issue. We would therefore exercise our discretion to award costs in this matter to the Respondents.

45. The upshot of this judgment is that this Appeal is dismissed with costs to the Respondents in this Court and the court below.

It is so ordered.

² Organization for Security and Co-operation in Europe.

³ Office for Democratic Institutions and Human Rights.

Dated and delivered at Kampala this 26th Day of May,
2022.



Elizabeth Musoke
JUSTICE OF APPEAL



Muzamiru Mutangula Kibeedi
JUSTICE OF APPEAL



Monica K. Mugenyi
JUSTICE OF APPEAL