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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

ELECTION PETITION APPEAL NO.22 OF 2021

(Arising out of Mukono Election Petition No. 04 OF 2021)

NABADDA RITAH APPELLANT

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VERSUS

NANTABA IDAH ERIOS RESPONDENT

CORAM: HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

HON. MR. JUSTICE STEPHEN MUSOTA, JA

HON. MR. JUSTICE CHRISTOPHER GASHIRABAKE, JA

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JUDGMENT OF COURT

This is an appeal against the decision of Olive Kazaarwe Mukwaya J. delivered on the 10th September, 2021, at the High Court of Uganda at Mukono.

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Background of the Appeal.

On the 14th day of January, 2021, the Electoral Commission conducted National Elections where the Respondent, Ms. Birungi Kobusingye Jackline, Ms. Nabirye Margret, Ms. Nakaddu Brenda, Ms. Nakweede Harriet, Ms. Nalubwama Agatha and Ms. Wabuza Lydia participated as candidates. The respondent was declared the validly elected Woman Member of Parliament for Kayunga District and was gazzeted on the 17th day of February, 2021.

The Appellant was dissatisfied with the results as a registered voter under registration **No. 60646595**, and filed **Election petition No 30 04 of 2021**. When the petition came up for scheduling, Counsel for the Respondent raised two Preliminary Objections on grounds that the petition is not duly supported by the signatures of 500 registered voters in Kayunga District and that the Petitioner's Certificate of Translation offends the Illiterates Protection Act. On 35 the basis of the two objections court dismissed Election Petition No. 4 of 2021, with costs on the 10th day of September, 2021 thus this appeal.

The following grounds of Appeal were raised for determination;

- 40 1. The learned trial Judge erred in law and fact when she failed to find that the preliminary objection raised by the Respondent required adducing evidence and was premature thus wrongly dismissing the petition.
- 45 2. The learned trial Judge erred in law when she determined matters of evidence by way of preliminary objection without subjecting the petition to a hearing thus occasioning a miscarriage of Justice.
- 50 3. The learned trial Judge erred in law when she determined the preliminary objection based on affidavit evidence which had not been read and admitted as evidence in court **contrary to the Parliamentary Elections (Interim Provision) Rules.**
- 55 4. The learned trial Judge erred in law and fact when she reached a conclusion that in election petitions once hearing commences there is no opportunity to call additional evidence as is available in ordinary suits thus wrongly

The Appellant was dissatisfied with the results as a registered voter under registration **No. 60646595**, and filed **Election petition No**
30 **04 of 2021**. When the petition came up for scheduling, Counsel for the Respondent raised two Preliminary Objections on grounds that the petition is not duly supported by the signatures of 500 registered voters in Kayunga District and that the Petitioner's Certificate of Translation offends the Illiterates Protection Act. On
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- 50 3. The learned trial Judge erred in law when she determined the preliminary objection based on affidavit evidence which had not been read and admitted as evidence in court contrary to the **Parliamentary Elections (Interim Provision) Rules**.
- 55 4. The learned trial Judge erred in law and fact when she reached a conclusion that in election petitions once hearing commences there is no opportunity to call additional evidence as is available in ordinary suits thus wrongly

dismissing the petition contrary to the Parliamentary Elections Act cap 17.

- 60 5. The learned trial Judge erred in law and fact when she held that the petition was not supported by the requisite 500 signatures of registered voters in Kayunga District when no evidence had been adduced to that effect thus occasioning a miscarriage of justice.
- 65 6. The learned trial Judge erred in law and fact when she reached a conclusion that only 70 out of 559 persons and had the opportunity of filing a form with voter number and concluded that other voters' numbers were suspect without any evidence having been adduced to that effect thus occasioning a miscarriage of justice.
- 70 7. The learned trial Judge erred in law and fact when she reached a conclusion that the Petitioner had failed to prove that the 559 supporters stated to be in support of the petition are duly registered voters in Kayunga District without conducting a hearing and/or receiving evidence.
- 75 8. The learned trial Judge erred in law when she found that the certificate of translation was of no legal consequence thereby occasioning a miscarriage of Justice.

Representation

The Appellant was represented by Mr. Gregory Byamukama King, Mr. Ogoi Allan, Mr. Kasimbi Phillip and Mr. Ssewanyana Viany. The Respondent was represented by Mr. Ambrose Tebyasa.

Duty of the Court

This being, *inter alia* a first and last appellate Court in election Appeals, we are alive to Courts duty as such. In **Kifamunte Henry v Uganda, Supreme Court Criminal Appeal No.10 of 1997**, court

85 held that held that a first appellate court has a duty to
review/reappraise the evidence and consider all the materials which
were before the trial Court and come to its own conclusion
regarding the facts, taking into account, however, the fact that it
neither saw nor heard the witnesses testify and that in this regard,
90 it should be guided by the observations of the trial Court on the
demeanor of witnesses.

The duty of this Court is laid down in **Rule 30(1) (a) of the
Judicature (Court of Appeal Rules) Directions S.I 13-10,**
(hereinafter referred to as “the Rules of this Court”). It provides
95 thus;

“... (1) On any appeal from a decision of the High Court
acting in the exercise of its original jurisdiction, the court
may,

100 a. Reappraise the evidence and draw inferences of fact; and in
its discretion, for sufficient reason, take additional
evidence...”

This provision has been applied in several cases in this court
including **Mugema Peter v. Mudiobole Abedi Nasser Election
Petition Appeal No. 30 of 2011**, where it was held that;

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

Section 61(3) of The Parliamentary Elections Act, 2005 (as Amended) provides for the standard of proof in election petitions. It provides that;

115 “Any ground specified in subsection (1) shall be proved on a balance of probabilities”

In the same ***Mugema Peter vs Mudiobole Abedi Nasser case*** (*supra*) court set out the burden and standard of proof in Election Petitions as follows;

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

130 Bearing the above position of the law in mind, we shall proceed to resolve the grounds in the Election Appeal.

We are going to consolidate the grounds not in the order that the Appellant submitted but in a way that would help this court to resolve the real issues before court.

135 **Appellant’s submissions.**

Grounds 1, 2, 3 and 4

The learned trial Judge erred in law and fact when she failed to find that the preliminary objection raised by the Respondent required adducing evidence and was premature thus wrongly dismissing the petition.

140 The learned trial Judge erred in law when she determined matters of evidence by way of preliminary objection without subjecting the petition to a hearing thus occasioning a miscarriage of Justice.

The learned trial Judge erred in law when she determined the preliminary objection based on affidavit evidence which had not been read and admitted as
145 evidence in court contrary to the Parliamentary Elections (Interim Provision) Rules.

And

The learned trial Judge erred in law and fact when she reached a conclusion that in election petitions once hearing commences there is no opportunity to call
150 additional evidence as is available in ordinary suits thus wrongly dismissing the petition contrary to the Parliamentary Elections Act cap 17.

It was the submission of counsel for the Appellant that it was a misdirection by the trial Judge to hold that once hearing commences in election petitions then you cannot call additional
155 evidence. This is contrary to **Rule 15(3) of The Parliamentary Election Rules S.1 141-2**, which provides that;

“The Court may of its own motion, examine any witness or call and examine or recall any witness if the Court is of the opinion that the evidence of the witness is likely to assist
160 the court to arrive at a just decision”

He submitted that if the trial Judge had proceeded with the trial and formed an opinion that the numbers were not sufficient she possessed the discretion to summon the chairperson or any other

relevant officer of the Electoral Commission to furnish court with
165 the voters register for Kayunga Constituency. The witness would
then be cross-examined by either party, instead of prematurely
dismissing the petition. He referred to **Dr. Kizza Besigye vs.**
Yoweri K. Museveni and Anor S.C E.P No.1 of 2001, where court
while resolving the issue as to whether the person presented was a
170 voter or not the following questions were asked;

1. Where was he registered as a voter?
2. What was his registration Number?

He submitted that the said questions read together with the form
and provision of the law point to the key feature in the form which
175 is the voter's registration number, signature and constituency and
as seen in the law. It is not mandatory to attach the voters register
to the petition. If those who drafted the said provision intended it to
be so, they should have expressly stated so. He notes that there are
minor differences between the form as provided under the law and
180 the one supporting the petition. **Section 43 of the Interpretation**
Act provides thus;

“ Where any form is prescribed by any Act, an instrument
or document which purports to be in such form shall not be
void by reason of any deviation from that forum which does
185 not affect the substance of the instrument or document or
which is not calculated to mislead”

The deviation in the form supporting the petition does not in any
way affect the substance. The learned trial Judge held that **Order 6**
R.28 of the Civil Procedure Rules does not apply to petitions

190 which is equally erroneous for **R 17 of The Parliamentary
Elections (Interim Provisions) Rules S.I 141-2** provides for the
applicability of the Civil Procedure rules and Preliminary Objections
are provided for under **Order 6 R.28 and 29 of the Civil
Procedure Rules**. He referred to **Mukisa Biscuits manufacturing
195 Co. Ltd v. West End Distributors Ltd (1996) 1 E.A 696** and
**Crane Bank Limited v. Sudhir Ruparelia and Meera Investments
limited Court of Appeal Civil Appeal No. 252 of 2019**.

Counsel submitted that the preliminary objection needed proof of
evidence which could not be determined on a preliminary objection
200 before evidence was led. The Judge ought to have set the petition
for hearing and given an opportunity to the Petitioner to prove the
registered voters instead of summarily dismissing the petition.

Counsel further submitted that **Section 60(2) (b) of the
Parliamentary Elections Act** provides that "An Election Petition"
205 may be filed by any of the following persons;

- a. A candidate who loses an election or
- b. A registered voter in the constituency concerned supported
by the signatures of not less than five hundred voters
registered in the constituency in a manner prescribed by
210 regulations.

Counsel submitted that the said affidavit introducing the list of
persons supporting the petition was never read in court since the
matter had come up for hearing but court proceeded to act on it
and determine the preliminary Objection on the basis of an unread

215 affidavit contrary to the **Rule 15(1) of The Parliamentary Elections (Interim Provision) Rules**

Counsel for the Appellant submitted that **Section 64(1) (b), (3) of the Parliamentary Elections Act and Rule 15 of the Parliamentary Elections (Election Petitions) Rules**, allow court
220 to summon any witnesses even if they did not swear affidavit pertaining to the petition as long as it gives a party an opportunity to cross examine the said witness as it was held in **Hon.Kipoi Tonny Nsubuga v.Ronny Waluku Wataka & 2 others (Election Petition Appeal No. 07 of 2011) [2012] UGCA 6.**

225 **Respondent's submissions**

Counsel for the Respondent submitted that from the reading of **Section 60 2(b)**, the requisite signatures must support the petition at the time of its filing in court. **Rule 4(4) of the Parliamentary Elections (interim Provisions) Election Petitions)**, Rules require
230 every Petitioner to whom **Section 60(2) (b) of the Parliamentary Elections Act** applies, to accompany a copy of the petition with the signatures prescribed there-under in the prescribed form. Furthermore, **Rule 3 (c) and 4(8)** of the same Rules, require that every petition filed in court must be accompanied with an affidavit
235 setting out the facts on which the petition is based.

He stated that, **Rule 15(1)** of the same rules provide that;

“Subject to this rule all evidence at the trial, in favor of or against the petition shall be by way of affidavit read in open court”

240 He further submitted that from the provisions above, it is clearly evident that at the time the petitioner files his/her petition in court, the same must be accompanied by the requisite 500 signatures if he/she petitions as voter as well as his /her evidence in form of an affidavit, statutorily required by law to accompany the petition.

245 Counsel further submitted that the whether or not a petition is supported by the requisite 500 signatures of registered voters in the constituency is not a matter that requires the full hearing of the petition, since rule 15 of the Election Petition (Interim Provisions) (Election Petition) Rules requires all evidence in an election petition
250 to be on record by way of affidavits. (See; **Simon Peter Kinyera v. E.C & Taban Idi Amin C.A 003/2018.**)

He submits that under **Order 7 Rule 14 of the Civil Procedure Rules**, which is applicable to election petitions by virtue of **Rule 17 of the Election Petition (Interim Provisions) (Election Petition) Rules**, a party relying on a document as a basis of his / her claim
255 or upon which he/she found locus, is required to file and present the same document together with the petition at the time of filing. That the *locus standi* to commence an action is demonstrated and proved at the time of filing the petition during or after the hearing,
260 which is a question of law and not evidence.

It was counsel's submission that the Appellant ought to have applied for a certified copy of the register. He stated that it is not the duty of court to start fishing for evidence on behalf of the petitioner.

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265 Counsel for the Respondent notes that at the time the preliminary
Objection was raised the pleadings had been closed. The last date
for filing affidavits by the Petitioner was 3rd September, 2021. Before
the hearing commenced it was agreed that the Respondent would
raise preliminary points of law.

270 **Appellant's submissions in Rejoinder.**

It was counsel for the Appellant's submission in rejoinder that
having provided a list of more than 500 signatures it was cogent
evidence before court that the said persons were registered voters in
Kayunga to cause the burden to shift to the Respondent to disprove
275 the same by way of affidavit which was not done. That the voter
registration number and signatures on the list are sufficient.

Consideration of Court

The Appellant in this appeal brought a Petition against the
Respondent as a registered voter **No. 60646495** in Kayunga
280 District Constituency. A Petition brought by a registered voter must
be supported by the signatures of not less than five hundred voters
registered in the Constituency. **Section 60(2) (b) of The
Parliamentary Elections Act**, provides that;

60. Who may present election petition

285 (2) An election petition may be filed by any of the following
persons—

(a) a candidate who loses an election; or

(b) a registered voter in the constituency concerned

supported by the signatures of not less than five hundred

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voters registered in the constituency in a manner prescribed by regulations.

Rule 3 (C) of The Parliamentary Elections (Interim Provisions)

Rules, provides that,

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“Petition” means an election petition and **includes the affidavit required by these Rules to accompany the petition**; (Emphasis added)

Rule 4(8) of the same Rules states that the petition must be accompanied by the affidavit together with the list of documents intended to be relied on, the rules provide that,

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“The petition shall be **accompanied by an affidavit** setting out the facts on which the petition is based together with a list of any documents on which the Petitioner intends to rely.”

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The foregoing provisions create *locus standi* for whoever can bring an election petition. The provisions also provide for the required accompaniments to the petition. *Locus standi* is created by the Constitution, statutes, common law and customary law that is not repugnant with the Constitution. The legal position according to **Section 60(2) (b)** is that the statute creating the cause of action should be considered in determining whether the party bringing the action has the *locus standi*.

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Only two categories of people can present a petition in election petitions. That is a *candidate who has lost an election or a registered voter in the constituency concerned supported by the signatures of not less than five hundred voters registered in the*

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constituency. For the Petitioner who was not a candidate, under **Section 60 (2) (b)** (*supra*) to have locus one must prove that,

1. He/she is a registered voter in the constituency concerned,
2. The petition must be supported by the signatures of not less than five hundred voters registered in the constituency.

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The fulfillment of these two requirements is what gives the voter *locus standi* to institute an election petition. The concept of *Locus standi* denotes the legal capacity to institute, initiate or commence an action in a competent court of law or tribunal without any hindrance from any one. The question whether a Petitioner has *locus standi* to bring an action does not depend on the success or the merit of the case, but on whether the Petitioner has sufficient interest or legal right in the subject matter of the dispute to entitle her/him to institute the action.

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Court has no obligation to give a remedy where the *locus standi* has not been established otherwise such a court will be acting without Jurisdiction. Since *Locus standi* affects the jurisdiction of the court, it can be raised at any time of the proceedings or on appeal. It could be at the initial stages of the petition or at the end. When it is found that the Petitioner has no standing to sue, the question whether other issues in the case had been properly decided or not does not arise. The correct position of the law therefore is that where a Petitioner is held to lack the *locus standi* to maintain his action, the finding goes to the jurisdiction of the court and lacks jurisdiction to either entertain any evidence or even

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determine the action. It therefore goes without saying that *locus standi* is an issue of law and not evidence.

In the case before us, the main question to be determined is whether or not the Appellant had the *locus standi* to file the Election
345 Petition No 04 of 2021 as a registered voter. The respondent raised two objections, that the Appellant did not fulfill the requirements in section 60(2) (b) of the Parliamentary Elections Act and that the Certificate of translation was in violation of The Protection of Illiterates Act.

350 It was the submission of counsel for the Appellant that by the time the preliminary objection was raised, the list of registered voters attached to the petition is presumed to be correct and any further proof that they were voters in the constituency was a matter of evidence which could not be determined on a preliminary objection
355 before evidence is led. That the judge ought to have set down the petition for hearing and give an opportunity to the Petitioner to prove that indeed these are registered voters instead of summarily dismissing the petition.

In proof of the requirement under Section 60(2) (b) of the
360 Parliamentary Election Act, the Appellant filed two sets of lists of allegedly registered voters in the constituency. The first list was a hand written list appearing from page 17 to 62 of the record of appeal. Some lists have 22 names and some even less. The lists make provision of, name, NIN card number, village, voter's
365 numbers. and signature. Some names do not have voter's numbers.

The second list is a well typed list with 559 names running from page 64 to 78 of the record of appeal. These lists indicate number, name, NIN card numbers, village and voters numbers without signatures.

370 The position of the law on dismissing a matter on preliminary objection is laid down in **Mukisa Biscuit Manufacturing Co. Ltd West End Distributors Ltd, Civil Appeal No 09 of 1969** where **Sir Charles Newbold**, on page 701 held that;

375 "The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of Preliminary objection. A preliminary objection is in the nature of what used to be a de-murrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are
380 correct. It cannot be raised if any fact has to be ascertained or of what is sought is the exercise of judicial discretion."

In **Crane Bank limited vs. Sudhir Ruparelia & Meera Investments Limited Court of Appeal Civil Appeal No. 252 of 2019**, where court held that;

385 "A preliminary objection by its nature is based on points of law in making a determination on a preliminary objection. The court is supposed to look at the plaint and assume that the averments therein are true. If in the opinion of the trial court, the preliminary objection cannot be disposed of
390 without calling additional evidence, the court cannot determine the matter on a preliminary point of law but

should set the case down for hearing and calling additional evidence.”

395 We are persuaded by the submissions of counsel for the Appellant that the conclusions reached by the learned trial Judge cannot stand under the law. According the record, the Appellant had filed 559 signatures in support of the petition in accordance to the requirements of Section 60(2) (b) of the Parliamentary Elections Act.

400 We opine that, the issues raised by the Respondent are issues that required further evidence to prove the assertions made by the Appellant. It is settled from the above cases of **Mukisa Biscuit Manufacturing Co. Ltd**, (*Supra*) and **Crane Bank limited** (*Supra*) that a matter cannot be disposed of by way of preliminary objection if it requires additional evidence.

405 The preliminary objections raised by the Respondent required adducing evidence in order to establish whether the petition lacked the requisite 500 signatures and that the Petitioners certificate of translation offends the Illiterates Protection Act.

410 Determining matters of evidence by way of preliminary points of law without a hearing where evidence is adduced occasions a miscarriage of justice. Secondly, there is no way a Petitioner should be condemned for not adducing proof without the Petition being subjected to a trial.

We are of the view that in this case, there was a violation of the
415 non-derogable right to a fair hearing. Therefore the whole process
amounted to a mistrial.

Ground 1, 2, 3, and 4 succeed.

Grounds 5, 6 and 7.

**The learned trial Judge erred in law and fact when she held that the petition was
420 not supported by the requisite 500 signatures of registered voters in Kayunga
District when no evidence had been adduced to that effect thus occasioning a
miscarriage of justice.**

**The learned trial Judge erred in law and fact when she reached a conclusion that
425 only 70 out of 559 persons had the opportunity of filing a form with voter
number and concluded that other voters' numbers were suspect without any
evidence having been adduced to that effect thus occasioning a miscarriage of
justice.**

And

**The learned trial Judge erred in law and fact when she reached a conclusion that
430 the Petitioner had failed to prove that the 559 supporters stated to be in support
of the petition are duly registered voters in Kayunga District without conducting
a hearing and/or receiving evidence.**

Appellants' submissions.

It was submitted by counsel for the Appellant that this court has
435 power to interfere with the finding of the trial Judge when it
considers that there was no evidence to support a finding of fact. He
stated that it was evident that this petition could not be disposed of
without adducing evidence. That the signatures, voter's numbers
and constituencies of 559 were availed and this is sufficient proof

440 on a balance of probabilities. The voter's registration numbers are
not simply numbers but are codes that contain the Surname, other
Names, Gender, Voter Number, Village, District, Constituency, Sub
County , Parish and polling Station of a particular voter. (See;
Namujju and Another v. Kizito Sserwanga (Election Appeal
445 **2016/62) [2017]**)

He stated that because of the uniqueness of a voter's registration
number, once a Petitioner presents a petition under Section 60(2)
(b) of the Parliamentary Elections Act and ensures that the
signatures and voter numbers of the 500 or more persons
450 supporting the petition appear on the list then, he or she has met
the requirements of the law. (See; **Mageni Geoffrey v. Ouma Adea**
George and Electoral Commission (Election Petition 2011/15)
[2011] UGHC 80)

Respondents' Submissions.

455 Counsel for the Respondent submitted that he strongly supported
the finding of the trial Judge that the petition was not supported by
the requisite 500 signatures of registered voters in Kayunga District
as required by law. The Electoral Commission is mandated by
Section 18 of the Electoral Commission Act to compile a voter's
460 register where all the names of registered voters are maintained.
Counsel referred to **Otada Sam Awori vs. Taban Idi Amin and**
Electoral Commission EPA No. 93/2016, where court held that it
is not enough for a person to merely state that he is registered

voter. The Appellant is to extract the relevant pages of the voter's
465 register as proof of registration.

Counsel stated that there was no proof in the petition to confirm
that the alleged names belong to existing human beings in Kayunga
District or elsewhere, as none of them had attached a copy of his or
her national identity card. Counsel made reference to **Namuju**
470 **Dionizia Cissy and Anor. V Martin Kizito Sserwanga C.A. No.**
62/2016 where court held that,

“In our view, it is the duty of the court of justice to try to get
to the real intention of the legislature by carefully attending
to the whole scope of the statute under scrutiny ... we
475 believe the message from the legislature is clear. By
enacting Section 60(2)(b) of the Parliamentary Elections Act,
Parliament intended to restrict persons who could file
election petitions so as to eliminate vexatious litigants and
ensure that the one who comes to court is serious and his
480 action is supported by a sizeable number of voters in the
constituency. It is not only the number that has to be 500
or more voters, there must be proof that they were
registered voters from the constituency. Further the names
of the voters must be shown together with the voter's
485 identity card numbers, the polling station, the district and
the voters must sign the list. In determining election
petitions, the courts must bear in mind that such petitions
are not ordinary suits where a party is enforcing a right
that accrues to him as a person. It is an exercise which
490 involves the determination of constitutional rights of many
people.

The procedures laid down to be followed are therefore,
special and must be followed strictly and failure by a part to

495 comply should not be taken lightly. Section 60(2) (b) enacts
a substantive legal requirement and non compliance would
not be a mere technicality.”

Counsel for the respondent concluded that the Appellant failed to
prove her case on a balance of probabilities.

500 We have internalized the submissions of both counsel under these
grounds and it is our finding that these grounds have been
exhaustively handled in the previous grounds 1, 2, 3 and 4.

The conclusions and findings in these grounds apply to grounds 5,
6, and 7 respectively. Therefore grounds 5, 6 and 7 succeed.

Ground 8

505 **The learned trial Judge erred in law when she found that the certificate of
translation was of no legal consequence thereby occasioning a miscarriage of
Justice.**

Appellants' Submission.

510 Under this ground counsel for the Appellant submitted that there
was no evidence adduced to the effect that the signatories did not
understand what they were signing. That as regards the translator,
the law does not bar one from translating a document in English to
another language that the person perfectly understands even if
he/she knows English.

515 Respondents' submissions.

For the Respondent, counsel submitted that the certificate of
translation was not competent. That the purported list of names is

in different handwriting for each particular page and for persons from different villages. The said list does not indicate the date on which the signatures were purportedly collected. The certificate does not also indicate whether the alleged translator Kikanyira John Bosco was in all the different places at the different occasions when the list was compiled.

He stated that under Section 3 of The Protection of illiterates Act, any person writing the name of an illiterate person on any document is also required to write his name and indicate that the document was written on the instructions of the illiterate. The certificate of translating does not indicate who wrote the names of the list and who of them were illiterate to benefit from the purported translation.

Appellants' submissions in Rejoinder

Counsel submitted in rejoinder that there was no evidence by way of affidavit or otherwise that has been furnished by the Respondent's to prove to court that the signatories did not understand what they were signing. Neither was there evidence to demonstrate that the certificate of translation violated the Illiterates Protection Act.

In addressing this issue the lower court held that,

"I find that the certificate of translation, in the way it has been drafted, has no legal consequence one way or the other. It makes no attempt to identify the persons, to whom

it was intended, a situation not envisaged by the Illiterates Protection Act Cap 8.

545 In conclusion, I allow the preliminary objection. This petition is accordingly struck out with costs to the Respondent.”

It is our finding as well that there was need for additional evidence by the Respondent to prove that the certificate of translation was in violation of The Protection Illiterate Act.

550 Ground 8 also succeeds.

From the above analysis we therefore find that the appeal has merit. Since this is an election petition, court takes cognizance of the fact that it is of great importance. Courts should therefore be careful in awarding costs so as not to unjustifiably deter aggrieved parties from seeking redress from court. (See **Akuguzibwe Lawrence v. Muhumuza David and 2 others, Election Petition Appeal No. 22 of 2016.**) The ruling and orders of the lower court are hereby set aside and we order that;

1. The Appeal is allowed.
- 560 2. The lower court should conduct a retrial.
3. Each party bears its own costs both in this court and in the lower court.

Dated at Kampala this.....^{16th}..... day of^{June}.....2022

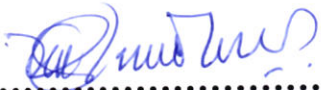
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GEOFFREY KIRYABWIRE

JUSTICE OF APPEAL

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STEPHEN MUSOTA

JUSTICE OF APPEAL

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C. GASHIRABAKE

JUSTICE OF APPEAL