



THE REPUBLIC OF UGANDA

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

CORAM: EGONDA-NTENDE, KIBEEDI AND MUGENYI, JJA

ELECTION PETITION APPEAL NO. 44 OF 2021

(Arising from Election Petition No. 8 of 2021)

ANDREW KABUGO KADDU APPELLANT

VERSUS

**1. JAMES MULINDWA
2. ELECTORAL COMMISSION RESPONDENTS**

**(Appeal from the Judgment of the High Court of Uganda holden at Mukono
(Kazaarwe Mukwaya, J) in Election Petition No. 8 of 2021)**

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JUDGMENT OF MONICA K. MUGENYI, JA

A. Introduction

1. Messrs. Andrew Kabugo Kaddu ('the Appellant'), James Mulindwa ('the First Respondent') and three other candidates contested in local council elections held in Uganda on 3rd February, 2021, vying for the position of Local Council (LC) III Chairperson for Kasawo Town Council in Mukono District. The Electoral Commission ('the Second Respondent') declared the First Respondent the duly elected LC III Chairperson for Kasawo Town Council having garnered 1,473 votes while the Appellant was the runner up with 1,396 votes.
2. Dissatisfied with the election result, the Appellant filed **Election Petition No. 8 of 2021** in the High Court of Uganda sitting at Mukono ('the Trial Court') contesting the participation of the First Respondent as a candidate in the election yet he was not ordinarily resident in Kasawo Town Council. In his estimation, the inclusion of Kitale Busia village in the Kasawo Town Council electoral area without either the authority of the Minister of Local Governments or the approval of Parliament was irregular.
3. The Trial Court found that Kitale Busia did in fact form part of the Kasawo Town Council electoral area and therefore the First Respondent had been rightly nominated to participate in the election for LC III Chairperson thereof, whereupon the Appellant lodged the present Appeal, **Election Petition Appeal No. 55 of 2021**, in this Court. It is opposed by both Respondents.
4. At the hearing of the Appeal, Mr. Godfrey Byekwaso represented the Appellant; Mr. Hannington Mutebi represented the First Respondent, while the Second Respondent was represented by Messrs. Geoffrey Ntambirweki and Anthony Muhwezi.

B. The Appeal

5. The Appellant proffered the following grounds of appeal:

*(1) The learned Lady Justice erred in law and fact when she found that **Kitale Busia (A – M)** and **Kitale Busia (N – Z)** formed part of **Kasawo Town Council Electoral Area**.*

- (2) *The learned Lady Justice erred in law and fact when she found that the 1st Respondent was rightly nominated to participate in the election for LC III Chairperson **Kasawo Town Council**.*
- (3) *The learned Lady Justice erred in law and fact when she found that the 2nd Respondent did not usurp the authority of the Minister of Local Government by creating polling stations at **Kitale Busia**.*
- (4) *The learned Lady Justice erred in law and fact when she found that the election for LC III Chairperson Kasawo Town Council was conducted in compliance with the relevant electoral laws.*
- (5) *The learned Lady Justice erred in law and fact when she failed to properly evaluate the evidence on record thereby arriving at a wrong conclusion.*

6. He seeks the following remedies:

- (a) *The 1st Respondent was not duly nominated and was not qualified to be elected as LC III Chairperson Kasawo Town Council.*
- (b) *The declaration of the 1st Respondent as duly elected LC III Chairperson Kasawo Town Council is revoked or set aside.*
- (c) *The Appellant is the duly elected LC III Chairperson Kasawo Town Council in the LC III Chairperson election of February 2021.*
- (d) *In the alternative but without prejudice to (a) above, that fresh election be declared and conducted and the 1st Respondent be barred from participating in the said fresh elections.*
- (e) *The Appeal is allowed with costs in this Honourable Court and the High Court.*

7. The parties' respective conferencing notes were at the hearing of the Appeal and upon their request adopted as their written submissions. The Appeal shall be determined on the basis of their written submissions as adopted.

8. I am constrained to state from the outset that I do agree with the objection raised by the First Respondent in respect of *Ground 5* of the Appeal. I find that ground of appeal to offend section 86(1) of the Judicature (Court of Appeal Rules) Directions, SI 13-10 ('the Court of Appeal Rules') in so far as it omits specificity as to the particular evidence on the court record that was not appropriately evaluated by the

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trial judge. It is therefore struck out. The residual grounds of appeal shall be considered together.

C. **Determination**

9. Rule 36 of the Parliamentary Elections (Interim Provisions) Rules, SI 141–2 adapts to the determination of 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 delineated in Rule 30(1) of the Court of Appeal Rules. The Court is enjoined to ‘**re-appraise the evidence and draw inferences of fact.**’ The re-evaluation of the evidence by this Court is applicable to both oral and affidavit evidence. See **Banco Arab Espanol v Bank of Uganda, Civil Appeal No. 8 of 1998** (Supreme Court).

10. The duty of upon this Court to re-evaluate the evidence on record does similarly extend to election petition appeals. 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.

11. It is trite law that the burden of proof in election petitions generally lies with the petitioner, and the applicable standard of proof in parliamentary election petitions shall be proof on the balance of probabilities. See *section 61(3) of the Parliamentary Elections Act, 2005*. This standard of proof has since been confirmed by this Court vide its decision in **Nanziri Kase Mubanda v Mary Babirye Kabanda, Election Petition Appeal No. 38 of 2016**.

12. Turning to the grounds of appeal, under *Ground 1* the Trial Court is faulted for relying upon sections 19(3), 25 and 33 of the Electoral Commission Act, Cap. 140

to determine whether Kitale Busia fell within Kasawo Town Council electoral areas. It is opined that the applicable laws in that regard are Articles 180 and 191 of the Constitution; section 7 of the Local Government Act, Cap. 243; section 3 of the Interpretation Act, Cap. 3, and the Local Government (Declaration of Towns) Regulations, 2017 under which Kitale Ward and Kasawo Town Council were created. The Trial Court is alleged to have misapprehended the nature of the Appellant's case, misconstruing the dispute to be about improperly demarcated polling stations rather than the improper creation of electoral areas as is in contention. Clarifying the Appellant's contestations, it is argued that whereas the Second Respondent does have the mandate to establish polling stations within a particular electoral area, the mandate to create electoral areas lies with the Ministry of Local Government, the Legislature and sub-county councils. Indeed, in Counsel's view, Kasawo Town Council was created by sub-county Council and District resolutions, with the approval of the Ministry of Local Government; and therefore the addition of Kitale Busia to it should have followed the same approval process.

13. The Trial Court having found the list of administrative units for Mukono District (that was adduced in evidence as Annexure E) to have been certified by the Uganda Printing and Publishing Corporation, it is faulted for nonetheless questioning the authenticity of the list contrary to the provisions of section 78 of the Evidence Act. It is opined that Annexures D and E did sufficiently established the Appellant's case, and were duly corroborated by the Appellant's affidavit in rejoinder; Seeta Namuganga Council's resolution; and Annexures CC and DD to that affidavit in rejoinder.
14. Under *Grounds 2, 3 and 4*, the trial judge is faulted for disregarding the electoral laws that had been invoked in the petition and being supposedly misled by opposite Counsel into non-contentious issues such as voters voting in wrong wards, creation of polling stations and the non-display of the voters' register. The trial judge is further faulted for confusing Regulation 2, item 66 of the Local Governments (Declaration of Towns) Regulations with the Respondents' list of administrative units (Annexure G3) in terms of the number of parishes that constitute Kasawo Town Council. Describing this as a major contradiction, it is opined that the Trial

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Court should have rejected the Respondent's evidence in deference to Annexure E to the Appellant's affidavit in support of the petition that is allegedly consistent with Annexure D and the Local Governments (Declaration of Towns) Regulations, and had been derived from the Uganda Gazette. Conversely, Annexure G3 is opined to contravene the Local Governments (Declaration of Towns) Regulations and section 3 of the Interpretation Act given that a Returning Officer, Chief Administrative Officer and District Planner have no mandate to create local administrative units. To the extent that the said officers are postulated to have usurped the authority of the Minister of Local Government, the Court is urged to resolve *Ground 3* in the affirmative.

15. In addition, it is proposed that Annexure G3 contravenes Guideline 3(2) of the Electoral Commission Guidelines for the Demarcation of Electoral Areas, which purportedly prescribes a cut-off date of 31st July 2019 for new administrative units yet the list of administrative units enlisted under Annexure G3 was generated in September 2020. Furthermore, the Trial Court's finding that the information on villages was not included in the Local Governments (Declaration of Towns) Regulations is considered by Counsel for the Appellant to have been a misdirection. In his view, it is inconceivable that a Statutory Instrument could have been formulated on new parishes without the villages that constitute those parishes being demarcated yet the creation of a parish would have political, economic, administrative, as well as territorial implications on the villages. Citing section 32(2)(a) of the Local Council Court Act that provides for Appeals from village to parish local council courts, it is argued that a litigant would need to know the parish to which an appeal would lie.

16. It is the proposition, therefore, that the Second Respondent wrongfully nominated and approbated the First Respondent's participation in the LC III Chairperson electoral contest for Kasawo Town Council yet the available evidence is that he was a resident of Kitale Busia, a village in Namuganga sub-county. The Court is urged to find that this was done in contravention of section 111(4) of the Local Governments Act, and affected the election result in a substantial manner. Section 111(4)(b) that pertains to the present Appeal provides as follows:

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A person shall not qualify for election as chairperson of a municipality, town, division or subcounty unless that person –

(a)

(b) **Is ordinarily resident in the municipality, town, division, or subcounty.**

17. The Respondents, on their part, do support the findings of the learned trial judge.

The Appellant's proposition that the trial judge had relied on sections 19(3), 25 and 33 of the Electoral Commission Act to resolve the question as to whether Kitale Busia was part of Kasawo Town Council is opined to be false and misleading. It is argued that the trial judge evaluated Annexure E to the petition – an unsigned list of administrative units, against a packing list dated 25th November 2011 and a list of polling stations in Kitale ward that were published in the New Vision publication of 17th December 2019, and adduced in evidence by the Respondents. She then concluded, rightly so in Counsel's view, that the Second Respondent had lawfully exercised its mandate under sections 19(3), 25 and 33 of the Electoral Commission Act in creating Kitale Busia (A – M) and Kitale Busia (N – Z) polling stations under Kitale ward in Kasawo Town Council.

18. In turn, Counsel for the Second Respondent contends that the affidavit of Mark Mayanja Mugangi, the Returning Officer of Mukono District, establishes that the District's Chief Administrative Officer and District Planner confirmed the list of villages that constituted Kasawo Town Council as at 1st September 2020. Prior to that, an advert that was run in the New Vision Publication of 17th December 2019 had listed the polling stations in respect of the 2020/21 general elections and indicated Kitale-Busia polling station under Kasawo Town Council. In addition, a copy of the packing list for Kasawo Town Council dated 25th November 2020 had included Kitale-Busia (A – M) and (N – Z) among the polling stations under Kitale ward. In Counsel's view, the duty to demarcate Local Government areas does not lie with the Second Respondent but, rather, with the line Minister and the Ugandan Parliament under Article 179 of the Constitution and section 7(2) – (8) of the Local Governments Act.

19. With regard to *Grounds 2, 3 and 4*, I understood Counsel for the First Respondent to argue that the Appellant had shifted its case from the claim that Kitale-Busia (A

– M) and (N – Z) were not lawful polling stations under Kitale ward, to faulting the trial judge’s observation (in what he considers to be a mere slip) that Kasawo Town Council has five polling stations yet the Local Governments (Declaration of Towns) Regulations delineates six polling stations. This is opined to be a departure from the Appellant’s pleadings in paragraphs 4(c), (d) and (e) of the petition.

20. It is argued that Annexure D, which the Appellant would have the Court uphold as the authentic list of polling stations, is neither an official document of the Electoral Commission nor does it make reference to Kasawo Town Council or the polling stations in contention, Kitale-Busia (A – M) and (N – Z). On the contrary, the Court is invited to consider the Local Governments (Declaration of Towns) Regulations alongside Annexures AA and BB to the Second Respondent’s supplementary affidavit as proof that Kitale-Busia (A – M) and (N – Z) were gazetted polling stations in Kitale ward under Kasawo Town Council.

21. Addressing *Grounds 2 and 4* of the Appeal, Counsel for the Second Respondent reiterates the position that the petition was not determined solely on the basis of sections 19(3), 25 and 33 of the Electoral Commission Act. Rather, all applicable electoral laws were complied with in the election of the First Respondent; he met all the requirements of section 111(4) of the Local Governments Act, and proof that he was indeed a resident of Kasawo Town Council is to be found in the numerous developed (immoveable) properties he owned there. With regard to *Ground 3*, citing section 33 of the Electoral Commission Act, it is argued that the Second Respondent did not usurp the mandate of the Minister of Local Government as it is its duty to demarcate constituencies and electoral areas. That legal provision is reproduced below.

1. **Each Returning Officer may, with the approval of the Commission, establish within each Parish or Ward within his or her Electoral District as many polling stations as are convenient for the casting of votes, taking into account the distances to be travelled by voters to polling stations, the number of voters in the constituency and the geographical features of the constituency.**
2.
3. **The Commission shall publish in the gazette and in the print media, a list of all places at which a voters register is required to be displayed and a list of**

all polling stations, at least sixty days before the date of display or polling day.

22. It is thus argued that the foregoing statutory provision justified the actions of the Second Respondent's Returning Officer for Mukono District in creating the impugned polling stations. Conversely, the list of administrative units relied upon by the Appellant is opined to have been undated, the context of its creation remained unclear and it did not amount to proof that by creating polling stations the Second Respondent had usurped the authority of the Minister of Local Government as the two entities have distinct roles.
23. My understanding of the Appellant's case is that the Second Respondent improperly created Kitale-Busia (A – M) and (N – Z) as electoral areas within Kasawo Town Council and, by allowing voters from those electoral areas to vote, affected the election result in a substantial manner. It is the Appellant's contention that whereas the Second Respondent does have the mandate to establish polling stations within a particular electoral area, the mandate to create electoral areas lies with the Ministry of Local Government, the Legislature and sub-county councils, the inference being that it was wrongfully exercised in this case.
24. Before evaluating the evidence on record to interrogate the Appellant's contestations, it is necessary to establish a common understanding of the term *electoral area* that is in issue presently. An electoral area is defined under section 1 of the Local Governments Act as '**one of the areas into which a district, city, municipality, town, division or subcounty is divided for the purpose of elections and representation.**' Whereas there is no corresponding definition of the term *polling station* in the same interpretation section, what would amount to a polling station may be deduced from section 33(1) of the Electoral Commission Act. It reads:

Each Returning Officer may, with the approval of the Commission, establish within each Parish or Ward within his or her Electoral District as many polling stations as are convenient for the casting of votes, taking into account the distances to be travelled by voters to polling stations, the number of voters in the constituency and the geographical features of the constituency. (*my emphasis*)

25. For purposes of local council elections, such as is in contention presently, section 104 of the Local Government Act echoes the foregoing provisions in the following terms:

Each returning officer of a district shall in consultation with the Electoral Commission create as many polling divisions and polling stations as are convenient for the casting of votes by voters taking into account –

- (a) The elections being conducted;
- (b) The distance to be travelled by the voters and the geographical features of the district. *(my emphasis)*

26. It seems to me that in so far as the definition of electoral areas denotes a division or demarcation of districts, cities, municipalities et al for purposes of 'election and representation', it is distinctly different from polling stations that are specifically demarcated for convenience in the *casting of votes* by voters. To my mind, therefore, electoral areas would denote constituencies for purposes of electoral representation while polling stations are simply venues for the casting of votes during elections. It is against this background that I interrogate the Appellant's contestations in this Appeal.

27. In terms of evidence, the Appellant essentially relied upon the Uganda Gazette publication of 22nd September 2017 that was presented as Annexure D to his affidavit in support of the petition, as well as the Local Governments (Declaration of Towns) Regulations and an undated, unsigned list of supposed administrative units under Mukono District, both of which were presented as Annexure E to the same affidavit. I would state forthwith that Annexure D is of no relevance to this Appeal as the notices therein that are made under the Electoral Commission Act simply notify the public about the appointment of a returning officer for Kyotera District, and publish the list of duly nominated candidates in respect of different offices within the then newly created districts of Bunyangabu, Kyotera, Namisindwa, Pakwach and Rukiga.

28. Meanwhile, Regulation 2, item 66 of the Local Governments (Declaration of Towns) Regulations highlights the creation of Kasawo as a newly created town in Mukono District that consists of '**Kitovu, Kasawo, Kitale, Kasenge, Kabimbiri A and**

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Kabimbiri B wards. The second document in Annexure E simply lists Kyewanise, Kitale A and B as parishes within Kitale ward. I find nothing conclusive about either pieces of evidence as far as the demarcation of electoral areas is concerned. The Regulations outline the wards that constitute the newly created Kasawo Town Council. These are legally created local government units that are neither electoral areas nor polling stations. On the other hand, the incomplete, undated and unsigned list that makes up the second document in Annexure E identifies, without any measure of authenticity, Kyewanise, Kitale A and B as parishes within Kitale ward, one of the wards that comprise Kasawo Town Council.

29. Conversely, the Second Respondent attests to the creation of the Kitale Busia polling stations in paragraph 6 of the Returning Officer's supplementary affidavit in support of the electoral body's Answer to the Petition. The deponent makes reference to an Advert in the New Vision publication of 17th December 2019 publishing polling stations in respect of the 2020/21 General Elections. The advert is titled '*Electoral Commission Polling Stations Gazetted for General Elections 2020/21 (Kampala, Wakiso, Kayunga, Mukono, Jinja, Mayuge, Namayingo, Kamuli, Luuka)*' and is on the electoral body's headed paper. It depicts Kitale Busia (A – M) and (N – Z) as polling stations within Kitale ward. Section 33(3) of the Electoral Commission Act does enjoin the Electoral Commission to publish polling stations in the print media therefore there is no reason to discredit that publication. In any case, the same data is reflected in a National Voters Register Packing List dated 25th November 2020 and attached to the same affidavit as Annexure BB.

30. I am alive to the averments in the Appellant's affidavit in rejoinder that as at 1st July 2018 Kitale ward was only comprised of Kitale A, Kitale B and Kyewanise villages. See Annexure CC to that affidavit. Nonetheless, the foregoing villages are local government units as opposed to either electoral areas or polling stations. To that extent, the affidavit in rejoinder does not negate the evidence on record that the Second Respondent created Kitale Busia (A – M) and Kitale Busia (N – Z) polling stations within Kitale ward of Kasawo Town Council in December 2019, as it is well mandated to do under section 33(1) of the Electoral Commission Act. More importantly, I find no evidence whatsoever on record that the Appellant designated the said polling stations as electoral areas (which they are not); or otherwise

wrongfully designated any other electoral areas, as appears to have been the mainstay of the Appellant's contestations. The Appellant clearly fell short on proof of that allegation to the required standard.

31. Consequently, I would not fault the Trial Court for its finding that Kitale Busia (A – M) and Kitale Busia (N – Z) were indeed polling stations (and not electoral areas) within Kasawo Town Council. I would therefore resolve *Ground 1* in the negative. Given the succinct provisions of section 33(1) of the Electoral Commission Act that mandate the electoral body through its returning officers to '**establish within each Parish or Ward within his or her Electoral District as many polling stations as are convenient for the casting of votes**', it follows that the Second Respondent could not have usurped the authority of the Minister of Local Government by creating Kitale Busia (A – M) and Kitale Busia (N – Z) as polling stations within Kasawo Town Council. The Minister holds no such authority. I am disinclined to evaluate Annexure G3 to the First Respondent's affidavit against the Electoral Commission's Guidelines for the Demarcation of Electoral Areas, as was proposed by the Appellant. The said Guidelines are an internal working document of the Electoral Commission that are signed by the Chairman of the electoral body in an administrative capacity and have no force of law whatsoever. Accordingly, *Ground 3* of the Appeal would therefore fail.

32. Under *Ground 2* of the Appeal, it is proposed that the First Respondent was wrongfully nominated for the post of LC III Chairperson of Kasawo Town Council yet he was a resident of Kitale Busia village in Namuganga sub-county, Nakifuma county, Mukono District. This ground of appeal literally challenges the consideration of Kitale Busia as a village within Kasawo Town Council.

33. Article 179(3) and (4) of the Constitution provides the constitutional framework within which the boundaries of lower local government units may be altered. Those clauses read as follows:

- (a)
- (b)

- (c) Parliament shall by law empower district councils to alter the boundaries of lower local government units and to create new local government units within their districts.
- (d) Any measure for the alteration of the boundaries of or the creation of districts or administrative units shall be based on the necessity for effective administration and the need to bring services closer to the people, and it may take into account the means of communication, geographical features, density of population, economic viability and the wishes of the people concerned. *(my emphasis)*

34. The alteration of such lower local government units within districts is provided for in section 7 of the Local Governments Act. For present purposes, subsection (8) of that provision is reproduced below for ease of reference.

A municipal division or town council may, within its area of jurisdiction and at the request of or in consultation with the relevant wards and with the approval of the Minister, alter the boundaries of or create a new ward.

35. The material on record in this case is as follows. Regulation 2, item 66 of the Local Governments (Declaration of Towns) Regulations (SI No. 48 of 2017) establishes the creation in 2017 of Kasawo as a newly created town in Mukono District that consists of '**Kitovu, Kasawo, Kitale, Kasenge, Kabimbiri A and Kabimbiri B wards.**' The First Respondent's national identity card (Annexure A to his affidavit) clarifies that Kitale Busia is a village within Kitale parish, contradicting the second document in Annexure E that restricts the parishes within Kitale ward to Kyewanise, Kitale A and B. Being the more authentic document vis a vis the unsigned, undated list in Annexure E, I find the national identity card to have more evidential worth and would defer to its confirmation of Kitale Busia as a village within Kitale ward. The First Respondent does also attest to this fact in paragraph 5(c) of his affidavit.

36. The national identity card, however, cites Kitale as a parish in Namuganga subcounty, Nakifuuma County and not Kasawo Town Council. The shift of Kitale ward/ parish from Namuganga subcounty, Nakifuuma County to Kasawo Town Council is explained by two documents. First, Minutes of an extraordinary meeting of Seeta Namuganga Subcounty Council that was held on 22nd August 2017, in

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which a decision was taken to transfer Kitale 'A' and 'B' (and Kyewanise) villages to form Kitale ward in the then proposed Kasawo Town Council. See *Annexure BB to the Appellant's affidavit in rejoinder*. The import of those Minutes is that Kitale ward was hived out of Namuganga subcounty, Nakifuuma to become a parish in Kasawo Town Council. That would explain the reference in the First Respondent's national identity card to Kitale ward as being at the time within Namuganga subcounty, Nakifuuma County. Additional confirmation of this shift is to be found in a letter from the Minister of Local Government dated 5th October 2017, which communicates the creation of Kasawo Town Council effective the Financial Year 2018/ 2019. It highlights Kitale as one of the wards that constitute the newly created Kasawo Town Council. See *Annexure H1 to the First Respondent's affidavit*. By extension, therefore, Kitale Busia having been established as a village within Kitale ward, it was thereby transferred to Kasawo Town Council.

37. It thus becomes abundantly clear that the Seeta Namuganga Subcounty Council, acting within the confines of section 7(8) of the Local Government Act and in consultation with the Minister of Local Government as required by that legal provision, did procure the alteration of the boundaries of Namuganga sub-county to create Kasawo Town Council. The Council's decision was confirmed by the Mukono District Chief Administrative Officer, the accounting officer thereof under section 64(1) of the Local Governments Act, vide the document on record titled '*List of Administrative Units in Counties/ City Divisions for Confirmation*'. See *Annexure G3 to the First Respondent's affidavit*. That document in turn designates Kitale Busia, Kyewanise, Kitale 'A' and 'B' as villages under Kitale ward within Kasawo Town Council. It includes provision for confirmation thereof by title, name, date and signature, and was duly endorsed by the Mukono District Planner and District Returning Officer on 1st September 2020, and the District Chief Administrative Officer on 8th September 2020. In his supplementary affidavit in support of the Second Respondent's Answer to the Petition, the District Returning Officer attests to this document being confirmation of Kitale Busia as a village within Kasawo Town Council. Given that the totality of the evidence on record does support this position, I would agree.

38. Having so held, it follows that as a resident of Kitale Busia village within Kasawo Town Council, the First Respondent did satisfy the requirements of section 111(4)(b) of the Local Government Act. Accordingly, he was validly nominated for the post of LC III Chairperson of Kasawo Town Council and subsequently duly elected thereto. I would therefore disallow *Ground 2* of the Appeal. By dint of that decision, I cannot fault the trial judge for her conclusion that the election for the LC III Chairperson of Kasawo Town Council was conducted in compliance with the relevant electoral laws. I would therefore resolve *Ground 4* in the negative.

39. In the result, the Appellant having emerged unsuccessful in all the grounds of appeal, this Appeal fails.

Conclusion

40. Rule 27 of the Parliamentary Elections (Interim Provisions) Rules gives the High Court discretion in the determination of costs in election petitions. Instructive as the said Rule might be on how costs in election petition appeals may similarly be addressed, it would of necessity be applied with due regard to 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.* In the instant case, finding no reason to decide otherwise, I would abide the general rule on costs.

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

I would so order.

Dated and delivered at Kampala this 20th Day of July,
2022.



Monica K. Mugenyi
JUSTICE OF APPEAL



THE REPUBLIC OF UGANDA

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2. ELECTORAL COMMISSION RESPONDENTS**

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Judgment of Fredrick Egonda-Ntende, JA

[1] I have had the opportunity of reading in draft the judgment of my sister, Mugenyi, JA. I agree with it and have nothing useful to add.

[2] As Kibeedi, JA, agrees this appeal is dismissed with costs.

Dated, signed and delivered at Kampala this ^{9th} day of *Dec* 2022


Fredrick Egonda-Ntende
Justice of Appeal

THE REPUBLIC OF UGANDA

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JUDGMENT OF MUZAMIRU MUTANGULA KIBEEDI, JA

I have had the opportunity of reading in draft the Judgment prepared by Hon. Lady Justice Monica K. Mugenyi, JA. I concur with the reasoning and Orders she has proposed.

Dated at Kampala this ^{90th} day of ^{June} 2022

Muzamiru Kibeedi
Muzamiru Mutangula Kibeedi
JUSTICE OF APPEAL