THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

ELECTION PETITION APPEAL NO. 43 OF 2021

[Arising from Election Petition No. 13 of 2021]

CORAM: (Egonda Ntende, Cheborion Barishaki, Luswata Eva Kavuma, JJA)

SEMUGOMA KIGOZI HAMDAN::APPELLANT

VERSUS

1. **SALIM SAAD UHURU**
2. **THE ELECTORAL COMMISSION::::::::::::::::::::::::::RESPONDENTS**

JUDGMENT OF CHEBORION BARISHAKI, JA

Background.

The appellant, the 1st respondent and six other candidates participated in an election conducted by the 2nd respondent for the position of chairperson Kampala Central City District held on 25th January 2021 wherein the 2nd respondent returned the 1st respondent as validly elected with 13,114 votes and the appellant came 2nd with 10,654 votes.

Aggrieved by the outcome of the said election, the appellant petitioned the High court challenging the election on grounds that the 2nd respondent failed

in its duty to conduct the election in accordance with electoral laws and alleged that the 1st respondent committed illegal acts which included bribery. In his view, these illegalities affected the results of the election in a substantial manner.

In answer to the petition, the 1st and 2nd respondents denied any wrongdoing and maintained that the 1st respondent was duly nominated and elected in elections which were conducted in a peaceful, free and fair manner in accordance with the law and the results reflected the will of the majority voters.

The parties filed a joint scheduling memorandum which was adopted by court. The 1st respondent raised preliminary objections challenging the competence of the petition and its accompanying affidavits stating that all affidavits filed by the petitioner on 6th, 7th and 16th September 2021 introduced new matters which were not before court in the original petition, that the petition was incompetent for raising matters relating to the 1st respondent`s nomination belatedly and that the evidence contained in the petitioner`s affidavit in support of the petition was hearsay.

In determining these points of objection, the learned trial judge held that the petitioner's averments that he inspected the nomination papers of the 1st respondent and the register after election was an action which had been overtaken by events and the contentions on irregularities and illegalities contained in the 1st respondents' nomination paper filed in court had no basis and for those reasons allowed the objection. In the case of the affidavits of

Anyazo Ahmed Munaj, Mayanja Ali, Kalisa Daniel, Sekyanzi Ivan, Ssali Fred, Sozi Twaha, Kaakoza Sania, Bweshoro Gilbert, Muwonge Frank, Openja Steward, Mukama Emma, Okwot Steven Kabuli, Oketcha David Obadia, Kaweesa Templer, Chelangat Sylvia and the petitioner`s additional affidavit filed on 6th September, 2021 he found that they introduced new pleadings not contained in the original pleading and expunged them from the record. He severed paragraphs 23, 37, 38 and 40 of the petitioner`s affidavit in support of the petition for being hearsay and found that the remaining part of that affidavit could not satisfy the standard of proof set out in section 138 of the local Government Act (LGA) and contained unsupported claims by the petitioner.

Being dissatisfied with the above ruling, the appellant now appeals to this Court on the following grounds;

1. ***The Learned trial judge erred in law and fact in his finding that irregularities pertaining to the 1st respondents' qualifications and illegalities in respect of his nomination had no basis before the High Court thereby leading to miscarriage of justice.***
2. ***The learned trial judge erred in law and fact when he misdirected himself in holding that the new set of affidavits deposed by persons whose names were not mentioned in the petition amounted to new pleadings being introduced by the petitioner hence occasioning a miscarriage of justice.***
3. ***The learned trial judge erred in law and fact in holding that the new affidavits in support of the petition raised new claims not canvassed in the petition and misdirected himself on expunging the entire said affidavits thus occasioning a miscarriage of justice.***

4. ***The learned trial judge erred in law and fact and misdirected himself in holding that paragraphs 23, 37, 38 and 40 of the appellant`s affidavit in support of the petition were hearsay evidence and that court could not rely and act upon them and further that, if parts of the same were severed, the remaining parts could not sustain the standard of proof in election petitions hence occasioning a miscarriage of justice.***
5. ***The learned trial judge erred in law and fact in his holding that he subjected the petitioner`s residual claims to the test and required standard of proof set out in section 139 of the local government Act and found them not worthy investigating, thereby occasioning a miscarriage of justice.***
6. ***The learned trial judge misdirected himself on the law governing trial of election petitions hence striking off the petition at a preliminary stage thereby occasioning miscarriage of justice.***
7. ***The learned trial judge erred in law, when he penalised the appellant in costs in the circumstances of the case.***

Representation

At the hearing of the appeal, Samuel Muyizi, Kenneth Kakande and Lydia Nakyejwe appeared for the appellant while Ambrose Tebyasa, Ben Semanda appeared for the 1st respondent and holding brief for Hammid Lugolobi for Electoral Commission the 2nd respondent.

Appellant`s submissions.

On ground 1 it was submitted for the appellant that section 138 of the LGA Cap 243 allowed an aggrieved candidate to petition the High Court for an order that a person declared elected as chairperson was not validly elected on grounds that at the time of his election he was not qualified or was disqualified

from election. For one to qualify for nomination, section 111 (f) of the LGA enjoins the applicant to attach to his nomination paper a list of 20 registered voters from each electoral area indicating their names, signatures, physical addresses and voter's registration number as specified in Form EC1 of the 7th schedule to the Act.

According to the appellant most of the names attached to the 1st respondent's nomination form were of persons who did not fall in the relevant electoral area while some contained forged signatures and others had no signatures at all. Counsel adverted that the 1st respondent had attempted to rectify the anomaly after receiving the petition but failed. In his view, without the alleged forgeries and the fraudulent entries, the nomination of the 1st respondent was without supporting names as required by law and would not have succeeded. Counsel submitted that section 114 (f) of the LGA forms a ground of disqualification envisaged by section 139 (d) of the same Act and at the time of the election, the 1st respondent was not qualified for want of the mandatory supporting signatures. The expert evidence of Chelangat Sylvia was presented to prove that 12 names of those used in the said electoral areas were forged and invalid.

Counsel submitted that he took steps and invited the lower court to investigate the glaring illegalities of fraud and forgery and cited **Kasirye Zimula Fred vs Bazigatilawo Kibuuka & EC EPA N.1 of 2018** for the holding 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 nomination before the election date except where the law otherwise

specifically provides would be referred to the Election Commission. To counsel, section 111 (4) (f) of the LGA which requires a list of 20 names and signatures of registered voters to support a candidate's nomination fell within the exception to section 15 of the ECA which provides the commission with jurisdiction to resolve election related complaints.

On ground 2, it was submitted for the appellant that leave was granted to file additional affidavits in support of the petition and the respondents applied for time to make replies but the learned trial judge erred when he found that additional affidavits filed with leave of court by persons whose names were not mentioned in the petition amounted to new pleadings. Referring to rules 4 (8) & 15 of the Parliamentary Elections(interim) provision rules SI- 142, counsel submitted that there was no legal requirement that affidavits intended to be relied upon by the petitioner had to be filed together with the petition. He cited **Akuguzibwe Lawrence v Muhumuza, Mulira & EC EPA No.22 of 2016** and **Bantalib Issa Taligola v Wasungiya Bob Fred & EPA No. 11 of 2006** to say that it is sufficient and in compliance with the law that once the petitioner files his petition and accompanying affidavits within 30 days stipulated under the PEA, additional affidavit evidence can be adduced to prove an allegation made by the petitioner. Counsel further cited **Odo Tayebwa vs Gordon Kakuuma Arinda & EC EPP No. 86 of 2016** for the holding that it is up to court to set timelines needed to ensure justice for all parties in the petition. He further submitted that the affidavits filed later with leave of court and within the timelines of court did not prejudice the respondents in any

way. To counsel the affidavits were properly before court and there was no miscarriage of justice occasioned.

On ground 3, it was submitted for the appellant that it was wrong for the learned trial Judge to disregard considerable affidavit evidence simply because they were filed after the petition and the impugned affidavits buttressed issues raised in the petition and no new grounds were raised therein. According to him the evidence gave effect to the grounds in the petition which included invalid nomination papers due to forgery and lack of the list of names of 20 registered voters from each electoral area. Counsel contended that the new affidavits brought out fraud and forgery which are illegalities and once brought to the attention of court override all questions of pleadings including any admissions made thereon and cited **Makula International versus His Eminence Cardinal Nsubuga SCCA No.4 of 1981**.

The contention in ground 4 was whether the main affidavit in support of the petition was a pleading or a mere piece of evidence. Counsel submitted that it was a pleading setting out facts the petitioner wished to rely on. He cited **Mutembuli Yususf v. Nagwomu Moses Musamba & EC EPA NO. 43 of 2016**, where court stated that the proper position of the law is that a petition and the supporting affidavit and the reply thereto are pleadings. His argument was that statements made by the petitioner in his affidavit were buttressed by witnesses which was sufficient disclosure of source of information since the said witnesses had filed affidavits in support of the petition. In his view this gave credence to the petitioner`s allegations and referred court to **Chebrot Stephen Chemioko vs Soyekwo Kenneth & EC EPA No. 56 of 2016.**

Counsel submitted that the learned trial judge severed 5 paragraphs out of 43 leaving 38 paragraphs in the petitioner`s affidavit in support of the petition but even then the remaining paragraphs contained sufficient information for court to have evaluated and determined issues in contention the trial judge erred for not doing so. He cited **Rtd Col. Kiiza Besigye vs Yoweri Museveni Kaguta Presidential Election Petition No. 1 Of 2006** where court held that a defective affidavit is not necessarily a nullity. The parts which are hearsay and offend order 19 rule 3 of the CPR ought to be severed off without rendering the remaining parts defective or a nullity.

On ground 5, it was submitted for the appellant that section 139 of the LGA sets the standard of proof for setting aside the election of a chairperson to be proof to the satisfaction of court. He faulted the trial judge for not subjecting the remaining parts of the impugned affidavit to proper evaluation following the required standard thereby arriving at a wrong conclusion. He adverted that paragraphs 12, 13, 14, 15, 16, 18, 31, 33, 34 and 35 of the said affidavit in support of the petition raised different grounds and court ought to have proceeded to evaluate this evidence which remained when other paragraphs were severed.

The appellant submitted on ground 6 that election matters are matters of public importance which reflect the will of the people and how they wish to be governed and for that reason, courts are enjoined to take a liberal view of affidavits so that petitions are not defeated on technicalities. He submitted that election petitions take the form of an inquiry and courts should be

reluctant to dismiss them at a preliminary stage but in this case court derogated from making an inquiry in the conduct of the election petition.

On ground 7, counsel submitted that costs are a matter for judicial discretion which discretion has to be exercised judiciously and not arbitrarily and while awarding costs courts should bear in mind that election petitions are matters of national importance. He cited **Acire v. Okumu & EC citing Kadama Mwogezaddembe v Gagawala Wambuzi Election Petition No. 1 of 2001** where court opined that keeping quiet over weaknesses in electoral process for fear of heavy penalties by way of costs in the event of losing the petition would serve to undermine the very foundation and spirit of good governance.

Counsel further submitted that this was not a proper case for closure at preliminary level. There should have been further inquiry into the conduct of the election and in case of costs, he prayed that court should interfere with the discretion of the trial judge because the award of costs was unnecessary.

Respondents' joint submissions.

It was submitted for the respondents on ground 1 that the appellant's allegations on nominations contained in paragraphs 5-11 of the affidavit in support of the petition disclosed that he had inspected the 1st respondent's nomination papers immediately after nomination and if he had found issues with the nomination papers, he ought to have lodged a formal complaint with the 2nd respondent under section 15 of the Electoral Commission Act. That the 2nd respondent was required by law to receive such complaints and resolve them before polling and if a party was dissatisfied with the decision of the EC

he had a right to appeal to the High Court. In this case, there was no indication that the appellant explored the provisions of Section 15 of the ECA but merely advanced arguments that section 15 of the ECA did not apply because it was ousted by the provisions of sections 111 (4) (f) and 139 (d) of the LGA.

Counsel submitted that section 111 of the Local Government Act specifies the qualifications of a chairperson of Local Government the same way the Presidential Elections and the Parliamentary Elections Acts do for the President and Member of Parliament respectively and emphasised that none of these provisions oust the powers and functions of the Electoral Commission under section 15 of the ECA in receiving, hearing and determining complaints after nominations. In this case the appellant had not pointed out any provisions in the law that would exclude a candidate from taking benefit of section 15 of the ECA. According to the respondents, the appellant was estopped from raising nomination grievances after the election and referred to **Baleke Kayiira Peter versus EC & another EP No. 4/2016** to support the assertion.

He further cited **Kasirye Zimula Fred versus B Bazigatilawo Francis Amooti EPA 1/2018** where court emphasised that whenever irregularities arise in an election, they ought to be challenged at the earliest opportunity. In that case, court analysed section 15 of the ECA and held that the appellant waived his right to complain when he failed to bring the complaints within the stipulated period and as such would be estopped from doing so after elections. since the appellant confessed that he inspected the 1st respondent`s nomination

papers, he should have taken benefit of the provisions of section 15 ECA and having failed to do so, according to counsel he was estopped from bringing the complaint after elections.

The respondent replied to grounds 2 and 3 together and submitted that after the filing of the petition and the supporting affidavit by the petitioner in line with the provisions of section 138(4) of the LGA, any subsequent affidavits to be filed in court ought to be read together with the petition. He contended that it's now settled law that a petitioner cannot file a petition outside 14 statutory days and any attempt at any stage of the proceedings to introduce a matter that was not originally pleaded would tantamount to introducing a new cause of action which was barred by limitation under section 138 (4) of the LGA. He cited **Robert Kyagulanyi Sentamu vs Yoweri Kaguta Museveni & EC MA No. 1 of 2021** to support this argument.

He then submitted that any evidence subsequently adduced outside what was pleaded in the original petition and statutory affidavit would not be admissible for contravening the provisions of Order 6 Rule 7 of the CPR, which bar a party from leading evidence in departure of pleadings. That all the 18 affidavits that were filed by the appellant in the lower court upon obtaining leave offended the provisions of order 6 Rule 7 of the CPR for purporting to give evidence outside the pleadings. His argument was that any affidavits filed after the petition and its supporting affidavits were filed as additional or supplementary affidavits and supplementary affidavits only supplement what is already on court record and not matters not originally pleaded.

Counsel further submitted that the appellant specifically mentioned in his petition that he challenged the nomination of the 1st respondent as Salim Uhuru Nsubuga and not Salim Saad Uhuru and had stated that persons nominating the 1st respondent in Kamwokya 2A, 2B, 2C, Nakasero 1 and 2 nominated a different person other than the 1st respondent. Further complaint was that some of the persons supporting the nomination of the 1st respondent were not registered voters in the respective electoral areas and examples of one Mwanze Muhammed and Zansanze Robinah were given as being in that category. He also mentioned Otema Ronald and Nakasenge Racheal as being outside Kamwokya II C. Counsel added that this vice had also taken place in Nakasero 1 and 2, Kisenyi 2 and 3 and kololo 1 and 4, industrial area, Bukesa, Nakivubo Shauriyako and Kisenyi. The names listed were rooted in his petition and the areas which were complained of also appeared in the petition. In reply it was then submitted for the respondents that there was no complaint whatsoever by the appellant regarding duplication or forgery of names on the nomination papers of the 1st respondent.

Counsel further submitted that the appellant`s additional affidavit in support of the petition filed on 6th September 2021 introduced new claims and according to him, it was evident that the same was prepared responding to the 1st respondent`s answer to the petition and affidavit in support which were filed on 27th August 2021. That paragraphs 2 and 3 of the affidavit of Semugoma showed that he had requested for the nomination papers of the 1st respondent from the EC on 3rd May 2021 and the EC responded with copies

on 20th May which copies the appellant attached as annexures 1 and 2 to his affidavit in support. That the documents introduced by the additional affidavit filed on 6th September 2021 after the respondent`s answer to the petition had been filed in court were not served on the 1st respondent. That the new documents were stamped unlike the documents in the supporting affidavit. He contended that these nomination documents were smuggled into the record through another affidavit.

It was further submitted for the respondents that in his additional affidavit, the appellant introduced more new claims one of which was that 9 voters were not from Kololo electoral area but came from Nakasero which was a different electoral area and that some supporters were not found on the register, respondent`s nomination papers had signatures allegedly forged and fraudulently obtained. Counsel submitted that these claims were not in the original petition but founded on newly introduced documents after the appellant had read the 1st respondent`s response thus a departure from pleadings.

Counsel accused the appellant of avoiding to file an affidavit in rejoinder to respond to any new issues introduced by the respondents but after looking at their answer, he chose to file a further affidavit in support of the petition which was outside the original petition. That the learned trial judge was justified to expunge the appellant`s additional affidavit which purported to supplement the petition on fresh matters.

Regarding the distinguished authorities of Akugizibwe Lawrence vs Muhumuza Edward Mlimira & EC and Bantarib Issa Taligora vs Wasungiyo Bob Fred & EC both election petition appeals, counsel submitted that they were duly considered and distinguished by the trial judge because they related to affidavits which supported matters in the original petition but the complaint here was never about late filing but admissibility of affidavits introducing new matters.

Counsel further submitted that paragraph 8 of the additional affidavit of the appellant at page 275 of the record introduced a new claim of bribery wherein the appellant claimed that the 1st respondent bribed voters with gifts including money to voters and to boda boda riders. That in paragraph 14 of the original petition, the appellant listed only 4 incidents of bribery in Kololo 2, Kamwokya, Kagugube, Mengo, and summit view barracks and these were the only acts of bribery in the petition but the appellant introduced other bribery accusations in Kampala Central Division in the affidavits of Okot Steven Kabuli and Oketcha David Obadia with video evidence in a CD attached. Counsel for the respondent submitted that this was outside the original petition and a departure from pleadings. He cited **Ntende Robert vs Isabirye Eid EPA No. 74 of 2016** to say that the trial judge was justified in expunging this affidavit together with that of Kaweesa Templer Edrin which made reference to the same acts of bribery.

Submitting on ground 4, counsel for the respondents adverted that the only evidence left was the appellant`s affidavit filed along with the petition. On the complaint of non-compliance, the respondents submitted that the appellant

did not depose that he was personally present at the different places where the offences were said to have occurred including summit view. In paragraph 23 of his affidavit the appellant stated that upon being informed of the set of affairs, he went to summit view at about 1pm. This to the respondents was hearsay and the judge was right to have severed the averment from the affidavit and since he was the only witness, his remaining evidence was too weak to sustain a claim of non-compliance bearing in mind that the burden of proof rested on him.

Counsel submitted that Order 19 rule 3 (2) of the Civil Procedure Rules makes provision for penalising a deponent who deposes hearsay. The appellant deposed that he was forced to move to summit view upon getting information on matters deposed in paragraphs 12-22 of the affidavit in support. In Counsel`s view, once paragraph 23 of the main affidavit was expunged, paragraphs 12-22 collapsed with it because they were hinged on paragraph 23.

In paragraphs 37, 38 and 39 of the affidavit in support of the petition, the petitioner alleged acts of bribery but according to the respondents he neither disclosed his source of information nor did he mention any particular voter who was allegedly bribed. It was submitted that these were general and blanket allegations and given the nature and gravity of bribery allegations in election matters, it was necessary that persons who were allegedly bribed be clearly identified which was not done in the present case.

Counsel contended that no evidence to prove that the persons referred to by the appellant as having been bribed were registered voters in the constituency. That the learned trial judge was justified in severing all those paragraphs with this allegation from the appellant`s affidavit and when these paragraphs were expunged, the appellant had no arguable case on non-compliance as asserted in paragraph 23 of the affidavit in support and there was no sustainable claim of bribery alluded to in paragraphs 37 to 40 of the same affidavit.

In response to grounds 5 and 6, it was submitted for the respondents that after expunging all the offending affidavits and severing the offending paragraphs of the petitioner`s affidavit in support of the petition the residual claim could not meet the requirements of section 139 of the LGA which require proving the ground to the satisfaction of court and on a balance of probabilities. In counsels view the learned trial judge was justified to strike out the Petition.

On ground 7, it was submitted for the respondents that costs follow the event and the winning party is entitled to costs as provided in section 27 of the Civil Procedure Act unless it's proved to court that the winning party`s conduct contributed to proceedings that would probably have been avoided. Counsel for the respondent submitted that Rule 27 of the Parliamentary Elections (Interim Provisions)(Election Petition) Rules give discretion to the trial judge in an election matter to award costs and determine the party from whom the same may be defrayed. According to counsel it was not demonstrated how the learned trial judge had failed to exercise his discretion judiciously as alleged

by the appellant and in this case it was never suggested by the appellant that each party bears its own costs in the event the petition was struck out but instead the appellant had made a prayer that the objections be overruled with costs and this being the case, the learned trial judge was justified in striking out the petition with costs.

Analysis.

The duty of this court is set out in Rule 30 of the Courts rules . **In Pandya V. R. [1957] EA 33** the then Court Of Appeal For East Africa quoted with approval the decision of the court of Appeal of England in **Coghlan V. Cumberland [1898]1 Ch. 704** which had put the matter in part as follows;

" Even where , as in this case the appeal turns out on a question of fact , the court of appeal has to bear in mind that its duty is to rehear the case , and the court must consider the materials before the judge with such other materials as it may have decided to admit . The court must then make up its own mind , not disregarding the judgment appealed from , but carefully weighing and considering it;and not shiriking from overruling it if on full consideration the court comes to the conclusion that the judgment is wrong.."

After submissions of counsel for the parties on the preliminary objections and at the start of resolving the Petition, the learned trial judge stated that it had been agreed by both parties that court would first resolve the issue regarding the competence of the Petition before the matter proceeded any further. He then framed three issues; the first issue was whether matters regarding the nomination of the 1st respondent could be entertained by court. This issue is

the same as ground no. 1 of the memorandum of appeal The second issue was whether the 18 affidavits filed by the petitioner on the 6th,7th and 16th of September 2021 introduced new matters not pleaded. This issue is the same as grounds 2 and 3 of the memorandum and the third issue was whether the petitioners' affidavit in support of the petition was based on hearsay. This is the same as ground number 4 of the memorandum and I will bear in mind that only four grounds were determined albeit at a preliminary stage by the trial judge.

In determining these preliminary points of objection, the trial Judge held that the petitioner's averment that he inspected the nomination papers of the 1st respondent and the register after the election was an action which had been overtaken by events and the contentions on irregularities and illegalities contained in the 1st respondents' nomination paper filed in court had no basis and for those reasons he allowed the objection.

In the case of the affidavits of Anyazo Ahmed Munaj, Mayanja Ali, Kalisa Daniel, Sekyanzi Ivan, Ssali Fred, Sozi Twaha, Kaakoza Sania, Bweshoro Gilbert, Muwonge Frank, Openja Steward, Mukama Emma, Okwot Steven Kabuli, Oketcha David Obadia, Kaweesa Templer, Chelangat Sylvia and the petitioner`s additional affidavit filed on 6th September, 2021 he found that they introduced new pleadings not contained in the original pleading and expunged them from the record. He severed paragraphs 23, 37, 38 and 40 of the petitioner`s affidavit in support of the petition for being hearsay and found that the remaining part of that affidavit could not satisfy the standard of proof

set out in section 138 of the local Government Act (LGA) and contained unsupported claims by the petitioner.

Rule 15 of the Parliamentary Elections (Election Petitions) Rules (S.I.141-2) provides for evidence in election petitions to be by affidavit. Cross-examination of the deponents may be permitted only with leave of court. The petitioner filed 18 additional affidavits in support of the petition while the 1st respondent filed 1 affidavit in support of the answer and the 2nd respondent filed 1 affidavit in support of her answer to the petition. The appellant never filed any affidavits in rejoinder and likewise the respondents did not file affidavits in reply to the petitioner's additional affidavits section.139 of the Local Government Act provides that the election of a candidate as a chairperson or a member of a council shall only be set aside on any of the following grounds if proved to the satisfaction of the court—

(a) that there was failure to conduct the election in accordance with the provisions of this Part of the Act and that the noncompliance and failure affected the result of the election in a substantial manner;

(b) that a person other than the one elected purportedly won the election;

(c) that an illegal practice or any other offence under this Act was committed in connection with the election by the candidate personally or with his or her knowledge and consent or approval; or

(d) that the candidate was at the time of his or her election not qualified or was disqualified from election.

The burden of proof lies on the petitioner to prove the allegations made against the respondent to the satisfaction of court and court may not be satisfied if it entertains a reasonable doubt. The degree of proof will depend on the gravity of the matter to be proved.

The Parliamentary Elections Act (PEA) is applicable to elections under the Local Government Act by virtue of section 172 of the same Act. Section 61 (3) of the PEA provides that the grounds have to be proved on the basis of a balance of probabilities. The Electoral Commission Act sets principles relating to free and fair elections although non-compliance with those provisions is not per se a ground for annulling an election. Non-compliance can however, be a ground if it affects the principles outlined in section 139 of the LGA.

Issue No. 1

The learned trial judge is faulted for finding that irregularities pertaining to the 1st respondents' qualifications and illegalities in respect of his nomination had no basis before Court and that no miscarriage of justice was occasioned to the petitioner. The ground is premised on section 139 (d) of the LGA. Section 111 (4) of the LGA sets out the required qualifications for one to be elected chairperson and the relevant part provides that a person shall not qualify for election as chairperson of a municipality, town, division or sub county unless that person attaches to his or her nomination paper a list of the names of twenty registered voters from each electoral area, and each of the twenty registered voters shall have appended to that list his or her name,

signature, physical address and voters' registration number as specified in Form EC 1 of the Seventh Schedule to the Act.

Counsel for the appellant submitted that names which were attached to the 1st respondent`s nomination paper were for persons who did not belong to the said electoral area and some names had no signatures at all. He referred to the affidavits of Openja Steward-Kololo iii, Bweshoro Gilbert-old Kampala, Kaliisa Daniel-Nakivubo, Anyazo Ahmed Munaj- Nakivubo, Sekyanzi Ivan-Nakivubo, Sali Fred- Nakivubo, Ssozi Twaha- Kagugube and Kakoza Sania to demonstrate his averment and for Omukama Emma whose name he adverted had a different signature. For him, these were signs that they were forged. That in some electoral areas, the list of registered voters on the nomination papers showed that the person nominated was Salim Uhuru Nsubuga not Salim Saad Uhuru. Counsel contended that without the alleged forgeries, the nomination of the 1st respondent was without supporting names required by law.

In reply, counsel for the respondents submitted that if the appellant had issues with the 1st respondent`s nomination, he ought to have lodged a complaint with the Electoral Commission under section 15 of the ECA and since he did not do so, he was estopped from raising such issues after elections because he had an opportunity to have them adjudicated by the Electoral Commission before election.

The learned trial judge held that the claim of irregular nomination had been overtaken by events because the petitioner should have raised it with the Electoral Commission.

I have scrutinised the 1st respondent`s nomination papers at pages 115- 215 of the record and the nomination lists had names of Uhuru Salim Nsubuga and others Salim Uhuru Saad. Indeed, on the face of the record, it appears there were irregularities in some of the names of the persons who seconded the 1st respondent`s nomination. Some were voters in the stated electoral areas while others were said to be from other electoral areas.

The candidate proposed for nomination on the 16/9/2020 was Salim Saad Uhuru and was seconded by Kasirye Kavuma Henry and Kizito Moses Nsubuga seconded him. His nomination was supported by voters with voters` cards or ID numbers recorded on Annexure C5. In some of the secondment forms, the seconder mentioned Salim Uhuru Nsubuga while in others correction of the name Nsubuga to Uhuru were made at pages 127, 128, 159 , 166. 175,176, 197,207 and 214 of the record. The majority of the forms had the name Salim Uhuru Saad. All the forms even those with Nsubuga indicated that NRM was the political party sponsoring him and the NRM administrative secretary endorsed the forms. This lends credence to the argument that the names Salim Uhuru Saad and Salim Uhuru Nsubuga referred to the same person because the NRM party could not have sponsored two of its own members to stand against each other for the same sit. Musime Doreen the returning officer declared Salim Uhuru Saad as the duly nominated candidate to contest for election of city division chairperson.

This court was faced with a similar situation in **Baleke Peter vs. Electoral Commission & Kakooza Joseph Election Petition Appeal No. 4 of 2016** where there was variance in names on the nomination forms and academic certificates of the elected Member of Parliament for Buwekula constituency.

Court held that it was incumbent on the appellant to prove his allegations that the differing names, on nomination papers and certificates, did not refer to the same person. It was further held that the 2nd respondent had adduced uncontroverted evidence to show that the impugned names all related to him.

In **Mutembuli Yusuf vs. Nagwomu Moses Musamba & the Electoral Commission** (Supra) although the issue there was on interchanging of names, it was held that more evidence must be adduced to prove to the satisfaction of Court that a person who sat and obtained certain academic qualifications was not the same person who was nominated for election.

In my view, the appellant did not adduce evidence to prove to the satisfaction of court that Salim Saad Uhuru was a different person from Uhuru Salim Nsubuga. It was incumbent upon him to prove that the differing names on some of the lists of seconding persons referred to a different person or that the person seconded was not the person appearing in the nomination form, voters` register, was not a citizen of Uganda or was not ordinarily resident in the relevant electoral area of Kampala City.

The 1st respondent did not change his name but it was the persons who listed their names in support of his candidature who added the name Nsubuga to his names on some of their lists and others who realised the mistake made the correction. In my view as long as the names Salim Uhuru Saad appeared in the voters` register the anomaly had minimal consequence. Be that as it may, this anomaly ought to have been brought to the attention of the Electoral Commission under section 15(1) of the Electoral Commission Act at the time of nomination.

Regarding the claim that some of the persons who seconded the 1st respondent`s nomination belonged to different electoral areas and therefore not qualified to have seconded him, Section 111(4) (f) of the LGA require a list of 20 registered voters from each electoral area to second the person being nominated. As mentioned above I have scrutinised the nomination forms and the list of names of persons therein. Proof of those said to be from the alleged electoral areas was based substantially on National Identity card number which was not sufficient to prove one`s electoral area.

The appellant further alleged that in the 1st respondent`s nomination papers there were missing names, names not found on the register, missing signatures, double registration of some names, names with invalid NINs and that some electoral areas had less than the required 20 persons seconding the 1st respondent.

The appellant got to know of these anomalies way before they headed to polls and decided to keep quiet and yet under the law he had a right to lodge a complaint with the electoral commission. Section 15 of the ECA enjoins the commission to hear and determine complaints arising from nomination proceedings. The section provides that 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 necessary action to correct the irregularity and any effects it may have caused. The section allows for appeals to the High Court against a decision of the commission. These powers of the commission cemented in section 15 of the ECA emanate from Article 61 of the Constitution

and must be adhered to. The article mandates the commission to hear and determine election complaints arising before and during polling. Article 64 of the Constitution further gives room to any person aggrieved by the decision of the Electoral Commission in any of the complaints lodged with the commission under article 61 (1) (f) to lodge an appeal with the High Court.

In determining this issue, the learned trial judge held that since the constitution confers original jurisdiction on the Electoral Commission to settle election related disputes arising before or during polling and expressly confers the High Court with appellate jurisdiction in respect of decisions made by the Electoral Commission it could not have been the intention of the framers of the constitution to confer both original and appellate jurisdiction on the High Court in respect of the same subject matter of settling election related disputes arising before or on polling day.

I agree with the trial judge`s conclusion on this point that the allegations of the petitioner against the 1st and 2nd regarding the 1st respondents nomination arose during nomination and the petitioner never challenged the 1st respondent candidature at that stage not even after nomination.

I am persuaded by the decision of V.F Musoke Kibuka J. in **Winnie Byanyima v Ngoma Ngime Revision Application No. 9 of 2001** when he held;

"The election process is organised in such a manner that there is time for nominations, a time for candidates or interested persons to inspect nomination documents of the candidates, a time for lodging complaints to the electoral commission under its mandate, a time for voting and declaring results, once the candidate skipped the stage of making complaints to the electoral commission, he cannot be allowed to do that after elections."

The record shows that the appellant requested for the 1st respondent`s nomination papers by letter dated 3rd May 2021 appearing at page 277 of the record. The Electoral commission responded with the said nomination documents by a letter dated 20th May 2021. The appellant investigated the 1st respondent`s nomination papers and found fault with them but decided to keep quiet and allowed him head to the polls.

The intention of the legislature in enacting section 15 of the Electoral Commission Act was to ensure that all disputes arising prior or during nomination before voting are resolved to finality before the election date, except where the law specifically provides. Timely resolution of complaints will avoid undue expense and inconvenience to the parties inclusive of the electorate who don`t have to vote where nomination of a candidate is contested

The appellant submitted that the provisions of section 111 (4) (f) of the LGA create an exception to section 15 of the Electoral Commission Act. This is not true because S.111 (4) (f) deals with requirements for nomination while section 15 is in respect to settlement of disputes.

I am alive to the provisions of Article 139 of the constitution which cloth the High Court with unlimited original jurisdiction in all matters but this has to be read together and harmonised with Articles 61 (1) (f) and 64 (1) of the Constitution which give the Commission powers to hear and determine election complaints arising before and during polling. Article 61 (1) (f) is specific on election complaints while Article 139 is a general provision on jurisdiction of the High Court. Article 64(1) gives the High Court appellate jurisdiction on complaints arising from decisions of the Electoral Commission

and not original jurisdiction. I agree with the trial judge that it could not have been the intention of the framers of the constitution to confer both original and appellate jurisdiction on the High Court in respect of the same subject matter of settling election related disputes.

For the above reasons, I find no reason to fault the learned trial judge when he allowed the objection and decided that the allegations of irregularities and illegalities in respect of the nomination of the 1st respondent ought to have been addressed and handled by the 2nd respondent and had no basis when they were filed in the High Court.

Ground 1 fails.

Issue no.2

The learned trial judge is faulted for having misdirected himself in holding that the new set of affidavits deposed by persons whose names were not mentioned in the petition amounted to new pleadings being introduced by the petitioner hence occasioning a miscarriage of justice. The appellant submitted that the additional affidavits were filed with leave of court and within timelines of court and the names of the deponents of the affidavits need not have appeared in the petition. The response was that the complaint before the trial court was not late filing of the additional affidavits but rather on the content and admissibility of the respective affidavits for introducing new matters not in the original pleadings.

In determining this issue, the learned trial judge held that persons referred to in the additional affidavits in support of the petition could not form the basis

of the allegation of forgery by the petitioner because these allegations were not contained in the petition. That the petitioner had the opportunity to list all the names he referred to in the original petition but chose to miss out the impugned deponents referred to in the additional affidavits and allowing this set of names would amount to allowing the petitioner set up a new claim not based on the petition. That since the new names were not pleaded in the original petition they had no basis on which they could be introduced in the petition and introducing new pleas through affidavits after the respondent had filed his response would be prejudicial to the respondent.

The Petition and affidavit in support do not mention of names of persons who swore the additional affidavits. Rule 4(8) and 15 of the Parliamentary Elections (interim) provisions rules which are applicable by virtue Section 172 of the LGA do not require affidavits intended to be relied upon by the petitioner to be filed together with the petition nor does the section require would be deponents to be mentioned in the petition or in the main affidavit in support of the petition. In **Bantalib Issa Taligola Vs Wasungiya Bob Fred and Electoral Commission EPA No. 11 of 2006** it was held that it was wrong for court to disregard considerable evidence simply because it was filed after the petition because a petitioner may not have all the necessary evidence he or she would like to put in the affidavit in support of the petition at the time of filing . It is up to court to set timelines which ensure that justice is done to all the parties to the petition as provided in Article 126(2) of the constitution that courts should administer substantive justice without undue regard to technicalities.

A person not named in the petition may depose an affidavit, if his evidence only remains in support of the claims in the petition and main affidavit. The appellant's additional affidavits, which related to irregularities in the nomination papers were properly before court having been filed with leave of court.

The trial judge was faulted for deciding that additional affidavits raised new matters which were not canvassed in the petition and thus erroneously expunged them from the record. It was submitted for the respondents that the 18 additional affidavits filed by the appellant with leave of court offended O6 R7 of the Civil Procedure Rules for giving evidence outside pleadings and supporting a matter that was not originally pleaded.

Order 6 Rule 7 of the Civil Procedure Rules which again is applicable by provisions of Section 172 of the LGA and Rule 17 of the Parliamentary Elections (interim provisions) Rules prohibits departure from previous pleadings and provides that no pleading shall, not being a petition or application, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party making that pleading.

In **Yusuf vs. Nagwomu Mutembuli Moses Musamba and the Electoral Commission Court of Appeal Election Petition Appeal No. 43 of 2016** this court held that an election petition and the reply thereto are considered as pleadings and a petitioner is not permitted to introduce fresh issues or to change the substance of his or her claim by introducing new matters by way of affidavits

in rejoinder. That a party cannot adduce evidence in respect of a matter that is not pleaded and since affidavits are considered purely as evidence and contain only what is pleaded.

The appellant filed an additional affidavit on 6th September 2021 and other additional affidavits by other deponents were filed on 7th September 2021. In paragraph 6 of the appellant`s additional affidavit filed on 6/8/21 he stated that the 1st respondent`s nomination forms in the following parishes were not accompanied by requisite names and signatures of a minimum of 20 registered voters in the electoral area of Kampala central division. He listed the following persons as not belonging to the relevant electoral areas; Nsereko Tebandeke Abdu, Nalukwago Phiona Birabwa, Kemigisa Lillian, Bamwiza David Mirembe Ronald and Baguma Michael. Kamukune Beatrice was not in the register while Sembusi Andrew Moses and Abwa Richard were registered under different names.

In paragraph 5 (b) of the petition, the appellant listed the following electoral areas as having supporting names from outside the electoral area; Kamwokya II, II B and II C, Nakasero 1and II, Kisenyi II and III, Kololo IV ,111and I, Industrial area, Bukesa, Nakivubo Shauliyako and Kisenyi I . In the case of Nakasero II the appellant listed Nsereko Tebandeke, Nalukwago Phiona Birabwa, Kemigisha Lillian, Bamwizawa David, Miremebe Ronald and Baguma Micheal as not being residents of that electoral area. The complaint regarding Nakasero II was not a new claim in the appellant`s additional affidavit. The first 6 supporting names as listed above were pleaded in the petition. It`s only Kamukune Beatrice, Sembusi Andrew Moses and Abwa Richard who were new in the additional affidavit. In paragraphs 6 (b,) (c) and

(d) the Petitioner listed more electoral areas where names of persons who supported the 1st respondent's nomination had irregularities. These included Mengo electoral area with 2 supporting names not found in the register, Nakasero III with 1 person whose name was missing the voter`s signature and 4 missing in the voters register. He also averred that there were also cases of names of supporters with invalid national identity numbers and other forms had less than 20 supporters appearing on the supporters list.

I have scrutinised the petition and its main supporting affidavit and found no claim of persons supporting the 1st respondent's' nomination not appearing on the voter`s register. In all the 3 electoral areas of Mengo, Nakasero III and Old Kampala names of persons mentioned do not appear anywhere in the petition. A part from the electoral areas pleaded in paragraph 5 (b) a-n of the petition the rest are new claims being brought up in an additional affidavit. The evidence in these affidavits was in respect of alleged flaws in the nomination of the 1st respondent, the appellant himself relied on voters location slip and listed names of persons who he said were from outside Kampala Central City Division and others with missing signatures. Obeja Steward and 10 others deponed that the 1st respondent forged their signatures in the list of persons supporting his nomination.

The law requires that 20 registered voters second a candidate for nomination. Whereas the other electoral areas had a number of 20 seconders, Old Kampala Electoral area had 11 names of persons as registered voters.

The appellant in paragraph 7 of his additional affidavit stated that there were parishes where the 1st respondent was nominated but the nomination was accompanied by fraudulently acquired names and signatures. He listed

names of nominees in item 1-X1. This was a claim of fraud which was not specifically pleaded. Even in paragraph 5 (b) of the petition, under the listed electoral areas of Kololo III in item k and Nakivubo in item m, no mention of fraud in names and signatures was pleaded. The 11 additional affidavits in support of the appellant`s new claims in paragraph 7 of his additional affidavit and the additional affidavit of Ms. Chelangat Sylvia were inadmissible.

It is trite that an illegality once brought to the attention of court overrides matters of pleadings. See: **Makula International versus His Eminence cardinal Wamala Nsubuga (Civil Appeal 4 of 1981) [1982] UGSC**. However, the appellant and the 11 deponents of the additional affidavits did not explain how their National Identity Numbers which appear on the 1st respondent`s nomination papers were accessed by the 1st respondent for his use yet they are the same numbers they list in their respective affidavits. It is more probable than not that these witnesses provided the 1st respondent with their National Identity Card numbers for his use and should not be heard to allege that their names were forged. Again this is one of the issues the EC was best placed to handle.

If proved these would amount to irregularities though new but as earlier noted, the appellant ought to have raised them with the Electoral commission before elections.

Issue 3

The learned trial judge is said to have misdirected himself in holding that paragraphs 23, 37, 38 and 40 of the appellant`s affidavit in support of the petition were hearsay evidence and that court could not rely and act upon them and further that, if parts of the same were severed, the remaining parts

could not sustain the standard of proof in election petitions hence occasioning a miscarriage of justice. Order 19 rule (3) (1) of the Civil procedure rules SI-71-1 sets out matters to which affidavits shall be confined. It provides that affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted, provided that the grounds thereof are stated. In **Uganda Journalist Safety Committee and Others vs. Attorney General, Constitutional Petition No.7 of 1997** it was held that failure to disclose the source of information in an affidavit rendered the affidavit null and void.

In paragraph 23 of his affidavit in support of the petition the appellant averred that upon being informed of the state of the affairs at summit view polling stations he went there at around 1:00pm and approached the presiding officer raising concerns of the soldiers surrounding the polling station and multiple voting. He did not disclose the source of this information.

In Paragraph 37 he averred that he was aware that the 1st respondent and his agents with his knowledge and intent to influence voters to vote for the 1st respondent and to refrain from voting the petitioner gave beans and Posho to the voters on the 23rd day of December, 2020 at summit barracks." He did not disclose the source of his information. This was hearsay.

In Paragraph 38 he averred that he was aware that the 1st respondent and his agents during the election period and with intent to influence voters to vote for the 1st respondent and to refrain from voting the petitioner gave money to some officers and voters of the summit view barracks on the 23rd day of January, 2021 at Kololo II Kampala Central Division. He neither disclosed

his source of information nor did he name the persons who were bribed. Again, this was hearsay.

In paragraph 39 he averred that he was aware that the 1st respondent and his agents during the election period and with intent to influence voters to vote for the 1st respondent gave soap, posho, oil and rice to officers and voters on the 23rd day of December, 2020 at summit view, Kololo. He again did not disclose the source of information or specify which officers were bribed and if they were registered voters.

In Paragraph 40 he averred that he was aware that the 1st respondent and his agents during the election period with intent to influence voters to vote for the 1st respondent gave masks around of 5th December 2020 in Kamwokya, kagugube and Mengo parishes. Again the source of information was not disclosed. The date the masks were given is not certain and the persons who were given the items were not stated.

In determining this issue, the learned trial judge held that these were allegations of bribery but the petitioner did not mention names of the particular persons who were bribed. In an affidavit sources of information must be clearly disclosed and the grounds of the belief must also be stated with sufficient particularly.

As earlier found , the learned trial Judge wrongly expunged from the record, certain additional affidavits, namely: the respective affidavits of the appellant, Okwot, Okech and Kaweesa and yet those affidavits were intended to support the appellant's claims of bribery against the 1st respondent. Thus, the learned trial Judge's finding that the appellant's evidence was insufficient to prove the allegations of bribery, which finding was reached without considering the

highlighted evidence was erroneous, because such a finding could not be reached without evaluating all the evidence. This issue would succeed in part.

The learned trial judge is faulted for holding that he subjected the petitioner`s residual claims to the test and required standard of proof set out in section 139 of the Local Government Act and found them not worthy investigating, thereby occasioning a miscarriage of justice. Section 139 of the Local Governments Act, Cap. 243 sets out the grounds for setting aside a Local Council Election. It provides:

1. ***139. Grounds for setting aside election of a candidate as a chairperson or a member of a council shall only be set aside on any of the following grounds if proved to the satisfaction of the court—***
    - ***(a) that there was failure to conduct the election in accordance with the provisions of this Part of the Act and that the noncompliance and failure affected the result of the election in a substantial manner;***
    - ***(b) that a person other than the one elected purportedly won the election;***
    - ***(c) that an illegal practice or any other offence under this Act was committed in connection with the election by the candidate personally or with his or her knowledge and consent or approval;***
2. ***or***
3. ***(d) that the candidate was at the time of his or her election not qualified or was disqualified from election.***

The appellant, in his Petition, set out to prove that the 1st respondent personally and/or through his agents committed the illegal practice of bribery. The learned trial Judge had evidence at his disposal to investigate and make a determination about the issue of bribery but instead, heerronousl expunged some of the evidence from the record. I cannot speculate what weight that evidence could have added to the appellant's case, but I can safely state that the evidence was worth evaluating. In my view, the appellant's

bribery claims were not sufficiently ruled out and ought to have been inquired into further

The other claims left in the petition were contained in paragraphs 6(b)-13 supported by paragraphs 12- 35 in the affidavit in support. (Paragraph 23 not inclusive). In Paragraph 6 (b) and (c) the appellant claimed that polling stations under summit view were situate in a military quarter guard contrary to the law and UPDF soldiers who were not registered voters voted multiple times and were involved in ballot stuffing. That most of the army officers had left the barracks, others were transferred, died, retired and yet their names still appeared on the electoral area voters roll during the voter register update exercise. He accused the Electoral Commission of neglecting to update the register and thus failed to ensure a free and fair election. In paragraph 12, the petitioner stated that the non-compliance with the provisions of the Act, and the failure affected the result of the election in substantial manner.

In the appellant`s affidavit in support, he retaliated the said claims in paragraphs 12-22 but he merely retaliated his averments. In paragraph 15, he attached the decision in Erias Lukwago v EC MCNo. 113 of 2010 which is to the effect that polling stations at summit view be stationed away from the military installation to avoid interference with the electoral process . This court did not see evidence to prove that dead soldiers voted or those who were transferred or retired and were no longer in the electoral area voted. There was an allegation that the military took over summit view polling stations and did ballot stuffing but did no evidence was tendered to prove this claim.

The learned trial judge is said to have misdirected himself on the law governing trial of election petitions hence striking off the petition at a preliminary stage thereby occasioning miscarriage of justice. The appellant submitted that election matters are matters of public importance which reflect the will of the people and how they wish to be governed in a particular entity and courts are enjoined to take a liberal view of affidavits so that petitions are not defeated on technicalities. He contended that courts should be reluctant to dismiss them at a preliminary stage. Having found that the learned trial judge was right to have severed some of the appellant`s affidavit evidence and erred in expunging some of the affidavits which were filed with leave of court, this ground partly succeeds.

It was submitted that the award of costs in this case was unnecessary because the case was closed at a preliminary level without court conducting a further inquiry into the conduct of the respondents. Counsel invited court to interfere with the exercise of the discretion by the trial judge. Section 27 of the civil procedure Act Cap 71 which deals with costs provides that;

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid.

(2) The fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of the powers in subsection (1); but the costs of any action, cause or other

matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(3) The court or judge may give interest on costs at any rate not exceeding 6 percent per year, and the interest shall be added to the costs and shall be recoverable as such.

Rule 27 of the Parliamentary Elections (Interim Provisions) (Election Petitions) Rules reasserts the discretion of the judge in determining who is to be awarded costs. The rule provides that 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.

In Banco Arabe Espanol vs. Bank of Uganda, Supreme Court Civil Appeal No. 8 of 1998, court stated that an appellate court will not interfere with the exercise of discretion by the trial court unless there had been a failure to exercise such discretion or a failure to take into account a material consideration, or that an error in principle was made while exercising that discretion.

The discretion must, however, be exercised judiciously and not arbitrarily and court should bear in mind the importance of elections. This is because election petitions are matters of national and/or political importance, a factor which a court should bear in mind while awarding costs.

In **Kadama Mwogezaddembe vs. Gagawala Wambuzi Election Petition No. 2 of 2001** court stated as follows;

'There is another dimension to such petitions; the quest for better conduct of elections in future...Keeping quiet over weaknesses in the electoral process for fear of heavy penalties by way of costs in the event of losing the petition, would serve to undermine the very foundation and spirit of good governance.'

In the instant case, the learned trial judge awarded costs to the 1st respondents after striking out the petition. However, having earlier found that the learned trial Judge reached his decision of striking out the Petition after wrongly expunging some of the appellant's evidence and did not hear the case in totallity the award of costs cannot stand. I would set aside the order on costs.

In the result the petition partly succeeds . In view of my finding on the three issues , I would, under *Rule 32 1* of the Judicature Court of Appeal Rules Directions, S.I 13-10, order that the matter be remitted back to the High Court for retrial on all issues save for the issue of nomination which has been resolved herein..

The costs of this appeal and the court below shall abide the outcome of the retrial

Dated at Kampala this 15th day of July 2022

Cheborion Barishaki

Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

[*Coram: Egonda-Ntende, Cheborion Barishaki and Luswata, JJA*]

ELECTION PETITION APPEAL NO. 43 OF 2021

[Arising from Election Petition No. 13 of 2021]

BETWEEN

SEMUGOMA KIGOZI HAMDAN==========APPELLANT

AND

SALIM SAAD UHURU==========RESPONDENT NO.1

THE ELECTORAL COMMISSION==========RESPONDENT NO.2

(*On appeal from the ruling and Orders of the High Court of Uganda (Muwata, J.) delivered on 30th September 2021 at Kampala*)

JUDGMENT OF FREDRICK EGONDA-NTENDE, JA

[1] I have had the benefit of reading in draft the Judgment of my brother, Cheborion Barishaki, JA. I agree with it and have nothing useful to add.

[2] As Luswata, JA, agrees, this appeal is allowed in part with the orders proposed by Cheborion Barishaki, JA.

Dated, signed and delivered at Kampala this 1st day of July 2022

Fredrick Egonda-Ntende
Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

ELECTION PETITION APPEAL NO. 43 OF 2021

[Arising from Election Petition No. 13 of 2021]

CORAM: (Egonda Ntende JA, Cheborion Barishaki JA, Eva K. Luswata JA)

SEMUGOMA KIGOZI HAMDAN::APPELLANT

VERSUS

1. **SALIM SAAD UHURU**
2. **THE ELECTORAL COMMISSION::::::::::::::::::::::::::RESPONDENTS**

JUDGMENT OF EVA K. LUSWATA, JA

I have had the opportunity to read in draft the judgment of my brother, Cheborion Bashiraki, JA. I agree with him and have nothing useful to add.

Dated, signed and delivered at Kampala this 19th day of July 2022

EVA K. LUSWATA
Justice of Appeal