

**THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA  
ELECTION PETITION APPEAL NO. 028 OF 2021**

**CORAM: {BUTEERA DCJ, OBURA JA, BAMUGEMEREIRE JA}**

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Asha Mafabi Nabulo :::::::::::::::::::::::::::::::::::::: Appellant

Versus

1. Wamala Nambozo Florence

2. Electoral Commission :::::::::::::::::::::::::::::::::::::: Respondents

*(An Appeal Arising from the Judgment and Orders of David Matovu J, in the High Court  
sitting at Mbale,  
Election Petition No. 18 of 2021)*

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**JUDGMENT OF THE COURT**

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The Appellant together with the 1<sup>st</sup> Respondent and five other candidates participated in the Directly Elected Woman Member of Parliament elections for Sironko District. The elections were conducted on the 14<sup>th</sup> day of January 2021 by the 2<sup>nd</sup> Respondent, the Electoral Commission, a Constitutional Body charged with the mandate to plan, organise and hold elections. Upon completion of the elections, the 1<sup>st</sup> Respondent was returned as winner and declared so by the 2<sup>nd</sup> Respondent. The 1<sup>st</sup> Respondent got 31,119 votes while the 2<sup>nd</sup> Appellant obtained 29,744.

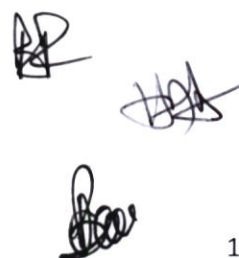
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The appellant was aggrieved by the result of the election and therefore filed an Election Petition in the High Court of Uganda at Mbale registered as Election Petition No. 18 of 2021. The Petitioner sought nullification of the Sironko District Woman Parliamentary election on the grounds that at the time of the nominations, the 1<sup>st</sup> Respondent was not qualified to contest in the elections for lack of the minimum academic qualifications and that the 1<sup>st</sup> Respondent and/or her Agents committed acts of bribery during the campaigns. Lastly, she contended that on the election day - 14<sup>th</sup> January 2021, there was electoral fraud and other practices committed by the 1<sup>st</sup> Respondent under the watchful eye of the 2<sup>nd</sup> Respondent. Consequently, the Petitioner argued that the election was not conducted in compliance with the Electoral laws of Uganda. The High Court dismissed the Petition with costs. Having been aggrieved by the decision of the High Court, the

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Appellant filed this Election Petition Appeal.



**The grounds of appeal are as follows:**

1. That the learned trial Judge erred in law and in fact by leaning heavily on the evidence of a single witness William Wamala in isolation of the totality of evidence thus arriving at a wrong conclusion that the 1st respondent was qualified to be a member of parliament and owns the impugned academic documents of UCE and UACE.
2. That the learned trial Judge erred in law and in fact in holding that the strongest evidence regarding the family of the late Peter Kisiiro was that adduced by his sons William Wamala and William Wogoire and thereby wrongly veered into paternity issues which matters were out of scope of the Petition.
3. That the learned trial Judge erred in law and in fact in holding that the family members denied knowledge of anyone called Gorreti Nafuna yet the first Respondent confirmed her existence during cross examination.
4. That the learned trial Judge erred in law and in fact in dwelling on and evaluating the evidence adduced by the 1<sup>st</sup> Respondent in isolation of the plethora of the Petitioner's evidence and thereby arrived at the wrong conclusion in respect of the issue whether the academic qualifications presented belonged to the 1<sup>st</sup> Respondent.
5. That the learned trial Judge grossly erred in law and in fact in ignoring grave contradictions which stripped the 1<sup>st</sup> Respondent of her claim to own the academic papers in question.
6. That the learned trial Judge erred in law and in fact in holding that the contradictions in the 1<sup>st</sup> Respondent evidence were due to the passage of time out of school and the politics around such petitions thus propounding a new phenomenon on the law of evidence relating to contradictions.
7. That the learned trial Judge erred in law and in fact in finding the evidence of Issa Yunusu Musiwa believable on the issue of sponsoring and giving donations during elections in the finals of the Nambozo Cup held on the 1<sup>st</sup> day of January 2021.
8. That the learned trial Judge erred in law and in fact in finding that Nambozo Cup could not be attributed to the 1<sup>st</sup> Respondent as a bribe because the tournament has been taking place since 2015.
9. That the learned trial Judge erred in holding that there was no evidence linking the 1<sup>st</sup> Respondent to the bribery of voters at Last Chance Restaurant.
10. That the learned trial Judge erred in law in his total failure to determine the issue of bribery of voters to Bumotale Catholic Church Polling Station.



## Appearances and Representation

The Appellant was represented by Mr. Kamba of Turinawe Kamba and Co. Advocates while the 1<sup>st</sup> appellant was represented by Mr. Nandaah of Nandaah Wamukota & Co Advocates. Mr. Hamidu Lugoolobi, a Principle Legal Officer at the Electoral Commission of Uganda  
6 represented the 2<sup>nd</sup> Respondent

## Legal Arguments

In his submissions, counsel for the appellant took issue with the learned trial Judge's finding that the 1<sup>st</sup> Respondent, Florence Wamala Namboozo was the only daughter of William Petero Wamala . Counsel for the Appellant argued that the Learned Judge erred by basing his decision on  
12 the testimony of the 1<sup>st</sup> Respondent's brother William Wamala in total disregard of the weight of evidence on the issue.

Counsel further submitted that the learned trial Judge ought not to have cherry-picked the evidence of William Wamala in isolation of other cogent evidence which pointed to the contrary. It was counsel's submission that this was a grave error and ought to be remedied by the  
18 court.

Counsel for the appellant further contended that William Wamala's evidence was partisan and needed corroboration and should not have been relied on alone. It was his submission that had the learned trial Judge evaluated all the evidence in totality, he would have discerned the incoherent stories made out by the 1<sup>st</sup> Respondent in support of her



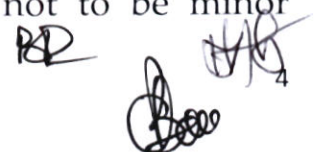
academic journey. Counsel submitted that witnesses simply regurgitated these deliberate lies in their entirety and thereby misled the trial Judge.

Counsel for the appellant relied on the 1<sup>st</sup> Respondent's testimony during cross-examination in which she stated that her father had another daughter who went by the name Gorretti. It was the appellant's case that  
6 the 1<sup>st</sup> Respondent's answer corroborated the contention that there was another girl in the family who went by the name Gorretti. It was counsel's submission that it was not far-fetched to infer that the 1<sup>st</sup> Respondent used her sister's academic papers and the 1<sup>st</sup> Respondent's name was not Goretta Nambozo Wamala as claimed. Counsel invited this court to be persuaded by the English case of **Chard v Chard 1955 (3) ALL ER 721**  
12 **and 726** for the proposition that

'the learned trial Judge ought to have considered the evidence of unexplained circumstances.

Counsel also referred to Halsbury's Laws of England Fourth Edition Vol. 17 in par.120 for the proposition that. 'as between an innocent and guilty party, unexplained circumstances are presumed unfavourably to the  
18 wrong doer.'

Counsel related the above statements to the discrepancies surrounding dates when the 1<sup>st</sup> Respondent sat her PLE and when she joined her S.1. He argued that the glaring gaps in the years were a pointer to the academic lies. He contended that this was crucial evidence and that in **Sserunjongi James Mukiibi v Lule Umar Mawiya Election Petition**  
24 **Appeal No. 15 of 2006** such conditions were held not to be minor



discrepancies which could be glossed over but ought to be considered as deliberate lies.

Counsel further submitted that the gravity of this matter required a more analytical approach which the learned trial Judge ought to have been alive to and carefully evaluated the evidence before him.

6 It was counsel's submission that had the learned trial Judge considered each party's case before reaching his decision; had he carefully analysed and evaluated the affidavit and oral evidence of the witnesses on the court record and applied the law properly, he would have arrived at the conclusion that the 1<sup>st</sup> Respondent was not Florence Nambozo Wamala and that she did not possess the required academic qualifications.

12 Counsel for the appellant invited this court to uphold the above grounds of appeal.

### **Submissions of Counsel for the Respondents in Reply**

In arguing Grounds No. 1, No.2, No.3, No.4, No.5 and 6, in reply, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent submitted that election petition evidence is by affidavit and that all parties did not have to read the affidavit in open  
18 court.

Counsel for the Respondents submitted that the learned trial Judge had considered each party's case before reaching his decision and carefully analysed and evaluated the affidavit and oral evidence of the witnesses on the court record, applied the law and properly analysed the evidence of the witnesses brought by the 1<sup>st</sup> Respondent. In particular, the learned

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Judge had properly addressed himself to the evidence of William Wamala and other witnesses whom he found to be credible and arrived at the correct conclusion. He agreed with the trial Judge that the Nambozo Wamala Florence who submitted her academic qualifications to the 2<sup>nd</sup> Respondent as the candidate for woman Member of Parliament for Sironko District; was qualified to be, and was duly nominated and elected as a woman Member of Parliament for Sironko District.

He relied on **Col. Retired Kizza Besigye v Museveni Yoweri Kaguta and Another Supreme Court Election Petition No. 1 of 2006** where Odoki CJ held thus, 'its true court may not be satisfied if it entertains a reasonable doubt but the decision will depend on the gravity of the matter to be proved.' Counsel also relied on **Mutembuli Yusufu v Nagwomu Moses Musuba Election Petition No. 43 of 2016** to argue that it was misleading of opposite counsel to suggest that 'mere contradictions can strip a person of his or her academic qualification.' Counsel argued that the 1<sup>st</sup> Respondent during cross examination was tasked to explain whether there was another 'Gorretti' in the Family and her reply was yes but that she was not called Nafuna Gorretti as claimed by the appellant.

Counsel for the 2<sup>nd</sup> Respondent submitted that it is well-settled law and practice that minor inconsistencies if they do not go to the root of the evidence being adduced in court should not be relied on or should be ignored citing **Amama Mbabazi v Musinguzi Garuga Court of Appeal Election Petition Appeal No. 12 of 2002**, where the differences in dates as to when the rally event took place was held to be a minor contradiction



that does not go to the root of the issue at hand. Relating to the issues at hand, counsel argued that the discrepancy of the dates the 1<sup>st</sup> Respondent went to school does not in any way affect the real identity and qualification of the 1<sup>st</sup> Respondent.

Counsel for the Respondent submitted that the learned trial Judge did not  
6 err in finding that the 1<sup>st</sup> Respondent was positively identified by witnesses, was qualified, properly nominated and elected as Member of Parliament for Sironko District.

In rejoinder, Counsel for the appellant contended that had the learned trial Judge been alive to the contradictions in the witness statements, and in the witness evidence of the 1<sup>st</sup> Respondent, he would not have attached  
12 much importance to the testimony of William Wamala.

He further submitted that the contradictory accounts of the 1<sup>st</sup> Respondent's academic journey proved that she was not and could not be relied on or even corroborate the evidence of any other person. Counsel relied on *Cross and Tapper on Evidence* where it has been widely found and it is trite that some witnesses such as close relatives and political allies  
18 are likely to give biased testimony.

It was counsel's submission that in this appeal before us, the court would be cautious not to rely on evidence-in-chief of a party whose own story was contradicted on cross examination and that the contradictions should be taken into account. He relied on the old English case of **Paddington v Benet & Wood and Property Ltd [1940] 63 CLR 533** as reported in *Cross and Tapper* at page 326. In that case, the plaintiff's witness in the run-  
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down action when asked in cross-examination on how he accounted for his presence at the scene of the accident said he had been to the bank on behalf of the named person. A new trial was ordered on the ground that the learned trial Judge had wrongfully allowed the Bank Manager to give evidence to the effect that no business was done on behalf of the man  
6 named by the witness.

In **R v Burke (1858) 88 Cokes CC 44**, a witness was giving evidence through an interpreter. His cross examination about his knowledge of English was that he did not know English. It was held that evidence could not be given to contradict his statement that he was ignorant of the language. In this case the evidence of the 1<sup>st</sup> Respondent as submitted in  
12 rejoinder by the Appellant's counsel was that she did not know who taught her mathematics, history, chemistry, biology, physics at O' Level and she did not know the subject taught by a notorious teacher called Mr. Mushirala.

Counsel argued that the learned trial Judge's finding that the contradictions were political and unsustainable should not be believed by  
18 this court. On the issue of academic qualifications, it was the submission of counsel for the appellant that the learned trial Judge seemingly evaluated the 1<sup>st</sup> Respondent evidence in isolation of the appellant's evidence.

On the issue of bribery, counsel for the appellant vehemently contended that the learned trial Judge's lopsided manner of evaluating evidence led  
24 to a miscarriage of justice. Counsel for the appellant attacked the learned

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trial Judge's findings for not evaluating the contradictions in the 1<sup>st</sup> Respondent's evidence. He argued that the contradictions came by way of conflicting testimonies. Counsel contended that the material contradictions went to the root of evidence and had the effect of impairing the validity and veracity of the evidence as a whole.

6 Counsel submitted that in dealing with inconsistencies, a court has to ask itself whether the evidence taken as a whole rings true. Therefore, the impression created by the contradictions should go to the root of the matter. He argued that the court is enjoined to scrutinise the evidence, keeping in view the deficiencies, the draw-backs and the weaknesses pointed out in the evidence as a whole. The court should evaluate the  
12 testimony to find out whether it is against the general tenor of the evidence given by the witness and whether the whole version is so shaken as to render it unworthy of belief.

Counsel invited this court to find that once the veracity of the witness is tainted, a person's credibility is impeached and for that reason the testimony of the 1<sup>st</sup> Respondent was not worthy of trust since it was at  
18 best lies, militated by politics and should be discarded and treated as unreliable. Counsel invited this court to disregard the findings of the learned trial Judge and to find that the 1<sup>st</sup> appellant was a person who lacked qualifications. He asked this court to allow the grounds of appeal.

In regards to Grounds No. 7, No. 8, No. 9 & No. 10, counsel for the 1<sup>st</sup> Respondent argued that the learned trial Judge properly evaluated the  
24 evidence of both parties and submissions of counsel. Regarding the



allegations of lack of minimum qualifications, it was counsel's submission that the learned trial Judge properly and at length, evaluated evidence of the appellant and the 1<sup>st</sup> Respondent in respect of academic qualifications and came to the conclusion that Namboozo Florence Wamala sat O' Level in 1992 at Nabumali High School and that it was Namboozo Florence  
6 Wamala who is the owner of the academic documents.

Counsel for the 1<sup>st</sup> Respondent submitted that the inconsistencies that came up in cross examinations were minor and did not go to root of the 1<sup>st</sup> Respondent's evidence. Counsel submitted that the 1<sup>st</sup> Respondent was truthful when she maintained the year in which she sat PLE and clearly stated in examination-in-chief that the year was 1988 and that she did not  
12 miss or skip any class year.

Counsel for the 1<sup>st</sup> Respondent referred to the evidence of Mr. Wabusela, Walukhuli, Mataka Andrew, Gidudu Mansa Musa in their respective affidavits and concluded that their affidavits contradicted the evidence contained in the affidavit in support of the petition since all the witnesses claim that the Namboozo Wamala they knew in Nabumali High School  
18 who sat O' Level in 1989 was a different person, yet the appellant says she was informed by the very witnesses that Florence Namboozo sat PLE in 1989 and proceeded to Budadiri Girls but dropped out in Senior two.

### **Submissions of the Respondents on the Question of Bribery**

With regards to the evidence of election related bribery, counsel for the 1<sup>st</sup> Respondent submitted that the learned trial Judge evaluated and  
24 analysed the evidence in respect of a football tournament and came to the



conclusion that the 1<sup>st</sup> Respondent did not give out prizes on the 1<sup>st</sup> of January 2021 and the tournament had existed since 2015 and could not be attributed to the 1<sup>st</sup> Respondent as a bribe to the voters in the elections conducted on 14<sup>th</sup> of January 2021.

6 Counsel for the Respondent further argued that the learned trial Judge considered the evidence of the appellant in respect of the football match and tournament. Counsel further contended that the learned trial Judge was justified in believing the evidence adduced by Abdul Magomu, Asuman Mubala and Rodgers Wandeka. Further counsel argued that the learned trial Judge was justified to believe that the evidence of Yunusu Musiwa who was Chairman and Founder of the Nambozo Cup was  
12 credible and that he was the one who started the tournament under the names of Sironko Christmas cup. Musiwa testified that the 1<sup>st</sup> Respondent only got involved in the 2017 Cup when she assisted him with funding, as the area Member of Parliament. Counsel for the 1<sup>st</sup> Respondent submitted that the Appellant failed to prove that the prizes were provided by the 1<sup>st</sup> Respondent. Counsel argued that the Appellant failed to prove  
18 that the tournament was not an annual event and that in a nutshell, he failed to prove that a gift or donation was given by the 1<sup>st</sup> Respondent. Regarding the video evidence that was attached, counsel for the 1<sup>st</sup> Respondent argued that it was not admissible and the learned trial Judge was right to disregard it. It was never shown to the court despite the court giving the appellant opportunity to do so. Counsel submitted that the  
24 video became inadmissible in evidence since it offended all the rules and

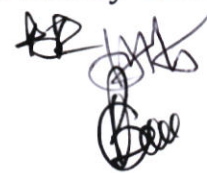


could not pass the test provided under section 5, 7 and 8 of the Electronic Transaction Act 2011.

Counsel for the 1<sup>st</sup> Respondent invited this court to find that the Appellant abandoned the allegation on the bribery at Bumutale Catholic Church. Regarding bribery at Last Chance Restaurant, counsel for the 1<sup>st</sup> Respondent submitted that the learned trial Judge rightly found that there was no credible evidence linking the 1<sup>st</sup> Respondent to any alleged bribery at Last Chance Restaurant and that in this regard the evidence for the 1<sup>st</sup> Respondent was credible and believable. Counsel submitted that the trial Judge was correct to accept the 1<sup>st</sup> Respondent's denial of ever attending any meeting at Last Chance Restaurant. The evidence of Sibatta Gerald and that of the owner of the Last Chance Restaurant in Mbale, Rose Nabukonde *alias* Last Chance was that there was no meeting that took place in the restaurant on that date as alleged by the Appellant.

Counsel for the Respondent relied on the evidence of Sibatta in particular as the Publicity Secretary of the National Resistance Movement for Sironko to prove that although he supported the Appellant as a Flag Bearer he did not call a meeting on her behalf or on behalf of the 1<sup>st</sup> Respondent. Counsel submitted that the learned trial Judge was right to believe that the latter witnesses were not partisan but were telling the truth.

Counsel agreed with the learned trial Judge when he found that the Appellant failed to prove that persons who were bribed were registered voters. He relied on **Sarah O. Lanyero & EC v Lanyero Molly Election**



**Petition Appeal No. 0032 of 2011** in which this issue was addressed. Counsel for the 1<sup>st</sup> Respondent further submitted that the appellant failed to prove any of the grounds raised in the appeal. He prayed that the appeal be dismissed.

Counsel for the 2<sup>nd</sup> Respondent in arguing Grounds No. 7, No. 8, No. 9, and No. 10 relied on **Odo Tayebwa v Basajjabalaba Nassser & Another of election petition appeal N0. 13 of 2011** to submit that the following elements must exist in order to prove a ground of bribery:

1. That a gift must be given to a voter
2. The gift must be given by the Candidate or the Agent
3. It must be given with the intention of inducing the person to vote or to refrain from voting.

He submitted that it was not true that the learned trial Judge did not determine the issue of bribery and contended that the learned trial Judge evaluated all the evidence and rightly found that there was no connection between the 1<sup>st</sup> Respondent and Ronald Gimei.

Counsel for the 2<sup>nd</sup> Respondent submitted that Appellant failed to adduce evidence of gifts and to produce credible witnesses to attest to the fact that they had been gifted by the 1<sup>st</sup> Respondent and her agent for the purpose of voting or abstaining from the vote. On the issue of organising football tournaments, during the campaign period and bribery at Last Chance Restaurant and bribery at Bumutale Catholic Church, Counsel associated themselves with the submissions of the 1<sup>st</sup> Respondent. In conclusion, it was the submission of counsel for the 2<sup>nd</sup> Respondent that the Appellant



had not proved any of the 10 grounds in the Memorandum of Appeal and prayed that Court finds no merit in this appeal and dismisses it with costs.

In rejoinder, counsel for the Appellant submitted that the learned trial Judge did not consider, analyse and evaluate the evidence of Abdul Magombe, Asuman Obala, Rodgers Kigaga , Perez Magomu Bashir and  
6 Abdul who were present and participated in the tournament.

Counsel further submitted that it was not in contention that there was a tournament named after the 1<sup>st</sup> Respondent, the 'Nambozo Christmas Cup Tournament', which run from December 2020 to January 2021 and that the finals were played at Masaba Senior Secondary School playground. It was not in dispute Sironko Town Football Team was the  
12 winner as against Busulani County and Bumaliba Sub county, Teams. It was equally not in contention that there were gifts that were handed over to the three sub counties to-wit, a cow to the winner; Sironko Town Council, a sum of UGX 400,000/= to runner-up Busulani sub county and UGX 250,000/= to the third team; Bumaliba sub county. Finally, it was not in contention that the 1<sup>st</sup> Respondent attended the first tournament on the  
18 1<sup>st</sup> of January 2021 and there was a trophy branded as Namboozo Cup and that photographs were taken and tendered as exhibits.

Counsel submitted that there was sufficient evidence to show that the 1<sup>st</sup> Respondent was present and handed over the gifts to three sub counties and requested people to vote for her and that Issa Yunusu did not attend the Finals on the 1<sup>st</sup> of January. Counsel also submitted that the learned  
24 trial Judge failed to consider and evaluate the evidence of Appellant's



witnesses who were present on the 1<sup>st</sup> of January 2021 when the Finals were played.

Counsel further argued that the 1<sup>st</sup> Respondent handed over UGX 250,000/= to Bumaliba Sub County and UGX 400,000/= to the Busulani Sub county and a cow, trophy and medals to Sironko Town Council and that  
6 she also promised to buy jerseys and balls for all the teams that had participated.

Counsel for the appellant further submitted that there was sufficient evidence to prove that the 1<sup>st</sup> Respondent organised this tournament for the purposes of influencing and mobilising people during the election period which was between December 2020 and January 2021. Section 68  
12 of the Parliamentary Elections Act (PEA) defines bribery to include a person who either before or during an election with intent either directly or indirectly to influence another person to vote or to refrain from voting for any candidate gives or provides money or gifts to that other person.

Counsel relied on **Mukasa Antony Harris v Lulume Bayinga Election Petition Appeal No. 18 of 2007** where it was held that there can be no  
18 doubt that any two participants at the rallies were voters or at least some of them and that the intention of the appellant in giving out the money was to influence their voting decision.

Counsel submitted that section 68(7) of the P.E.A emphatically and specifically prohibits a candidate or the agent of a candidate from carrying out or giving donations during the campaign period. Counsel submitted  
24 that according to Black's Law Dictionary in relation to campaign law, a

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donation is a mode of acquiring a benefit or a gift. Counsel further submitted that while under s.68 of PEA, bribery is the giving or causing to give a gift or other compensation and to induce a person being given the same gift or to vote or to refrain from voting, the court must be alive to a fact that s. 68(1) of the PEA cannot be interpreted in the same way as  
6 sec 68(7) which prohibits any candidate from carrying out fundraising or giving out donations. And it was their submission that once a donation is given the offence under sec 68(7) is committed and there was no need to prove the aspect of inducing the voters. See **Fred Dabada v Prof. Muyanda Mutebi Election Petition Appeal No. 25 of 2006.**

Counsel submitted that the 1<sup>st</sup> Respondent addressed people during the  
12 disguised campaign meetings and induced voters to gain political capital and to get votes from them. He further submitted that a contradiction regarding the dates when the tournament started is minor and does not go to the root of allegation. He invited this court to take a serious view to the Respondent's organised tournaments during election periods.

Counsel for the Appellant concluded that the learned trial Judge had  
18 failed to evaluate and analyse the evidence as a whole and therefore he invited this court to evaluate, analyse and scrutinise the evidence on the whole and to find that it is the 1<sup>st</sup> Respondent who donated the gifts to Sironko Town Council, Busulani and Bumaliba sub-counties.

### **Consideration of the Court**

As the first Appellate Court in respect of appeals from the High Court,  
24 the Court of Appeal shoulders extra responsibility in election appeals

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because its decisions are final. We shall therefore review and re-evaluate the evidence on record and subject it to thorough scrutiny before we arrive at our own inferences. We are however mindful that we did not have the opportunity to observe the witnesses testify, first hand. We further note that where election petitions depend on affidavit evidence, 6 this court will likely have access to the same materials which were at the disposal of the trial court. We bear in mind, however, the handicap that where the evidence or part of the testimony was oral, we will not be able to see and hear first-hand the evidence of such witnesses. **Rule 30 of the Judicature (Court of Appeal Rules) Directions, S.I.13-10, Pandya V R [1957] EA 336, Okeno v Republic [1972] E.A 32 and Kifamunte Henry v Uganda SCCA NO. 10 of 1997.** 12

Before we delve into the matters now before us we would like to thank counsel of both sides for the authorities and written submissions you provided. Our deliberations have borne the above in mind.

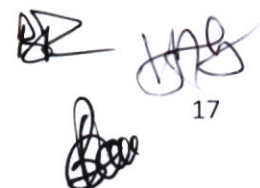
Regarding Grounds No. 1, No. 2, No. 3, No. 4, No. 5 and No. 6, it should be noted right from the onset that matters relating to qualifications for a 18 parliamentary position in Uganda are regulated under section 4 of the Parliamentary Elections Act (the PEA) as amended. Indeed section 4 of the PEA stipulates as follows:

**4. Qualifications and disqualifications of members of parliament.**

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

- a. is a citizen of Uganda;
- b. is a registered voter; and

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c. has completed a minimum formal education of Advanced Level standard or its equivalent

The question of academic qualifications is at the core of this election contest. The appellant's claim is that the 1<sup>st</sup> Respondent presented papers which belonged to someone other than herself and was therefore not  
6 qualified to stand for election as Woman Member of Parliament for Sironko District in the elections that took place on the 14<sup>th</sup> of January 2021. The Appellant and the 1<sup>st</sup> Respondent produced witnesses to prove their respective claims. The trial Judge found for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

This allegation is quite novel for the reason that the 1<sup>st</sup> Respondent is accused of impersonating a member of her family and uttering documents  
12 which purportedly or possibly belonged to a member of the family by the name Florence Nambozo Wamala. The 1<sup>st</sup> Respondent on the other hand insists that she is the very Florence Nambozo Wamala who attended Nabumali High School.

At the trial the Appellant unsuccessfully sought to prove that the 1<sup>st</sup> Respondent uttered documents claiming to be Florence Nambozo  
18 Wamala, whereas not. The Appellant relied on several witnesses to support this contention. One of the Appellant's witness, Andrew Jackson Mataka in his affidavit deponed that while at a function with the 1<sup>st</sup> Respondent he had opportunity to interact with the 1<sup>st</sup> Respondent and inquired from her whether she attended Nabumali High School. He states that while she had been responsive, upon hearing the question about  
24 which school she attended, the 1<sup>st</sup> Respondent totally blindsided him,

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busied herself on her cellular phone and avoided him for the rest of the function.

Another deponent, Herbert Wodega, testified that he was in the same stream, **Senior 1 (W)**, with Florence Nambozo Wamala and they both hailed from Sironko and so he knew her personally. On oath, he stated  
6 that he was jolted when he learnt that the Member of Parliament claimed to have attended Nabumali High School, whereas not. He attested to the fact that this Member of Parliament could not be the Florence Nambozo Wamala with whom he attended Nabumali High School between 1989 and 1992. In the affidavit of one Gidudu Mansa Musa who was in the same class as the previous witness, he too denied knowledge or sight of  
12 the 1<sup>st</sup> Respondent as his classmate in the years 1989-to 1992. A teacher and former Deputy Head Teacher of Nabumali High School also stated that he knew Florence Nambozo Wamala and just as most of the above witnesses he had on separate occasions between 2006 and 2011 met Florence Nambozo. Some deponed to having last seen her in 2011 and 2013 but they all insisted that the 1<sup>st</sup> Respondent was not Florence  
18 Nambozo Wamala, the Old Girl of Nabumali High School.

The 1<sup>st</sup> Respondent in answer to the petition stated that all the above witnesses were her classmates at Nabumali High School in the O' Level class 1982 through 1992. Unfortunately, the would-be classmates all denied her. They neither had recollection of her at Nabumali High School as the spotty, ample and burly adolescent commonly referred to as, 'IFA',  
24 nor of her having sat her O' Levels in that school in 1992. The 'IFA'

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reference as explained by the above witnesses was a comparison of the burly teenager with a heavy military hardware truck which was commonly used by the Uganda Army. The metaphor was applied to the said Florence Nambozo Wamala. The 1<sup>st</sup> Respondent equally claimed that Hon. Justice Paul Gadenya was her classmate. In her defence were  
6 two teachers of Nabumali High School who testified that they recall teaching her. One of them Mr. Anthony Khaukha Watuwa testified that he was her house-master.

The trial Judge found as follows:

12 “Court has also perused the supplementary affidavit of the 1<sup>st</sup> Respondent filed on 12<sup>th</sup> August, 2021 and all annexures thereto which details the academic qualifications of Wamala Nambozo Florence as presented to the 2<sup>nd</sup> Respondent at the time of her nomination.

18 Court has read the affidavit of Wamala William an elder brother of the 1<sup>st</sup> Respondent and in Paragraph 4 he states that the 1<sup>st</sup> Respondent was born on 14<sup>th</sup> February, 1975 and then in Paragraph 5 he lists all the eleven (11) children left by the late Peter Wamala Kisiiro.

24 Wamala William denies knowledge of any family member called Nafuna Gorret. This Wamala William in Paragraph 8 of his affidavit shows the 1<sup>st</sup> Respondent’s academic journey that led her to Nabumali High School in 1989, and in paragraph 10 he states that he personally took the 1<sup>st</sup> Respondent Wamala Nambozo Florence to Nabumali High School in senior one in 1989. The affidavit of Wogoire William Wamala another brother to the 1<sup>st</sup> Respondent also confirms the contents of the affidavit of Wamala William. The affidavit of Watuuwa Anthony Khauka confirms that he was a teacher at Nabumali High School between 1989 and 2002 and that he taught the 1<sup>st</sup> Respondent Nambozo Florence Wamala English language and Geography at Nabumali High  
30 School.



According to Paragraphs 5 and 6 of Watuwa Anthony Khauka's affidavit he confirms that the Nambozo Florence Wamala he taught at Nabumali High School is the current Woman member of Parliament for Sironko District and that while at Nabumali High School she was in Aggrey House was stubborn and an active member of the Music, dance and drama club. Court also read the affidavit of Kakai Shirley Ann who was a teacher at Nabumali High School from 1989 to 2003 and used to teach Home Economics. She states that she taught the 1<sup>st</sup> Respondent Home Economics from S.1 to S.3. According to Paragraph 5 of the affidavit of Kakai Shirley Ann she states that she knows Nambozo Florence Wamala who is the Woman member of Parliament of Sironko District and was a student at Nabumali High School in Aggrey House.

From all the above evidence court is not in doubt that Nambozo Florence Wamala was a student of Nabumali High School from 1989 to 1992, but what is left hanging is whether the said Nambozo Florence Wamala who attended Nabumali High School is the same person who is the Woman member of Parliament of Sironko District, the 1<sup>st</sup> Respondent to this petition.

The best evidence about the family of the late Peter Wamala Kisiiro was given by his sons William Wamala and Wogwoire William Wamala. They confirmed that the 1<sup>st</sup> Respondent called Nambozo Florence Wamala was born on the 14<sup>th</sup> February, 1975 and they explained her academic journey leading her to Nabumali High School in 1989 where William Wamala physically took her.

These family members deny knowledge of anyone called Nafuna Gorret in the family of the late Peter Wamala Kisiiro and they disclose all the eleven (11) children born into this family.

It would be unsafe for the court to rely on the evidence of Wozisi Vincent Gizamba alias Kamau to create another Nambozo Florence Wamala who is unknown to members of the family of the late Peter Wamala Kisiiro."

We have critically reviewed the findings by the trial Judge and the evidence laid before the court. We agree with findings of the trial Judge

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that it would be unsafe to rely on the affidavit evidence which creates another Florence Nambozo. The trial Judge had opportunity to see, first-hand, the witnesses to the above facts. Secondly, they were tested in cross-examination. While indeed the appellant created an impression of an alternative possibility of the existence of a 'Florence Nambozo', we find  
6 that it would be unsafe to rely on impressions and ignore the facts gathered by the trial court. We disallow this ground of appeal.

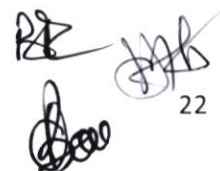
### **Bribery Allegations**

It was argued for the appellant that the 2<sup>nd</sup> Respondent was involved in acts of bribing voters during the "Nambozo Cup" and through Bumutale Catholic Parish Church.

12 With regard to the evidence of corruption, counsel for the 1<sup>st</sup> Respondent submitted that the learned trial Judge evaluated and analysed the evidence in respect of a football tournament and came to the conclusion that the 1<sup>st</sup> Respondent did not give out prizes on the 1<sup>st</sup> of January 2021 and that the tournament had existed since 2015 and therefore could not be attributed to the 1<sup>st</sup> Respondent as a bribe in the elections conducted  
18 on 14<sup>th</sup> of January 2021.

### **The Nambozo Cup**

Counsel for the appellant faulted the trial Judge for ignoring cogent evidence which pointed to the fact that the 2<sup>nd</sup> Respondent presided over a tournament named after her and gave out cash prizes asking voters present to vote for her with full knowledge that this was a campaign

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period and that this activity was prohibited. The Petitioner adduced affidavit evidence of Abdu Magombe, Hasan Obala, Rogers Kigaga Wozosi, Rogers Wadika, Perez Magomu and Abdallah Bashir. The above witnesses whose voter location slips and copies of national ID were attached, gave evidence to the effect that the 1<sup>st</sup> Respondent was present at the final football match of the tournament on 1<sup>st</sup> January, 2021 and she gave out medals and donated a cow black in colour, to the winning team which was Sironko Town Council football team, a sum of UGX 400,000/= (four hundred thousand shillings) to the runner up which was Busulani sub county and a sum of UGX 250,000/= (five hundred thousand shillings) to the 3<sup>rd</sup> placed team of Bumalimba Sub county. Among the exhibits the trial Court took cognizance of was the photograph of the trophy attached to the petitioner's affidavit in rejoinder and named "Nambozo Sironko Christmas Cup" dated 1<sup>st</sup> January 2021, sponsored by the 1<sup>st</sup> Respondent. It is marked exhibit PE77 and the transcription of the CD recording from Makerere University it is also attached to the affidavit in rejoinder of Mr. Magombe Abdu and is marked Exhibit PE78. Rogers Wadika specifically stated that the final match was on 1<sup>st</sup> January 2021 when the 1<sup>st</sup> Respondent rewarded the winners with money, medals and trophies, and a cow. In particular, the 1<sup>st</sup> Respondent reminded the players and fans that her symbol was a football and that they should not even look at the faces and names of the candidates on the ballot paper but simply tick the "ball". The 1<sup>st</sup> Respondent also promised to give uniforms to all clubs that participated in the tournament and promised to erect goal posts and nets

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at all playgrounds, this influenced Wadika to vote for the 1<sup>st</sup> Respondent, yet he supported the petitioner.

Counsel for the Respondent argued that the learned trial Judge considered the evidence of the appellant in respect of the football match and tournament and found it wanting. Counsel contended that the  
6 learned trial Judge was justified in believing the evidence adduced by Abdul Magomu, Asuman Mubala and Rodgers Wandeka. Counsel argued that the learned trial Judge cannot be faulted for believing that the evidence of Yunusu Musiwa who as the Founder and Chairman of the “Nambozo Cup” was credible since he was the initiator of the tournament under the names of Sironko Christmas cup. Musiwa testified that the 1<sup>st</sup>  
12 Respondent only got involved in the 2017 Cup when she assisted him with funding, as the area Member of Parliament. Counsel for the 1<sup>st</sup> Respondent submitted that the Appellant failed to prove that the prizes were provided by the 1<sup>st</sup> Respondent. Counsel argued that the Appellant failed to prove that the tournament was not an annual event and that in a nutshell, he failed to prove that a gift or donation was given by the 1<sup>st</sup>  
18 Respondent. Regarding the video evidence that was attached, counsel for the 1<sup>st</sup> Respondent argued that it was not admissible and the learned trial Judge was right to disregard it. Counsel submitted that the video became inadmissible in evidence since it offended all the rules and could not pass the test provided under sections 5, 7 and 8 of the Electronic Transactions Act 2011.





### **Bribery at Bumutale Catholic Church**

Counsel for the 1<sup>st</sup> Respondent invited this court to find that the Appellant abandoned the allegation on the bribery at Bumutale Catholic Church. Counsel cited an incident in which the 1<sup>st</sup> Respondent's agent Ronald Gimei solicited for votes at Bumutale Catholic Church Polling Station  
6 when he made voters to line up and he gave each of them UGX 2,000 (Two thousand) while asking them to vote the 1<sup>st</sup> Respondent. Counsel argued that this matter was reported to Sironko Central Police Station vide CRB/24/2021 and Gimei was charged with voter bribery the charge sheet, criminal summons, photographs of the said money and the agent were admitted in evidence and marked Exhibits PE11, PE12, PE13, PE14 & PE15  
12 respectively.

### **Bribery at Last Chance**

In his affidavit Moses Bagala who was the Petitioner's co-ordinator in the elections, attested to the fact that he was invited to Last Chance Hotel in Mbale. He met the 1<sup>st</sup> Respondent at the meeting which meeting had  
18 approximately 400 people. They were asked to vote for the 1<sup>st</sup> Respondent in the forthcoming elections as opposed to the Petitioner. At the meeting they were facilitated with 2tins of red creole onion seeds since they were an onion-growing community, and a sum of UGX 30,000 which we received happily. He testified that the tin of onions and UGX 30,000 influenced him to vote the 1<sup>st</sup> Respondent as opposed to voting for the  
24 Petitioner.



Bernard Wotalunga in his affidavit stated that on 28<sup>th</sup> December 2020, he received a call from Kiganga Paul who informed him that the 1<sup>st</sup> Respondent had organized a meeting at Last Chance hotel. Gerald Simbata chaired the meeting and later invited the 1<sup>st</sup> Respondent to address the meeting. The 1<sup>st</sup> respondent requested the people to vote for her and in return she would tarmac Namagumba-Budadiri–Nalugugu road. He testified that the 1<sup>st</sup> Respondent gave each person 2 tins of red creole onion seeds and UGX 30,000 as facilitation. Bernard testified that the gifts influenced him to vote for the 1<sup>st</sup> Respondent as opposed to voting for the Petitioner.

Levy Kiguma stated that on 28<sup>th</sup> December 2020, Bigala Moses invited Levy to a meeting at Last Chance hotel. Simbata Gerald chaired the meeting and later invited the 1<sup>st</sup> Respondent to speak, the 1<sup>st</sup> Respondent requested to vote for her in the elections conducted on 14<sup>th</sup> January 2021. The 1<sup>st</sup> Respondent gave everyone 2 tins of red creole onion seeds and UGX 30,000. These gifts influenced him to vote for the 1<sup>st</sup> Respondent.

Samuel Siduma was informed of a meeting at Last Chance Restaurant by Domba Yunusu and Gerald Simbata. Gerald chaired the meeting and later invited the 1<sup>st</sup> Respondent to address them. In her address she requested for votes and promised to tarmac Namagumba-Budadiri–Nalugugu Road. At the end everyone was facilitated with 2tins of red creole onion seeds and UGX 30,000. These gifts influenced him to vote for the 1<sup>st</sup> Respondent.



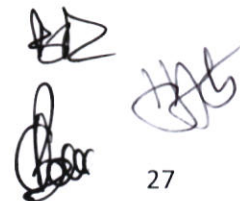
Regarding bribery at Last Chance Restaurant, counsel for the 1<sup>st</sup> Respondent submitted that the learned trial Judge rightfully found that there was no credible evidence linking the 1<sup>st</sup> Respondent to any alleged bribery at Last Chance Restaurant and that in this regard the evidence for the 1<sup>st</sup> Respondent was credible and believable. It was his submission that  
6 the trial Judge was correct to accept the 1<sup>st</sup> Respondent's denial of ever attending any meeting at Last Chance Restaurant. The evidence of Gerald Sibatta and that of the owner of the Last Chance Restaurant in Mbale, Rose Nabukonde alias Last Chance was that no meeting ever that took place in the restaurant on the day in question as alleged by the Appellant.

Counsel for the Respondent, in particular, relied on the evidence of  
12 Sibatta as the Publicity Secretary of the National Resistance Movement for Sironko to prove that although he supported the Appellant as a flag bearer he did not call a meeting on her behalf or on behalf of the 1<sup>st</sup> Respondent. Counsel submitted that the learned trial Judge was right to believe that Gerald Sibatta was not partisan but was telling the truth.

Regarding the above incidents, the trial Judge made the following  
18 findings:

164. The 1<sup>st</sup> Respondent's witnesses stated that the 1<sup>st</sup> Respondent briefly attended the final on 1<sup>st</sup> January, 2021 and did not give out any prizes as alleged.

165. Court heard Issa Yunus Musiwa being cross examined by  
24 Counsel for the Petitioner and this witness owned the creation of Nambozo Cup and indeed stated that he was the one who gave out presents to the winning teams on 1<sup>st</sup> January, 2021.

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166. Court provided all necessary equipment to enable the Petitioner and her advocates play the video recording presented as evidence but she somehow they failed to play this video recording and this court has not seen the same.

6 167. Court finds the evidence of Issa Yunus Musiwa relating to the Nambozo cup believable as the person who started this tournament way back in 2015 and also that the 1<sup>st</sup> Respondent did not give out prizes on 1<sup>st</sup> January, 2021 as alleged by the Petitioner and her witnesses.

12 168. Court also finds that this tournament has been in existence since 2015 and as such cannot be attributed to the 1<sup>st</sup> Respondent as a bribe to voters in elections conducted on 14<sup>th</sup> January, 2021.

169. The other aspect of bribery relates to an allegation that Gimei Ronald Cylan and since this case was referred to courts of law a verdict from this court could assist the Petitioner in this allegation.

170. This court does not find any connection between the said Gimei Ronald Cylan and the 1<sup>st</sup> Respondent.

18 171. Finally, the Petitioner alleged that the 1<sup>st</sup> Respondent bribed voters at best chance restaurant at Budadiri Trading Centre with two (2) tins of red onions, cash of 30,000/= (thirty thousand shillings) each and T shirts.

172. There was no credible evidence linking the 1<sup>st</sup> Respondent to any alleged bribery at Last chance restaurant.

24 We have rigorously re-appraised the evidence, the submissions of counsel and the Judgment in relation to the above incidents of alleged bribery as a whole. As regards the alleged bribery during the Nambozo Cup the Appellant did not satisfy the trial Judge that the prizes UGX 400,000, Medal and a Bull were provided by the 1<sup>st</sup> Respondent. We find that the tournament was an annual event which occurred at the same time each year and had gone on for over five years. The appellants failed to provide  
30 a nexus between the tournament and the elections.



There was the question of the video evidence that was provided by the appellant which video was meant to be proof that the 1<sup>st</sup> respondent was located at the tournament and that she handed out prizes. For avoidance of doubt, section two of the Electronic Transactions Act, Act 8 of 2011 stipulates as follows:

6        **2 Interpretation**

“electronic record” means data which is recorded or stored on any medium in or by a computer system or other similar device, that can be read or perceived by a person or a computer system or other similar device and includes a display, print-out or other output of that data;”

12 It is indeed regrettable that the procedures laid down in the Electronic Transactions Act are hardly followed, leading to the failure to adduce otherwise useful and even best evidence available to prove a fact. The Act sets out ways in which the authenticity of electronic evidence may be proved. It states as follows:

18        **8. Admissibility and evidential weight of a data message or an electronic record**

(1) In legal proceedings, the rules of evidence shall not be applied so as to deny the admissibility of a data message or an electronic record —

(a) merely on the ground that it is constituted by a data message or an electronic record;

(b) if it is the best evidence that the person adducing the evidence could reasonably be expected to obtain; or

24        (c) merely on the ground that it is not in its original form.

(2) A person seeking to introduce a data message or an electronic record in legal proceeding has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be.

(3) Subject to subsection (2), where the best evidence rule is applicable in respect of an electronic record, the rule is fulfilled upon proof of the authenticity of the electronic records system in or by which the data was recorded or stored.

30        (4) When assessing the evidential weight of a data message or an electronic record, the court shall have regard to —

(a) the reliability of the manner in which the data message was generated, stored or communicated;

ABZ    ABZ  
29  
[Signature]

- (b) the reliability of the manner in which the authenticity of the data message was maintained;
- (c) the manner in which the originator of the data message or electronic record was identified; and
- (d) any other relevant factor.

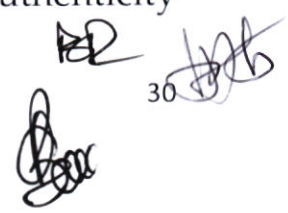
6 (5) The authenticity of the electronic records system in which an electronic record is recorded or stored shall, in the absence of evidence to the contrary, be presumed where—

(a)...

12 b) it is established that the electronic record was recorded or stored by a party to the proceedings who is adverse in interest to the party seeking to introduce it; or (c) it is established that the electronic record was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not record or store it under the control of the party seeking to introduce the record.

18 (6) For the purposes of determining whether an electronic record is admissible under this section, evidence may be presented in respect of set standards, procedure, usage or practice on how electronic records are to be recorded or stored, with regard to the type of business or endeavours that used, recorded or stored the electronic record and the nature and purpose of the electronic record. (7) This section does not modify the common law or a statutory rule relating to the admissibility of records, except the rules relating to authentication and best evidence.

As a rule, courts are enjoined to accept evidence which is in electronic  
24 form especially when its authenticity can be ascertained. The evidence on the record was that there was an attempt to play the video in electronic format, in the court but this was not possible since the gadgets were incapable of producing the picture and the sound. As a result, trial Judge was unable to watch the video and assess the evidence. The generation, storage and communication of the electronic data could thus not be  
30 demonstrated. In this day when data can be processed real time, parties seeking to rely on electronic data must ensure that devices used to generate and store such data are kept in pristine condition. This was not the case. We agree with counsel for the 1<sup>st</sup> Respondent's argument that this electronic recording became inadmissible evidence since it did not live up to requirements of the rules of evidence regarding authenticity

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and the handling of exhibits and further that it could not pass the tests provided under sections 5, 7 and 8 of the Electronic Transactions Act 2011 and hence the learned trial Judge was correct when he disregarded it.

We agree with Counsel for the respondent when he argued that in general the Appellant failed to prove that persons who were bribed were registered voters. **Sarah O. Lanyero & EC v Lanyero Molly Election Petition Appeal No. 0032 of 2011** is instructive on this matter. The court pronounced itself as follows:

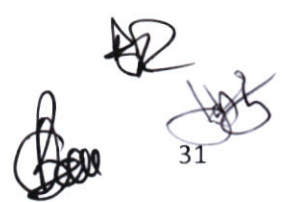
That S.1 of the PEA defines a registered voter as:

“A person whose name is entered on the voter’s register”

The conclusive proof of a registered voter, therefore, is by evidence of a person’s name or names and other relevant data having been entered on the National Voters Register. It is not the voter’s card or any other election document but the National Voters Register.

In the matter now before us, no voter’s register was produced in court in order to confirm that the alleged bribery allegations in all the three places namely; at the Nambozo Cup, Bumutale Catholic Church and Last Chance Restaurant involved persons who were registered voters.

Regarding compliance with electoral laws, the trial Judge found that the conduct of the petitioner’s polling agents by signing the declaration forms, bound the petitioner. He further found that the results in the declaration of results forms proved that the 1st Respondent won the election of Woman member of Parliament for Sironko District. We do not find reason to deviate from this finding. The ground is equally unsuccessful.



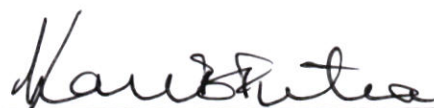
Consequently, we conclude that the appellant failed to prove any of the grounds raised in the appeal. We find that the Election of the Woman member of Parliament for Sironko District was conducted in compliance with the electoral laws.

The appeal dismissed.

6 The general rule is that costs follow the event. Which means that ordinarily the successful party gets to be awarded costs. We have considered carefully the grounds framed in this appeal and found that they were worth contesting on appeal. Although the appellant may have been unsuccessful, costs should not be used as a punishment to bar a party from going on appeal. As a result, we find this a good case for each party  
12 to bear its own costs in this court and in the court below.

Dated and Signed this...<sup>5<sup>th</sup></sup>..... Day of .....<sup>July</sup>.....2022

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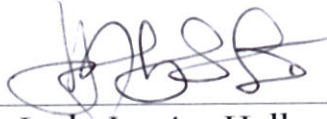


The Honourable Mr. Justice Richard Buteera  
Deputy Chief Justice

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The Honourable Lady Justice Hellen Obura  
Justice of Appeal

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The Honourable Lady Justice Catherine Bamugemereire  
Justice of Appeal

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