

# THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: G. Kiryabwire, M. Kibeedi, C. Gashirabake, JJA)

ELECTION PETITION APPEAL NO. 14 OF 2023

*(Arising out of the judgment of Hon. Justice Alex Mackay Ajiji dated 4<sup>th</sup> April  
2023, Election Petition No. 001 of 2021-Mpigi)*

**BETWEEN**

**SENTAMU BETTY .....APPELLANT**

**AND**

**1) NAYEBARE SYLVIA**

**2) THE ELECTORAL COMMISSION..... RESPONDENTS**

## **JUDGMENT OF THE COURT**

### **INTRODUCTION**

1] The Appellant appealed to this Court against the Judgment of Alex Mackay Ajiji, J. dated 4<sup>th</sup> April 2023, where he found that the first Respondent was validly elected as the Woman Representative for Gomba District.

### **BACKGROUND**

2] The Appellant and the first Respondent, Nayebare Sylvia, were candidates for election to the position of Woman Member of Parliament for Gomba District which was held on the 14<sup>th</sup> day of January 2021, wherein the second Respondent returned, declared, and published the first respondent as the

*W. Clout*  
*C. 1000*

validly elected Woman Member of Parliament for Gomba District, having polled 30,253 votes against the Petitioner's 22, 657 votes.

3] Following that declaration and publication of the first Respondent by the second Respondent as the validly elected Woman Member of Parliament for Gomba District, the Appellant petitioned the High Court of Uganda at Mpigi challenging the first Respondent's election and subsequent declaration and publication by the second Respondent as the validly elected Woman Member of Parliament Gomba District *inter alia* on grounds that the election and declaration of the first Respondent was in contravention of the provisions of the Parliamentary Elections Act, No 17 of 2005 as amended, the Electoral Commission Act Cap. 140 and the 1995 Constitution of the Republic of Uganda as Amended.

4] During the hearing at the High Court, Counsel for the first Respondent raised two preliminary objections to wit: that contrary to Rule 5(3) of the Parliamentary Election (Interim Provisions) Rules SI 141-2, the Petitioner/Appellant had paid only Ug. Shs. 100,000/= upon presentation of the petition, a non-compliance with Rule 5(3) which sets filing fees at Ug. Shs. 150,000/= upon presentation of the petition.

5] The second preliminary objection related to the jurats in some of the Petitioners' witnesses' affidavits which Counsel for the first Respondent argued did not comply with Section 3 of the illiterates Protection Act Cap. 78 in so far as the jurats of those affidavits revealed that the deponents were illiterate which required the inclusion of a certificate of translation which was missing on the said affidavits.

6] Upon considering the foregoing two preliminary objections, the High Court dismissed the Petitioner/ Appellant's petition on grounds that it did not have the power to extend the time set by an Act of Parliament within which a

5 party to Court proceedings may take a prescribed action. The Court also expunged some of the Petitioner's witnesses' affidavits on the ground that they did not comply with Section 3 of the Illiterates Protection Act Cap 78.

7] Dissatisfied with the first High Court decision dismissing Mpigi Election  
Petition No. 001 of 2021, the Appellant filed Election Petition Appeal No.11  
10 of 2021 in the Court of Appeal at Kampala on six grounds of Appeal. Upon hearing the Appeal in Election Petition Appeal No. 11 of 2021, the Judgment was delivered on 25<sup>th</sup> April 2022 by which this Court determined the Appeal in favour of the Petitioner/ Appellant. Consequently, the file was sent back to the High Court of Uganda at Mpigi for retrial before a different  
15 Judge upon the Petitioner/ Appellant paying the residual Ug. Shs. 50,000/= on the prescribed filing fees. The matter was subsequently heard on its merits and dismissed in favour of the first Respondent. Aggrieved with the outcome of the retrial, the Appellant filed this appeal on the following grounds: -

20 *1) The learned trial Judge erred in law and fact when he held that the affidavit of Rwabutenture Edward that had a jurat and certification appearing on separate pages thereby leaving a lot of space in total violation of the law. (sic!)*

25 *2) The learned trial Judge erred in law and fact when he held that the affidavits of Namagga Resty and Ssempala Musisi that had different signatures from that of a national identity card were properly before the Court and that they conform to the principles governing affidavits well as not.*  
30



5 3) *The learned trial Judge erred in law and fact when he held that there was compliance with the Electoral law and principles laid down in the electoral law during the conduct of elections for Woman Member of Parliament, Gomba District whereas not.*

10 4) *The learned trial Judge erred in law and fact when he held that there was no evidence to show that the Appellant applied for and was never availed with the certified declaration of results forms and the Appellant's failure to pay prescribed fees yet it is the duty of the*  
15 *second Respondent to assess and prescribe the requisite fees to be paid by the Appellant and the same was not done by the second Respondent as required by the law.*

20 5) *The learned trial judge erred in law and fact when he struck off the record the Declaration of results forms marked Annexures P, Q1, Q2, Q3, Q4, Q5, Q6, Q7, Q8, Q9, Q10, Q11, Q12, Q13,14, Q15, Q16, Q17, Q18, R1, R2, R3, R4, R5, R6, S1, S2, S3, 11, 12, 13, 14, 15, 16, 17, 18, 19, 110, 111, 112, 113, 114, and 115, j, k, m and Annexure A1 (return for transmission of results for*  
25 *being uncertified by the Electoral Commission.*

30 6) *The learned Trial Judge erred in law and fact when he failed to evaluate the evidence on the Court Record thereby coming to the conclusion that the petition did not have merit thereby dismissing it.*

## 5 REPRESENTATIONS

8] At the hearing of the Appeal, Mr. Jonathan Elotu appeared for the Appellant. Mr. Geoffrey Ntambirweki Kandeebe, Ms. Christine Ntambirweki, Mr. Ronald Tusingwire, and Ms. Phiona Ampire appeared for the Respondents. The parties with the permission of the Court adopted the conferencing notes as their legal arguments.

## DUTY OF APPELLATE COURT ON APPEAL

9] This is a final Appellate Court in parliamentary election matters. Section 66 (3) of the Parliamentary Elections Act provides that: -

*“(3) Notwithstanding S. 6 of The Judicature Act, the decisions*

*of the Court of Appeal pertaining to parliamentary elections*

*petitions shall be final”*

10] The role of this Court as a last appellate Court in hearing appeals from the High Court is laid down under **Rule 30(1) of The Judicature (Court of Appeal Rules) Directions, S I 13-10**, which provides that: -

*“30. Power to reappraise the evidence and to take additional evidence.*

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

*(a) Reappraise the evidence and draw inferences of fact;*

5 11] This Court is therefore obliged to re-appraise the inferences of fact drawn by the trial Court. In the case of **Mugema Peter v. Mudiobole Abedi Nasser, Election Petition Appeal No. 30 of 2011**, the Court held that: -

10 *".... On the first appeal, an Appellant is entitled to have the appellate Court's own consideration and views of the evidence as a whole and its own decision thereon. The first appellate Court has a duty to re-hear the case and to consider the materials before the trial judge. The appellate Court must then make up its mind by carefully weighing and considering the evidence*  
15 *that was adduced at trial...."*

12] As a final appellate Court in Election appeals, this Court has to caution itself on the nature of evidence adduced at the trial Court by affidavit where cross examination may not have taken place to test the veracity of testimony. Furthermore, when evaluating the evidence at the trial Court regard must be had to the fact that in election contests, evidence may be  
20 partisan with witnesses having a tendency towards supporting their candidates. This may result in false or exaggerated evidence which may be subjective. Therefore, this situation calls upon the Court to ensure that the veracity of the evidence is tested against independent and neutral sources as  
25 well.

### **Burden and Standard of Proof**

13] The burden of proof is cast on the Petitioner to prove the assertions to the satisfaction of the Court that the alleged irregularities or malpractices or non-compliance with the provisions and principles laid down in the relevant  
30 electoral laws were or was committed and that this affected the results of the



5 election in a substantive manner in the election petition. Furthermore, the  
evidence must be cogent, strong, and credible. The standard of proof is on a  
balance of probabilities. In the matter of **Paul Mwiru v Hon. Igeme Nabeta  
& Others**-Election Petition No. 06 of 2011 this Court held: -

10 *"Section 61(3) of the PEA sets the standard of proof in  
parliamentary election petitions. The burden of proof  
lies on the Petitioner to prove the allegations in the  
petition and the standard of proof required is proof on  
a balance of probabilities. The provision of this  
15 subsection was settled by the Supreme Court in the  
case of **Mukasa Harris v Dr. Lulume Bayiga** when it  
upheld the interpretation given to the subsection by this  
Court and the High Court."*

14] Additionally, in the case of **Masiko Winifred Komuhangi and  
Babihuga J. Winnie Election Petition Appeal No. 09 of 2006** L. E. M.  
20 Mukasa Kikonyogo (Deputy Chief Justice as she then was) held: -

25 *"...It is now well settled that the present legislative  
formulation of section 62 (3) Parliamentary Elections Act  
requires that the Court trying an election petition under the  
Act will be satisfied if the allegation/ground in the petition  
is proved on a balance of probabilities although higher than  
in ordinary civil cases. This is because an election petition  
is of great importance both to the individuals concerned and  
the nation at large. An authority for that observation is the  
case of **Bater v Bater** (1950) 2 ALL ER 458. See also **Sarah  
30 Bireete and Another v Bernadette Bigirwa and Electoral  
Commission, Election Petition Appeal No. 13 of 2002***

5            *(unreported). A Petitioner has a duty to adduce credible or  
cogent evidence to prove his allegation at the required  
standard of proof.*" (Emphasis Ours)

15]        With the above position of the law in mind, we shall proceed to  
resolve the grounds of Appeal in this Election Petition Appeal.

10        16]        Counsel for the Appellant addressed the grounds of Appeal in the  
following order grounds one and two; grounds four and five; then concluded  
with grounds three and six of the appeal. We shall adopt the same order  
when resolving this appeal.

#### **Ground One**

15        **The learned trial Judge erred in law and fact when he held that the  
affidavit of Rwabutenture Edward that had a jurat and certification  
appearing on separate pages thereby leaving a lot of space in total violation  
of the law.**

#### **Ground Two**

20        **The learned trial Judge erred in law and fact when he held that the  
affidavits of Namagga Resty and Ssempala Musisi that had different  
signatures from that of a National Identity Card were properly before the  
Court and that they conform to the principles governing affidavits well as  
not.**

#### **Submissions by Counsel for the Appellant.**

25        17]        Counsel for the Appellant submitted that during the trial, the  
Appellant objected to the admission in evidence the affidavit of  
Rwabutenture Edward on grounds that it offends Section 3 of the Illiterates



5 Protection Act Cap 78 to the extent that the witness could not claim to have understood the contents of his affidavit prior to marking his thumbprint thereon since the translation of the contents of his affidavit was done in the Luganda language yet the witness was familiar with Runyankole language.

18] Regarding the affidavit of Namagga Resty and Ssempala Musisi,  
10 Counsel submitted that the objection to Namagga Resty and Ssempala Musisi's affidavit revolved around the discrepancies in the names and signatures of the said witnesses as presented through their affidavits and the annexure to wit; the National Identity Cards which discrepancies rendered the said witnesses' evidence suspect and unreliable. Counsel argued that  
15 Namagga Resty made her purported impression by signing as the deponent, however, on her National Identity Card, she made her impression by writing her surname as her signature. Counsel further submitted that during cross examination, Resty Namagga told the Court that at the time of registering for her National Identity card, she did not know what they wanted so she wrote  
20 her name.

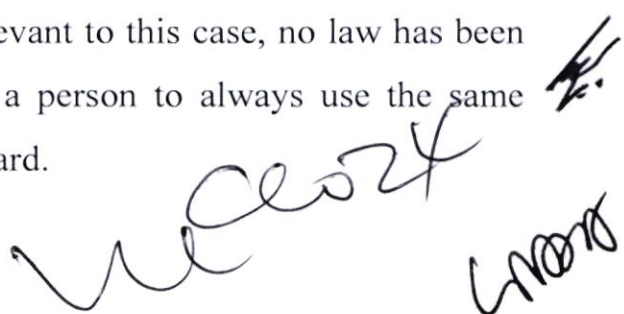
19] Counsel faulted the trial Judge for ignoring the factual discrepancies in the names and signatures of the said and witness to hold that it was the duty of the Petitioner to obtain the services of a handwriting expert and that the Petitioner/ Appellant had failed to engage the services of an expert and  
25 as such, she had failed to prove her case whereas the discrepancies were so obvious to necessitate the services of a handwriting expert. To support his argument Counsel relied on the case of **Kasaala Growers Co-operative Society Vs. Kakooza Jonathan & Anor, SCCA No. 19 of 2010**. Counsel argued that the defective jurats on an affidavit are an illegality that should  
30 not have been sanctioned by the trial Court and no amount of admission confers validity on them. Counsel argued further an illegality once brought

5 to the attention of the Court overrides all questions of pleadings including  
any admissions made thereon. See the case of **Makula International Ltd**  
**Vs. His Eminence Cardinal Nsubuga and Anor., [1982] UGSC 2**

### **Submissions by Counsel for the Respondent**

10 20] Counsel for the Respondent argued that there is no law or rule in  
Uganda that a person or witness must use one signature as that on the  
National Identity Card. Counsel argued that as long the witness identified  
the signature on the affidavit as his and there was no evidence to show that  
the witness did not sign, then the trial Judge was right to find that the  
15 witnesses signed the same. The Petitioner failed to show that the witness did  
not sign or that there is a law, under which a person's signature must appear  
on the same page where paragraphs appear on the same page where the  
paragraph appears.

20 21] Counsel further argued that concerning Rwabutenture Edward's  
affidavit, it did not fall under ground one or two of the appeal. He argued  
that Counsel was seeking to smuggle a different case outside those grounds.  
Furthermore, Counsel argued that ground two talks about nothing on  
discrepancies of names, but rather it contends that the affidavits of Namagga  
Resty and Ssempala had different signatures from that of the National  
25 Identity Card. Counsel submitted that the submissions outside ground two  
should be rejected. It is not mandatory that the signature of a witness must  
always be the same as that on the National Identity Card or that for a person  
to make a signature it must include all his names. Counsel argued that the  
case in **Kasaala Growers** (supra) is irrelevant to this case, no law has been  
30 referred to that makes it mandatory for a person to always use the same  
signature as that on the national identity card.





5        22]        Counsel noted that the argument on defective jurat or discrepancy in names is not part of ground two or one in this Appeal, he prayed that the rest of the arguments be rejected.

### Consideration by Court

10        23]        Ground one is to the effect that the learned trial Judge erred in law and fact when he held that the affidavit Rwabutenture Edward had a jurat and certification appearing on separate pages thereby leaving a lot of space. However, when we analysed the submissions of the Appellant's Counsel, we noted that they are not related to the ground raised by the Appellant. Counsel  
15        in his submission noted that the affidavit of Rwabutenture Edward offends Section 3 of the Illiterates Protections Act Cap 78, to the extent that the witness could not claim to have understood the contents of the affidavits prior to putting his thumbprints thereon since the translation was done in Luganda yet the witness was familiar with Runyankole as a language.

20        24]        Rule 102(a) of the Court of Appeal Rules provides that the Court shall not allow an appeal or cross appeal on any ground not set forth in the memorandum of Appeal. It is trite that parties are bound by their pleadings. In the case of **HAM Enterprises Ltd and 2 others Vs Diamond Trust Bank (U) Ltd and another, Supreme Court Civil Appeal No. 13 of 2021**,  
25        the C.J Owiny –Dollo held that: -

*“Rule 102(a) of the Court of Appeal Rules bars parties from arguing or canvassing any issue or matter neither included in, nor implicit from the grounds listed in the Memorandum of Appeal. These rules place emphasis on the parties' right to be informed of the case against them, and thus enable them prepare their respective case accordingly; also enable the*



5            *appellate Court effectively delineate and address issues crucial  
for the determination of the appeal.*”

25]        The ground of appeal concerns the Jurat being on a different page  
whereas the submissions of the Appellant are regarding the failure of the  
deponent to understand the content of the affidavit. The Appellant's Counsel  
10        faulted the trial Court for misdirecting itself on the objection raised by the  
Appellant when he alluded to the presence of the Commissioner for Oaths at  
the time Rwabutenture Edward signed his affidavit yet the issue concerned  
whether or not the contents of the affidavit were understood by  
Rwabutenture Edward before affixing his mark thumbprint thereon. Upon  
15        perusal of the file on page 840 of the record, the objection was that the  
affidavit of Rwabutenture Edward was defective because it left a lot of  
space. It is clear therefore that the issue of whether the deponent understood  
the affidavit or not was neither traversed in the lower Court nor was it raised  
as a ground in this appeal. It cannot therefore be entertained.

20        26]        Regarding the discrepancies in the signatures of Namagga Resty and  
Ssempala Musisi Seezi, **Black's Dictionary 10 Edition** defines a  
“signature” on page 1593 as: -

*“A person's name or mark written by that person or at the  
person's direction especially one's handwritten name as  
25        one ordinarily writes it, as at the end of a letter or a check,  
to show that one has written it.”*

27]        From the above definition, it is clear to us that a signature can be the  
name of someone put on the document to show that the person owns up to it.  
In this instant case during cross examination, Namagga Resty confirmed that  
30        she had put her name on the form for a National Identity Card because she  
was not told she needed a signature. Likewise, Ssempala Musisi Seezi on

5 cross-examination, also confirmed that that was his name. The two deponents owned up the documents. We find no satisfactory evidence that the impugned signatures did not belong to the deponents.

28] In the result, we find that ground two lacks merit.

#### **Ground 4**

10 **The learned trial Judge erred in law and fact when he held that there was no evidence to show that the Appellant applied for and was never availed with the certified declaration of results forms and the Appellant's failure to pay prescribed fees yet it is the duty of the second Respondent to assess and prescribe the requisite fees to be paid by the**  
15 **Appellant and the same was not done by the second Respondent as required by the law.**

#### **Ground 5**

20 **The learned trial Judge erred in law and fact when he struck off the record the Declaration of results forms marked Annexures P, Q1, Q2, Q3, Q4, Q5, Q6, Q7, Q8, Q9, Q10, Q11, Q12, Q13,14, Q15, Q16, Q17, Q18, R1, R2, R3, R4, R5, R6, S1, S2, S3, 11, 12, 13, 14, 15, 16, 17, 18, 19, 110, 111, 112, 113, 114, and 115, j, k, m and Annexure A1 (return for transmission of results for being uncertified by the Electoral Commission.**

#### **Submissions by Counsel for the Appellant**

25 29] Counsel for the Appellant submitted that the Appellant averred in paragraph 5 of her affidavit in support of the petition that her lawyers to wit M/S Imperium Advocates wrote to the second Respondent requesting for all Declaration Forms of Kyayo and Kifampa Sub Counties to be availed to  
30 them but the request had not been fulfilled by the second Respondent. Counsel faulted the trial Judge for believing the second Respondent's



allegations that assessment was made but it was not paid for by the Appellant. Counsel argued that there was no documentary evidence to prove the second Respondent's assertions.

Counsel further argued that considering the foregoing, this court to uphold the trial Judge's Order to strike off annexures P, Q1, Q2, Q3, Q4, Q5, Q6, Q7, Q8, Q9, Q10, Q11, Q12, Q13,14, Q15, Q16, Q17, Q18, R1, R2, R3, R4, R5, R6, S1, S2, S3, 11, 12, 13, 14, 15, 16, 17, 18, 19, 110, 111, 112, 113, 114, and 115, j, k, m, and Annexure A1 (return for transmission of results for being uncertified by the Electoral Commission), would be in total disregard of the second Respondent's Statutory duty to make assessments for interested parties.

30] Counsel cited the case of **Sitenda Sebalu Vs. Sam K. Njuba & Another, Election Appeal No.26 of 2007**, where while considering a party's noncompliance with the mandatory provisions of Section 62 of the Parliamentary Elections Act, the Supreme Court deduced the purpose and intention of the legislature was to ensure, in the public interest, that disputes concerning elections of people's representatives are resolved without undue delay, and for setting aside election results found from such inquiry to be flawed on defined grounds was to ensure, equally in the public interest, that such allegations are subjected to fair trial and determined on merit. Counsel further cited **Tamale Julius Konde Vs. Ssenkubuge Isaac & Another, Court of Appeal Petition No. 75 of 2016**, where the Court cited with approval the decision of **John Baptist Kakooza Vs. Electoral Commission & Another** (supra) where it was held that the import of the majority decision on that point was that there are exceptional circumstances under which uncertified DR Forms can be admitted in evidence pursuant to Sections 64(1)(a) and 6 of the Evidence Act Cap. 6 the Court Appeal further



5 held that given the peculiar nature of the Appellants complaint, it would  
defeat logic to expect the Appellant to get certified copies of the impugned  
DR Forms from the second Respondent whom he is accusing of altering the  
results in collusion with the first Respondent.

31] Counsel submitted that it was illogical for the trial Court to insist on  
10 certified copies of Declaration of Results Forms well knowing that the  
second Respondent did not make any assessment upon which the Appellant  
ought to have paid for and obtained certified copies of Declaration of  
Results Forms.

32] Counsel submitted that in light of the foregoing, the trial Court ought  
15 to have ordered the second Respondent to avail the Appellant with the  
alleged assessment to the Appellant who was ready and willing to pay for  
them to be in a position to obtain certified copies of the Declaration of  
Results Forms.

33] Counsel further argued that the uncertified Declaration of Results  
20 Forms that the Appellant attached to her petition were obtained from  
Aheebwa Anna the Returning Officers of Gomba District and therefore the  
Trial Court ought not to have expunged the same on the basis that they were  
not certified by the second Respondent who had subtly denied the Appellant  
an assessment with the ultimate intention of frustrating the Appellant's  
25 petition through technical points of law.

**Submissions by Counsel for the Respondent.**

34] Counsel submitted that ground four should be struck off for offending  
the Rules of this Court. It is argumentative.

35] Counsel submitted that it is not in dispute that the Appellant applied  
30 through her lawyers requesting for certain documents. Counsel argued that  
the second Respondent responded to the letter, and the same was served on

Imperium Advocates on 24<sup>th</sup> March 2021. Counsel argued that from 14<sup>th</sup> March 2021 to 23<sup>rd</sup> January 2023 the Appellant made no effort to go to the Electoral Commission to pay for the documents she requested or to write a reminder letter if she still needed the certified documents. Counsel submitted that no Notice to produce the Declaration of Result Forms was served on the second Respondent or its lawyers. Counsel argued that the alleged letter on page 78 of the record of appeal was written before the filing of the Petition. It cannot constitute a Notice to Produce, whose procedures and process are stipulated in the Civil Procedure Rules nor should a Notice to Produce be used to circumvent payment of Government Revenue for certified documents that a party applies for in writing before the action.

36] Counsel further submitted that there was no burden imposed on the second Respondent to prove the assessment. The statement of Ms. Aheebwa in paragraph 9 of her affidavit is meant to prove that documents were available on payment of the requisite fees which the Petitioner never bothered to pay by the date of the hearing on 23<sup>rd</sup> January, 2023.

37] Counsel argued that the cases of **Sentamu Betty Vs. Nayebare, EPA 11 of 2021** and **Sebalu Vs. Njuba, EPA 26 of 2007**, were cited out of context. That these concern Court fees which is not the case in this matter. Counsel argued that equally the decision in the case of **Ssenkubuge Isaac Vs. Tamale Julius Konde, Election Petition No.1 of 2019**, it was held that it is in exceptional circumstances that a photocopy can be accepted, however, those exceptional circumstances did not arise in this case. Counsel further argued that in **Kakooza John Baptist Vs. Electoral Commission and Anor, Election Petition Appeal No.11 of 2007** there was evidence that the Appellant followed up the copies but he was denied which was not the case in this matter.



5 38] Counsel submitted that it was unfair to accuse the trial Judge of failure  
to order the EC to make an assessment when there was no such Application  
or request. He argued that the Electoral Commission in its defence stated  
that the assessment was there but the Appellant did not follow up nor make  
any payments aimed at getting the same. He concluded that the trial Judge  
10 was right to expunge the uncertified copies of documents whose source was  
unknown.

### Rejoinder

15 39] In rejoinder Counsel argued that whether the second respondent made  
any assessment upon which the Appellant ought to have made payment of  
fees to access the Declaration of Results Forms was a question of fact that  
needed documentary proof that the second Respondent did not adduce in  
Court.

### Consideration of Court.

20 40] It is trite that an Appellant should concisely set out their grounds in  
the memorandum of appeal without being argumentative. This is set out in  
**Rule 66(2)** of the Rules of this Court which provides that: -

25 *“(2)The memorandum of appeal shall set forth concisely  
and under distinct heads numbered consecutively,  
without argument or narrative, the grounds of objection  
to the decision appealed against, specifying, in the case  
of a first appeal, the points of law or fact or mixed law  
and fact and, in the case of a second appeal, the points  
of law, or mixed law and fact, which are alleged to have  
30 been wrongly decided, and in a third appeal the matters*



5                    *of law of great public or general importance wrongly decided.*"

41]            The above provision has been discussed by this Court in several cases including the case of **Muhereza Bosco and Katureebe Boaz Vs. Uganda, CACA No.066 of 2011**. The Court observed that: -

10                    *"in any event, it is superfluous as this Court has a duty to re-evaluate the evidence as a first appellate Court. We would strike it out as it offends Rule 66(2) of the Rules of this Court which requires that a memorandum of appeal sets forth concisely and without argument the grounds of*  
15                    *objection to the decision appealed against specifically the points of law or mixed fact and law which are alleged to have been wrongly decided."*

42]            We find that ground four offends Rule 66(2) of the Rules of this Court for not being concise and argumentative. We accordingly strike out ground  
20                    four.

43]            Under ground five, the trial Judge is faulted for striking out the uncertified Declaration forms of the Appellant. We find it pertinent to reproduce the decision of the trial Judge: -

25                    *"The Declaration of Results Forms (DR Forms) are official documents that contain the results of the parliamentary election in Uganda as announced by the Electoral Commission (EC). The DR Forms are signed by the district returning officers and agents of parliamentary candidates at each polling station. The DR Forms are then transmitted to*  
30                    *the EC for tallying and verification.*

5           In Uganda, declaration of results forms (DR Forms) are  
public documents within the meaning of section 73 (a)(ii) of  
the Evidence Act Cap 6. It requires certification according  
to section 75 (supra) if it is to be presented as an authentic  
and valid document in evidence. See **Kakooza John Baptist**  
10       **Vs. Yiga Anthony and Anor EPA 11 of 2007.**

The import of section 76 of the Evidence Act is that  
Petitioner who intends to rely on a Declaration of Results  
Form as part of their evidence must obtain a certified copy  
of that form from the Commission. The Petitioner must pay  
15       the cost of obtaining such certified copies. The position of  
the law in Uganda is that a Petitioner who challenges the  
validity of a parliamentary election has the burden of proof  
to establish that there were irregularities or malpractices  
that affected the outcome of the election. One of the ways to  
20       do this is to produce certified copies of Declaration of  
Results Forms (DR Forms) from the Electoral Commission  
as evidence.

However, the Petitioner must pay the cost of obtaining these  
copies from the Electoral Commission. This position was  
25       upheld by the Supreme Court in the cases of **Besigye Vs.**  
**Museveni & and Anor (2006)** and **Mbabazi Vs. Museveni**  
**& others (2016).**

Therefore, it is not enough for the Petitioner to state that he  
or she applied for the DR. Forms from the Commission, and  
30       the same was denied or not furnished in order to have  
recourse to use uncertified copies. It must also be shown



5            *that the Petitioner paid the prescribed fees for obtaining  
certified copies. in the instant case, no evidence was  
presented by the Petitioner to that effect....”*

44]        We have had the opportunity to carefully peruse the petition that the  
Appellant presented to the Court. The Appellant in her affidavit in support  
10 of the petition averred in paragraph five that her lawyer’s M/s Imperium  
Advocates wrote to the second Respondent requesting for all the Declaration  
Forms of Kyayi and Kifampa Sub counties. In response to this allegation the  
second Respondent in paragraph 9 of the affidavit of Aheebwa Anna,  
averred that the assessment was made but the fees were never paid.

15 45]        It is not in dispute by both the Petitioner and the Respondents that the  
said impugned Declaration of Results Form were uncertified. What is in  
dispute for the Appellant was that the Judge misdirected himself when he  
held that since the said documents were not certified, any evidence relating  
to them was inadmissible. Counsel argued that since the Appellant got those  
20 uncertified Declaration of Results Forms from the second Respondent Court  
should have disregarded the fact that it was not certified.

46]        The law on proof of public documents is provided for under **Sections  
73, 75, and 76 of the Evidence (Act Cap 6)**. Section 76 specifically  
provides that: -

25            *“Such certified copies may be produced in proof of  
the contents of the public documents or parts of the  
public documents of which they purport to be  
copies.”*

47]        The Supreme Court in considering the above provisions and assertions  
30 by the Appellant in the case of **John Baptist Kakooza vs. Electoral**



5           **Commission and Yiga Anthony, Supreme Court Election Appeal No. 11**  
of 2007, Held that: -

10           *“A non-certified Declaration of Results Form cannot  
be validated by the mere fact that it is annexed to an  
affidavit. A Declaration of Results Form is a public  
document within the meaning of section 73(a)(ii) of the  
Evidence Act. It requires certification if it is to be  
presented as an authentic and valid document in  
evidence. Consequently, I agree with Okello, J.A.  
where in his lead judgment he opines that Rules 15 of  
15           the Parliamentary Elections (Election Petitions) Rules,  
1996, does not prohibit or indeed conflict with section  
76 of the Evidence Act which provides that the contents  
of public documents or part thereof are to be proved  
by certified copies. The uncertified copies of  
20           Declaration of Results Forms annexed to the affidavits  
were inadmissible as evidence” (Emphasis added)*

48]       In the circumstances, a public document ought to be proved as  
required by law. The said document cannot be validated because it is an  
attachment to an affidavit or it was obtained from a respondent who has not  
25       certified it. The purpose for certification of public documents as required  
under sections 73, 75, and 76 is proof that the said document is a true,  
reliable, and authentic copy of the primary document. The essence of this is  
to protect the unsuspecting public from fraudulent acts that would occasion a  
miscarriage of justice. See the case of **Tumwesigye Anthony Vs.**  
30       **Arinaitwe Rauben and Anor, Consolidated Election Petition No 31 of 21**  
**and Miscellaneous Application No 15 of 2022.**

5 49] There are circumstances under which the Court may rely on  
uncertified public documents. This Court in the case of **Tamale Julius  
Konde Vs Ssenkubuge Isaac and anor, Election Petition Appeal No. 75  
of 2016**, considered the issue of admissibility of uncertified Declaration of  
Result Forms and cited the case of **John Baptist Kakooza Vs. Electoral  
10 Commission & Yiga Anthony, (supra) the Court of Appeal** held that: -

15 *“The import of the majority of the decision on that  
point was that there are exceptional circumstances  
under which uncertified DR. Forms can be admitted in  
evidence pursuant to sections 64(1)(a) and 65 of the  
Evidence Act.”*

50] Section 64(1) (a) of the Evidence Act provides that: -

*“64. Cases in which secondary evidence relating to documents may be  
given.*

20 *(1) Secondary evidence may be given of the existence, condition or  
contents of a document in the following cases—*

25 *(a) when the original is shown or appears to be in the possession or  
power of the person against whom the document is sought to be  
proved, or of any person out of reach of, or not subject to, the  
process of the Court, or of any person legally bound to produce it,  
and when, after the notice mentioned in section 65, that person  
does not produce it;”*

51] Section 65 provides that: -

*“65. Rules as to notice to produce.*

30 *Secondary evidence of the contents of the documents  
referred to in section 64(a) shall not be given unless the  
party proposing to give the secondary evidence has*





5                    *previously given to the party in whose possession or*  
*power the document is, or to his or her advocate, such*  
*notice to produce it as is prescribed by law, and if no*  
*notice is prescribed by law, then such notice as a Court*  
*considers reasonable in the circumstances of the*  
10                    *case.....”*

52]                Section 64(1) provides for circumstances under which secondary  
evidence relating to a public document can be admissible. These include: -

1. *When an original document is in possession of a person*  
*whom it is sought to be proved against.*
- 15                2. *Any person out of reach.*
3. *Not subject to the process of Court.*
4. *Any person legally bound to produce but does not produce*  
*after notice has been served upon them.*

53]                For one to rely on section 64(1), there must be proof that the Notice  
20                was served upon the person in possession of the original document. The  
Appellant averred that annexure “H” to her affidavit dated 22<sup>nd</sup> February  
2021 was served upon the second Respondent to produce the Declaration of  
Results Forms. Counsel for the Respondent alluded to the fact that the letter  
referred to by the Appellant did not amount to a Notice to produce as  
25                required under the law. This is not defined by the Evidence Act; however, it  
is defined by the **Black’s Law Dictionary Sixth Edition at page 1063** as: -

*“Notice to produce. Document by which party to a civil*  
*or criminal action requests opposing party to submit*  
*specified papers, evidence, etc. needed for preparation*  
30                    *of the case and use at trial.”*

5 54] It is clear therefore from the above definition that any document  
requesting a document from an opposing party in preparation for a suit  
would suffice as a Notice to produce. We note that there is no prescribed  
notice to produce under the law. Hence under Section 65, the Court is given  
10 discretion to assess and see what is reasonable Notice in the circumstances  
of the case.

15 55] Considering the timelines in Election Petitions and the workload of  
the second Respondent during Election times, was it sufficient that the  
Appellant just dropped the letter asking for the Declaration of Results Form  
and did not follow up? We would think prudence would demand more from  
the Appellant. More so, if the second Respondent had refused, the Appellant  
had an opportunity, to apply to the Court under Order 10 Rule 14, and  
request the Court to Order the second Respondent to produce the said  
Declaration Result Forms, but she did not. The appellant did not exhaust all  
the available remedies before settling to use uncertified documents. We  
20 therefore find that the Appellant's dilatory conduct cannot be condoned. We  
find that this ground does not have merit.

### **Ground Three**

25 **The learned trial Judge erred in law and fact when he held that there  
was compliance with the Electoral law and principles laid down in the  
electoral law during the conduct of elections for Woman Member of  
Parliament, Gomba District whereas not.**

### **Ground Six**

30 **The learned Trial Judge erred in law and fact when he failed to evaluate  
the evidence on the Court Record thereby coming to the conclusion that  
the petition did not have merit thereby dismissing it.**

**Submissions by Counsel for the Appellant**





5 56] Counsel argued that the trial Court's finding that the Appellant's allegation was unsubstantiated was erroneously hinged upon the trial Court's unsupported finding that the second Respondent made an assessment upon which the Appellant ought to have paid the attend fees for her to be availed with certified copies of the Declaration of results form. Counsel argued that this deprived the Court of all the relevant evidence that informed the Trial Court's legal and factual finding that the Appellant was unsupported with evidence and this dismissed the same.

10 57] Counsel submitted that in the absence of the evidence of assessment by the second Respondent, the Trial Judge erred in law and fact when he dismissed the Appellant's Election Petition for lack of supporting evidence.

15 **Submissions by Counsel for the Respondents**

58] Counsel argued that the trial Judge was right to expunge the documents as he did. That the evidence of assessment was given by Aheebwa in the paragraph of the Affidavit. That it was upon the Appellant to follow up on the assessment. Counsel prayed that this appeal should be dismissed with costs.

20 **Consideration of this Court**

59] We start by stating that ground six suffers the same fate as Ground four. It is not concise as to where the trial Judge erred. We therefore strike it out. We noted that the submissions raised by the Appellant in ground three were sufficiently addressed in ground five. We therefore see no need to handle them again on this ground.

60] This ground fails.

61] We find that the appellant failed to prove her case against the respondents to the satisfaction of the court and as such we cannot fault the Trial Judge for holding as he did.

5 **Final Result**

62] In the final result we uphold the decision and orders of the High Court and dismiss the appeal with costs to the respondents in this Court and in the Court below.

1. The Appeal is dismissed.

10 2. The first Respondent was validly elected as a Woman Member of Parliament for Gomba District.

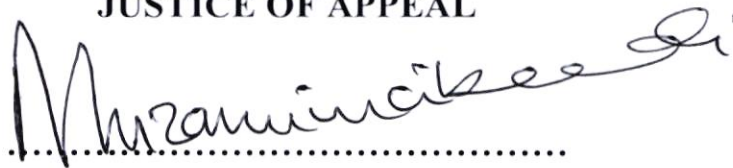
**We so Order**

15 Dated at Kampala this 24<sup>th</sup> day of January 2024



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**GEOFFREY KIRYABWIRE**

**JUSTICE OF APPEAL**

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**MUZAMIRU MUTANGULA KIBEEDI**

**JUSTICE OF APPEAL**

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**CHRISTOPHER GASHIRABAKE**

**JUSTICE OF APPEAL**