

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBALE
ELECTION PETITION NO. 015 OF 2021

IN THE MATTER OF THE PARLIAMENTARY ELECTIONS ACT 17/2005 AS
AMENDED

AND

IN THE MATTER OF THE PARLIAMENTARY ELECTION HELD ON THE 14TH
JANUARY 2021

MUSUYA SOOBI ANNET FLORENCE.....PETITIONER

VERSUS

1.MUKHAYE MIRIAM

2. THE ELECTORAL COMMISSION

3. NATIONAL IDENTIFICATION

AND REGISTRATION AUTHORITY

.....RESPONDENTS

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

Judgment

Introduction:

The petitioner was one of the four candidates that contested for the seat of District woman representative to Parliament for Mbale District whose election was held on the 14th of January 2021. The 2nd respondent published the election results in the gazette with the 1st respondent as the winner having obtained 29,073 votes while the petitioner had 25, 864 votes.

The petitioner being dissatisfied with the outcome of the said elections brought the instant petition under **Sections 60, 61(a), (c), 62, 63, 68(7), 70, 83A (1) (a) and (b)** of the Parliamentary Elections Act, 2005 as amended, **Articles 61 and 68** of the Constitution of the Republic of Uganda, 1995, and **Rule 4** of the Parliamentary Elections (Election Petitions) Rules S.I 141 -2, seeking the following orders;

- a. That the 2nd and 3rd respondents acted in fundamental violation of the law when they introduced the 1st respondent's name "**Mukhayе Miriam**" on the voters' register for Mafutu church polling station Bukhuma Parish, Bumbobi Sub-County in Bungokho Central County, alongside her lawful name, "**Wangisi Mukhayе Mariam Wangisi**".
- b. The 1st respondent's nomination under the name "**Mukhayе Miriam**" was invalid and hence she was not a candidate in the race.
- c. The 1st respondent committed illegal practices and aided commission of an electoral offence during the campaign period and was therefore not validly elected as Woman Member of Parliament for Mbale District.
- d. A declaration that your petitioner as the validly nominated candidate with the highest number of votes was duly elected as winner of the said election for District Woman representative to Parliament, Mbale.
- e. In the *alternative* without prejudice to the prayer in (d), the election of the respondent be annulled and fresh election be conducted in the said district.
- f. The respondents pay the costs of the petition jointly or severally to the petitioner.

Pleadings:

The petitioner contended that the 1st respondent was not eligible for nomination under the name "**Mukhayе Miriam**" which was unlawfully introduced onto the voter register through collusion between the 1st, 2nd and 3rd respondent. That the 1st respondent was registered as a voter in 2016 under the name "**Wangisi Mukhayе Mariam Wangisi**" on the voters' register for Nasyera primary school A polling station, Bukhuma Parish, Bumbobi Sub County, Bungokho county south, Mbale under voter registration No. 52699799.

Further, that the 1st respondent was in respect of the general elections for 2021, registered as a voter under the name "**Wangisi Mukhayе Mariam Wangisi**" on the voter's register for Mafutu Church polling station, Bukhumwa Parish, Bumbobi Sub-County in Bungokho Central County under voter Registration No. 52699799.

That the 1st respondent caused the introduction of "**Mukhayе Miriam**" on the voter's register of Mafuta Church polling station, Bukhumwa Parish, Bumbobi Sub-County in Bungokho Central County, well aware that "**Wangisi Mukhayе Mariam Wangisi**" was already there as the same voter. That this was done in collusion with the 2nd and 3rd respondents.

Furthermore, that the 1st respondent had never changed her name from “**Wangisi Mukhaye Mariam Wangisi**” that was on the register in 2016 to “**Mukhaye Miriam**”. Instead her name was introduced onto the voters register in 2020. Consequently, both names appear side by side in the register.

- 5 The petitioner also contended that the said election for the District woman representative to Parliament for Mbale was not conducted in accordance with the provisions and principles laid down in electoral laws in so far as the 1st respondent committed various illegal practices and election offences to wit; donation of drugs and money.
- 10 The petition was supported by the affidavit sworn by the petitioner, the other supporting affidavits were expunged from the record.

The 1st respondent in answer to the petition on the other hand denied all the allegations made by the petitioner and averred that the 1st respondent was eligible and lawfully nominated to contest as a District woman representative to
15 Parliament for Mbale District under the name of ‘**Mukhaye Miriam**’ and has never gone by the name ‘**Wangisi Mukhaye Mariam Wangisi**’. The 1st respondent also denied engaging in any electoral malpractices.

The answer to the petition by the 1st respondent was supported by the affidavits sworn by the 1st respondent, Dr. Jonathan Wangisi, Malema George Calvin,
20 Kanyago Dinah, Gidudu David, and Kigere Siragi.

The 2nd respondent in her answer to the petition denied the petitioner’s allegations and contended that the 1st respondent was validly nominated having found her a dully registered voter and academically qualified for the position of Member of Parliament in accordance with the electoral laws and principles
25 governing elections. That the 1st respondent was nominated and elected, on the harmonization of her particulars appearing on the National Voters’ Register and her academic qualifications.

That the 2nd respondent was not aware of the allegations of commission of electoral offences of voter bribery, giving donations, involvement of public
30 officers as none was ever reported before or during election period.

The 2nd respondent’s answer to petition was supported by the affidavits of Amongin Emily Onyas, Namatovu Ruth, Musibiha Joy Juliet, Ochama Ahmed and Buyera Moses.

The 3rd respondent in her answer to petition averred that there was no collusion with the 1st and 2nd respondents to unlawfully introduce the 1st respondent's name onto the voters' register. That the 3rd respondent does not have the mandate to add or remove any person from the voters' register which mandate is solely
5 with the 2nd respondent.

Further, that the 1st respondent applied for a National identification card with the 3rd respondent and indicated her name as “**Wangisi Mukhaye Miriam**” but later on had the name “**Wangisi**” eliminated and the National Identity card was left bearing the name “**Mukhaye Miriam**”. That the 3rd respondent accordingly
10 submitted this updated information to the Electoral Commission to update the voters' register.

The 3rd respondent's answer to the petition was supported by the affidavit of Kagina David.

Representation:

15 Mr. Wanambuko Innocent together with Mr. Mwesiga Phillip represented the petitioner, Mr. Cornelius Watulu together with Mr. Ojok Godfrey Odur represented the 1st respondent, while the 2nd respondent was represented by Mr. Weteka Patrick together with Ms. Katutu Gilda and the 3rd respondent was represented by Mr. Masaba Peter. All parties filed written submissions.

20 At scheduling the following issues were raised for court's determination:

1. Whether the nomination of the 1st respondent by the 2nd respondent as a candidate for District Woman Member of Parliament Mbale District was valid and lawful?
2. Whether the 1st respondent undertook the right procedure to register the
25 change of name with the 3rd respondent in accordance with the law?
3. Whether the 1st respondent committed any illegal practices and/or election offences personally or through her agents with her knowledge, consent or approval?
4. What remedies are available to the parties?

Burden of proof and standard of proof:

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Counsel for the petitioner in their submissions stated that the burden and standard of proof in election petitions are well settled both in the provisions of the Parliamentary Elections Act 2005 as amended and case law.

The burden of proof in election petitions lies on the person bringing the action and proof is on the basis of a balance of probabilities in accordance with **Section 61(10) and (3) of the Parliamentary Elections Act, 2005**. (See: **Mukasa Anthony Harris v. Dr. Bayiga Michael Philip**, SC EPA No.18/2002).

- 5 Counsel for the 1st respondent in addition to the above cited **Section 102** of the Evidence Act which provides that;

“The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

- 10 It is the Petitioner in this case who bears the burden of proving all her allegations to the satisfaction of this Court. The petitioner is therefore required to adduce cogent, convincing and compelling evidence to prove her case. (See: **Masiko Winfred Komuhangi v. Babihuga J. Winnie**, Election Petition Appeal No. 9 of 2002).

- 15 I concur with the submissions of counsel for the petitioner, 1st, 2nd, and 3rd respondents together with all the authorities cited there under that I will not reproduce here, in as far as the burden and standard of proof in election petitions are concerned.

The parties chose not to cross examine any of the witnesses.

Preliminary objection:

- 20 Counsel for the 1st and 2nd respondents raised a preliminary objection in regard to the jurisdiction of this court on issues of nomination.

- Counsel for the 1st respondent submitted that the complaint by the petitioner in regard to nomination of the 1st respondent offends **Articles 61(1)(f) and 64 (1)** of the Constitution of the Republic of Uganda, 1995. And in the case of **Akol Hellen Odeke v. Okedel Umar**, Election Petition Appeal No. 6 of 2020, it was held that; the High Court does not have jurisdiction to hear and determine disputes arising before and during the polling day, (including nomination), as a court of first instance. While dismissing the argument on the unlimited jurisdiction of the High Court, the Court of Appeal in that case held that **Article 139 (1)** of the Constitution of the Republic of Uganda 1995 is subject to **Articles 61(1)(f) and 64(1)** of the same law.
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Counsel for the 1st respondent also cited the case of **Kasirye Zzimula Fred v. Bazigatirwawo Kibuuka Francis Amooti and Electoral Commission**, Election Petition Appeal No. 01 of 2018, where it was stated that; issues of nomination

should be lodged with and resolved by the Electoral Commission before the election and where the petitioner does not challenge the nomination, he or she is deemed to have waived his or her right and is therefore estopped from challenging the nomination after the election.

5 That in the circumstances the petitioner waived her right when she failed to lodge a complaint with the Electoral Commission before and during polling as provided under **Section 15** of the Electoral Commission Act. That the petitioner should have inspected her opponent's nomination papers and lodged a complaint with the Commission and if dissatisfied with its decision appeal to the High
10 Court.

Counsel for the 2nd respondent also contended that the ground challenging nomination offends the provisions of the Constitution of the Republic of Uganda, 1995 which gives the Electoral Commission the mandate to hear and determine election complaints arising before and during polling under **Article 61(1)(f)**,
15 which states;

“The Electoral Commission shall have the following functions –

(f) to hear and determine election complaints arising before and during polling.”

Further, that **Section 15** of the Electoral Commission Act empowers the
20 Commission to resolve complaints arising at any stage of the electoral process. It provides that;

*“Any complaint submitted in writing alleging any irregularity with any aspect of the electoral process at any stage, if not satisfactorily resolved at a lower level of authority, shall be examined and decided by the commission; and
25 where the irregularity is confirmed, the commission shall take necessary action to correct the irregularity and any effects it may have caused.”*

Counsel for the 2nd respondent noted that issues of qualification prior to nomination of the 1st Respondent are an irregularity and ought to have been brought to the attention of the 2nd Respondent for legal action before polling.

30 Counsel cited the case of **Byanyima Winnie v. Ngoma Ngime Civil Revision No. 0009 of 2001**, where it was held that; the Electoral process flows like a river. You have to build a dam across it to halt its rapid movement. It moves like a speeding bus. You have to stop it well in time. Short of that you will, certainly, be left behind.

Counsel for the 2nd respondent further submitted that, there was no evidence whatsoever that the Petitioner and/or any other person lodged any complaint with the 2nd Respondent in regard to the nomination of the 1st Respondent. That had the Petitioner brought her complaint in regard to the qualification of the 1st Respondent, the 2nd Respondent would have entertained and determined the same in accordance with the law. Rather she chose to sit on her right and is therefore estopped from bringing the same after elections. (See: **Kasirye Zimula Fred v. Bazigatirawo Amooti (Supra)**). Counsel for the 2nd respondent prayed that the petition be dismissed with costs.

Counsel for the petitioner in rejoinder submitted that the authority of **Akol Hellen Odeke V Okodel Umar (Supra)** as cited by the 1st Respondent is distinguishable from the present facts. That the Respondent in the said appeal challenged the nomination of the appellant through a Miscellaneous cause in the High Court at Soroti on account of the discrepancy in her names. However, the respondent had not lodged a complaint with the returning officer or the Electoral Commission against the appellant. Thus, the ratio decidendi that the High Court at Soroti did not have jurisdiction to hear and determine the respondent's application as a court of first instance. Therefore, the decision is inapplicable to the present facts of the petition.

Counsel for the petitioner relied on the case of **Namboowa Rashiida V Bavekuno Mufumu Godfrey Kyeswa & Electoral Commission, Election Petition Appeal No.69/2016**, where the Court of Appeal held that;

“We are of the view that the intention of Parliament in enacting Section 15 of the Electoral Commission Act was not to limit the inherent powers and jurisdiction of the High Court to determine and resolve complaints of electoral irregularities where no such complaint had been lodged with the Electoral Commission. Indeed, if the Legislature had intended that for a person to qualify to file an Election Petition, he or she needed to have first lodged a complaint of election malpractices with the Electoral Commission, it would have expressly stated so under Section 138(3) of the Local Government Act.”

Further,

“It is our finding therefore that the petitioner's complaint regarding electoral irregularities was properly before the High Court and the trial Judge erred in finding that failure to report the alleged illegal practices to the Electoral Commission before elections took place was fatal to the petition.”

Counsel for the petitioner added that there is no requirement of the petitioner under the Parliamentary Elections Act, 2005 as amended to have lodged a complaint with the Electoral Commission in order for his or her petition to be valid. That the 1st Respondent's argument in respect of their preliminary issue
5 seems to suggest that the petitioner is barred from challenging her nomination due to failure to lodge a complaint with the 2nd Respondent. That this interpretation of the law is erroneous and the preliminary objection should be overruled.

I have carefully considered the law, submissions and authorities as cited by the
10 parties in regard to the preliminary objection. The petitioner in the instant case challenged the nomination of the 1st respondent on grounds that she was registered twice in the Voters' register and therefore her nomination was invalid. That the 1st respondent also used a different name while being nominated as
15 opposed to what was in the voters' register. It was the contention of the 1st and 2nd respondents that the petitioner having failed to make a complaint to the Electoral Commission as provided under **Section 15** of the Electoral Commission Act waived her right and cannot challenge the same after the election.

It is my considered view that the Parliamentary Elections Act under which
20 Parliamentary Election petitions are lodged is not instructive on such matters. It is trite law that where there is a law that relates specifically to a given area the same takes precedence over the general application law. In the case the Parliamentary Elections, the Parliamentary Elections Act takes precedence when it comes to parliamentary election petitions over any other electoral laws.

It is true that the Electoral Commission has the mandate to entertain complaints
25 lodged with it in regard to any irregularities before or during polling. The law as cited by the 1st and 2nd respondent from my understanding does not state that one must lodge a complaint about irregularities that occurred before or during polling before coming to court after an election. There is no law in my opinion that makes it mandatory for one to lodge a complaint in regard to an illegal
30 process that happened before or during polling before they can file a petition in the High Court after elections have been conducted.

Secondly, the law as cited by the 1st and 2nd respondents points out the powers of the Electoral Commission before an election is held and the way forward for any party that is dissatisfied with the outcome of the decision of the Commission
35 when a complaint is lodged with it. The law therefore, only provides that a complaint can be lodged at any time before or during the electoral process with

the Electoral Commission, meaning the powers of the Electoral Commission to handle complaints does not extend to after elections have been conducted

The law as cited above also does not indicate that it is mandatory to lodge a complaint with the Electoral Commission if one discovers any anomaly before or during polling even though they have the right to do so.

Failure to institute a complaint with the Electoral Commission about an illegality before polling in my humble view does not bar one from lodging a petition with the High Court after elections. Because that would mean that one who discovers about an illegality/dispute after an election has been conducted cannot seek for justice from the courts of law since making complaints is limited to before and during polling to be handled by the Electoral Commission.

In the circumstances I concur with the submissions of the petitioner that the authority of **Akol Hellen Odeke v. Okedel Umar, (Supra)** as relied on by the 1st and 2nd respondents is distinguishable from the instant case, as the former was a miscellaneous application brought before the High Court before elections could be held and the High Court did not have the jurisdiction to entertain the matter which is different from the instant case.

I find and hold that the High Court has the jurisdiction to entertain the issue of nomination after elections have been conducted as is case in the instant matter as discussed above. I accordingly overrule the preliminary objection by the 1st and 2nd respondents.

I will therefore, go ahead to consider the petition on its merits.

Resolution of issues:

Counsel for the petitioner opted to discuss issues 1 and 2 concurrently and the rest separately. The 1st and 2nd respondents also took on the same approach and this court has equally adopted the same format. The 3rd respondent only resolved issues 2 and 4 which relate to it.

Issues 1 and 2:

1. Whether the nomination of the 1st respondent by the 2nd respondent as a candidate for District Woman Member of Parliament Mbale District was valid and lawful?

2. Whether the 1st respondent undertook the right procedure to register the change of name with the 3rd respondent in accordance with the law?

Counsel for the petitioner submitted that one of the requirements for one to contest as a Member of Parliament is that the contestant should be a registered voter according to **Article 80(1)(b)** of the Constitution of the Republic of Uganda, 1995 and **Section 4(1)(b)** of the Parliamentary Elections Act, 2005.

- 5 Counsel for the petitioner went on to submit that at the time of the nomination of the 1st Respondent, she appeared on two voters' registers under different names namely **"Wangisi Mukhaye Mariam Wangisi"** on the voters' register for Nasyera Primary School A polling station and also appeared under two different names at Mafutu Church polling station as **"Mukhaye Miriam"** and **"Wangisi Mukhaye**
10 **Mariam Wangisi"**.

That the 1st Respondent in her answer to the petition and supporting affidavit denied ever contesting under the name **"Wangisi Mukhaye Mariam Wangisi"** and that she had never used or voted under the said name at any polling station or for any official position. That however, this was not true.

- 15 Counsel for the petitioner added that the 3rd Respondent's official called Kagina David deponed an affidavit in support of their answer to the petition and under paragraph 7 confirmed that the 1st Respondent was issued with a National identification card with the name **"Wangisi Mukhaye Mariam Wangisi"** and the said identity card was attached as annexure "B" on the said affidavit. That the 1st
20 Respondent then approached the 3rd respondent to correct the National Identification Card having rejected it on grounds of mistakes to wit; the repetition of the name **"Wangisi"** and misspelling of the name **"Miriam"** which was written as **"Mariam."** However, the 1st Respondent did not apply for a change of particulars or variation but went ahead to change her name without
25 following the proper procedure as captured under the law.

Counsel for the petitioner relied on the case of **Kasule Robert Sebunya v. Wakayima Musoke Nsereko & The Electoral Commission**, Election Petition No. 004 of 2016, where court held that;

- 30 *"It is important to emphasize that any adult person who has applied for issue or re-issue of a national identification card or alien's identification card or a holder of such card, who may wish to change his or her name, must do so in compliance with section 36(1) of the Registration of Persons Act 2015 and regulations 4(1) (2) and (5) of SI No. 67 of 2015 and regulation 11 of SI No. 68 of 2015."*

Counsel for the petitioner also noted that the position of the law was clear in regard to the contents of public documents or parts thereof to be proved by certified copies. However, that there was an exception where uncertified copies could also be provided so long as there was evidence that the party requested them from the appropriate body. (See: **Kakooza John Baptist v. Electoral Commission & Yiga Anthony**, (Supreme Court) Election Petition Appeal No.11/2007, at page 9).

Counsel for the petitioner further submitted that the petitioner in the instant matter requested for certified voters' registers of different polling stations and other documents from the 2nd Respondent but to no avail. Subsequently, the petitioner filed a notice to produce documents on the 18th August 2021 and served it upon the 2nd Respondent. That eventually when the 2nd Respondent availed the said voters' registers to the petitioner and they were filed in this Honorable Court on the 19th August 2021 attached on the additional affidavit of the petitioner. However, the said affidavit and others were expunged in the court's ruling dated 19th August 2021. Thus, the petitioner was left with only uncertified voters' registers of Nasyera Primary School A polling station and Mafutu Church attached as annexures "C1" and "C2" respectively on the affidavit in support of the petition. Counsel for the petitioner implored this court to admit the uncertified copies of the Declaration forms as notice was given to the 2nd respondent.

Counsel for the petitioner concluded that the 1st Respondent was therefore not validly nominated or elected as a woman member of parliament for Mbale District as she was not a registered voter as per the provisions of the law and she adopted a wrong procedure while changing her name with the 3rd Respondent.

Counsel for the 1st respondent agreed with the position as to the qualifications of a Member of parliament and submitted that the 1st respondent was a registered voter under the name "**Mukhayе Miriam**" as evidenced by the Voters Register attached to the affidavit of Ochama Ahmed and was therefore validly nominated. That the 1st respondent has always used the name "**Mukhayе Miriam**" as evidenced by her academic documents and **Section 36** of the Registration of Persons Act in the instant case is inapplicable.

Further, that the name "**Wangisi Mukhayе Mariam Wangisi**" was erroneously assigned to the 1st respondent and the defect was corrected under **Section 57(1)(d)** of the Registration of Persons Act and in the case of **Dunn v. Palermo**, 522 S.W.2d 679 (Tenn. 1975) it was held that;

*“We hold that a person’s legal name is that name given at birth, or as voluntarily changed by either spouse at the time of marriage, or as changed by affirmative acts as provided under the Constitution and Laws of the State of Tennessee. So long as person’s name remains constant and consistent, unless
5 and until changed in the prescribed manner, and absent any fraudulent or legally impermissible intent, the State has no legitimate concern.”*

Counsel for the 1st respondent added that the 1st respondent has always been known as “**Mukhaye Miriam**” and the petitioner did not provide any proof that she had ever changed her name to “**Wangisi Mukhaye Mariam Wangisi**”.(See:
10 **Hashim Sulaiman v. Onega Robert, Civil Appeal No 01. of 2021 at page 17-20).**

Further, counsel for the 1st respondent submitted that the instant case is distinguishable from the authority of **Otada Sam v. Taban Amin and Electoral Commission, No. 93 of 2016**, whereby in the instant case the 1st respondent’s name corresponds to her academic documents, National Identity card, the voters;
15 register, and her nomination papers unlike the latter where there was a disparity in names on the National Identity card, nomination papers and the academic documents.

Counsel for the 1st respondent noted that it was a mistake by the 3rd respondent that a National Identity card was issued in the name “**Wangisi Mukhaye Mariam
20 Wangisi**” and the 3rd respondent has the mandate to correct such mistakes under **Section 51(1) and (2)** of the Registration of Persons Act. That in the instant case the 1st respondent notified the 3rd respondent about the mistake and it was accordingly corrected.

Counsel for the 2nd respondent on the other hand submitted that the allegations
25 by the Petitioner that the 1st Respondent was not a registered voter and therefore not qualified to contest for the office of member of Parliament are false and baseless. That this is because the 1st Respondent appeared before the Returning Officer for nomination, possessed with the requisite academic documents. Upon confirming that she met all the requisite qualifications of being a registered voter
30 and meeting the minimum academic qualifications, therefore legible, the Returning Officer nominated and declared her as a duly nominated candidate for the position of Member of Parliament, Mbale District, in accordance with the law. (**See: Section 4 of the Parliamentary Elections Act**). That this was revealed by the Affidavit evidence of the Returning Officer, Ms. Onyango Emily Onyas and
35 Mr. Ochama Ahmed, the Head of Voter Data Management employed by the 2nd Respondent.

Counsel for the 2nd respondent added that the 1st respondent was a registered voter under the name **“Mukhayе Miriam”** as per the affidavit of Ochama Ahmed. That at nomination she presented all her academic qualifications with the same name. That the 1st respondent is married to **“Dr. Jonathan Wangisi”** which fact
5 was disclosed in the affidavits of Namatovu Ruth, Buyera Moses and Musibiha Joy Juliet and undisputed by the petitioner. That the 1st respondent according to her Ordinary and Advanced Level Education Certificates and other subsequent academic qualifications, she was and still is **“Mukhayе Miriam”** which name she has never applied to change. She was only known as **“Mukhayе Miriam Wangisi”**
10 by virtue of being married to **“Dr. Wangisi Jonathan”**. That to deny the 1st Respondent from participating in the elections would have amounted to failure on the part of the 2nd Respondent to execute its mandate.

Counsel for the 2nd respondent quoted **Section 13 of the Parliamentary Elections Act** which provides for the factors upon which the nomination of a person duly
15 nominated can be invalidated. These include, if; the person’s nomination paper was not signed and counter signed in accordance with **Section 11(1)** of the same Act, the nomination fees referred to in **Section 11(3)** was not lodged with his or her nomination paper, the person seeking nomination was not qualified for election under **Section 4**, the person seeking nomination has been duly
20 nominated for election for another constituency for which the poll has not taken place or the person has not complied with the provisions of **Section 4**.

Counsel for the 2nd respondent noted that the allegations made by the Petitioner do not fit any of the above factors.

Counsel for the 2nd respondent further submitted that the law does not forbid
25 change of names. That change of name is part of culture especially for married women whose maiden names in their academic papers may vary depending on when they got married. He cited the Court of Appeal in the case of **Hashim Sulaiman v. Onega Robert, Election Petition Appeal, No. 001 of 2021**, where it was held that; failure to do a deed poll and subsequently have the register
30 amended would not change the identity of a person.

Counsel for the 3rd Respondent submitted that the 3rd respondent did not fault any procedures in correcting the name **“Wangisi Mukhayе Mariam Wangisi”** to **“Mukhayе Miriam”**. That the 3rd Respondent in paragraphs 7 and 8 owned up that there was an error in the printing of the National Identification card issued
35 to the 1st Respondent. Thus undertook a procedure of internally correcting an

error committed by them on an Identification Card in accordance with **Sections 51 & 57** of the Registration of persons Act.

That the Petitioner wrongly alleged that the 3rd Respondent's official called Kagina David deponed an affidavit in support of their answer to the petition confirming that the 1st Respondent was issued with identification card with the name **"Wangisi Mukhaye Mariam Wangisi"** and that the said identity card was attached as annexure "B" on the said affidavit". That this was not true, as the 3rd respondent did not issue such Identity card though attempted to.

That the 3rd Respondent did not change the name of the 1st Respondent and there was no law or legal procedure that was breached by the 3rd Respondent in correcting an error on its part. Thus, the internal procedure undertaken by the 3rd Respondent was an internal Correction and not change of name. The procedure of internal rectification is different from that of change of names reflected in the case **Kasule Robert Sebunya v. Wakayima Musoke Nsereko & The Electoral Commission, Election Petition No. 004 of 2016** and others relied upon by the Petitioner. Hence, a change of name on a register can only be undertaken by a name that is on a register. In the present case, the electoral register was never amended, and the name in the Register of the 2nd Respondent was the same consistent with the name on the 1st Respondent's National Identification Card issued by the 3rd Respondent.

Counsel for the 3rd respondent further submitted that in absence of a person possessing a national Identification in the name of **"Wangis Mukhaye Mariam Wangisi"**, the 3rd Respondent was right to issue a National Identification in the name of **"Mukhaye Miriam"**. (See: **Mutembuli Yusuf Vs Nagwomu & Another Election Petition Appeal No. 43 of 2016**).

Counsel for the 3rd respondent concluded that in the current case, even in absence of a National Identification Card, there would be no doubt that the 1st Respondent is **"Mukhaye Miriam"**, as her identity is backed by the Documentary evidence.

I have carefully considered the submissions of the parties under this issue for which am grateful.

In the instant petition the petitioner contended that the 1st respondent was not validly nominated since she was not a registered voter which is one of the requirements for anyone to contest as a Member of Parliament. I disagree with this allegation with all due respect. It is very clear from the uncertified copies of

the Voters' registers attached to the petitioner's affidavit which this court takes cognizance of, that the 1st respondent was a registered voter at Mafutu church polling station Bukhuma Parish, Bumbobi Sub-County in Bungokho Central County, under registration No. 68168173 at page 5 out of 16 of the Voters' Register. The 1st respondent is therefore a registered voter under the name **"Mukhaye Miriam."**

The 1st respondent also provided her academic qualifications to this court in particular her ordinary level certificate and advanced level certificate which were all issued in the name **"Mukhaye Miriam."**

It was the evidence of the 2nd respondent that the 1st respondent was validly nominated according to the law. That upon presenting her academic documents the same were confirmed to be hers and all the requirements under the law for a valid nomination were considered before the 1st respondent was nominated. Therefore, the 1st respondent's nomination was not invalid. The 1st respondent was then duly registered as a voter with the name **"Mukhaye Miriam"** under which she was also nominated.

In regard to the 1st respondent using the name **"Mukhaye Miriam"** to contest as Member of Parliament as opposed to **"Wangisi Mukhaye Mariam Wangisi"** it was the evidence of Ms. Amongin Emily Onyas that the 1st respondent merely updated her voter particulars to suit her academic qualifications in accordance with the law by dropping her husband's name **"Wangisi"** adopted by virtue of their marriage.

Counsel for the 1st respondent also submitted that the person's legal name is that which is given at birth and in this case it is **"Mukhaye Miriam."**

It was the submission of the 2nd respondent that there is no law that forbids change of name and thus, the 1st respondent adopted her husband's name by virtue of marriage. However, the 3rd respondent admitted to making an error when issuing the 1st respondent with her first National Identity card but denied existence of the same and yet a photocopy of the Identity card is on record.

The 1st respondent in my view made it known to the 3rd respondent that she wished to make adjustments to her name since there was a mistake made by the 3rd respondent on her National Identity Card that was initially issued bearing the name **"Wangisi Mukhaye Mariam Wangisi"**. The 1st respondent had initially registered as **"Wangisi Mukhaye Miriam"** while applying for her National Identity card however, the National Identity Card was printed with the name

“Wangisi Mukhaye Mariam Wangisi”, the 1st respondent then pursued correcting the name on her National Identity Card to “Wangisi Mukhaye Miriam” to eliminate the second “Wangisi” and correcting “Mariam” to “Miriam” but then she eliminated the name “Wangisi” all together and maintained only “Mukhaye Miriam” the name on her academic documents. Upon informing the 3rd respondent about the anomaly on the National Identity card, the 3rd respondent went ahead and corrected the mistake internally and the 1st respondent was issued another card with her correct name “Mukhaye Miriam”.

The 3rd respondent submitted that the procedure as adopted in correcting the 1st respondent’s name is an internal procedure provided for under the law as cited earlier and not a change of name procedure as alleged by the petitioner.

It was not in contention that the 1st respondent always went by the name “Mukhaye Miriam” before adding the name “Wangisi” which belongs to her husband. All the petitioner concentrated on was the fact that the 1st respondent was registered as a voter under the name “Wangisi Mukhaye Mariam Wangisi” on the 2016 and 2020 Voters’ Registers which was clearly as mistake made by the 3rd respondent who forwarded this information to the 2nd respondent.

The 1st respondent told court that she had never used the name “Wangisi Mukhaye Mariam Wangisi” and the petitioner failed to prove to this court that indeed the 1st respondent was and has always been called “Wangisi Mukhaye Mariam Wangisi.” and chose to change her name to “Mukhaye Miriam” while contesting for Member of Parliament.

In the case of *Tinka v. Bigirwenkya & Another*, Election Civil Appeal Petition, No. 7 of 2011, it was held that;

“...I would liken this to assuming a new name when one’s academic certificates are all in that person’s former names. Assuming the new name would not mean that the person who assumes the new name thereby relinquishes all rights to the academic certificates acquired in the old names, or that he/she has to go back to the various institutions to have all the certificates changed to the new name.”

It is my considered view that it is not known how the 1st respondent acquired the name “Wangisi” whether it was legally adopted through a deed poll or it was only used by virtue of the fact that she was married and that was her husband’s name as is the practice by most marrieds.

In the case of **Ninsiima Grace v. Azairwe Dorothy Nshaija Kabaraitysa and Electoral Commission, Election Petition Appeal No. 5 of 2016**, the respondent had sworn a statutory declaration explaining that the addition of one name had been to add her father's name and another being the adoption of her husband's name upon marriage.

It was held that; the addition of the latter did not amount to a change of name but was rather an adoption of her husband's name. similarly, the addition of her father's name was not a change of name but a simple addition. The evidence adduced by the appellant was insufficient to satisfactorily discharge the burden of proof which rested upon her to prove that the respondent was not the owner of the academic documents she presented for nomination as a candidate.

The 1st respondent produced academic documents which indicated that she had always been known by the name **"Mukhaye Miriam"** and this was corroborated by the evidence of Buyera Moses a witness for the 2nd respondent who stated in his affidavit evidence that the 1st respondent had always been known as **"Mukhaye Miriam"** who sat and completed her Advanced Level Education in 1996 at Mbale Senior Secondary school where he was a head teacher. He confirmed to court that he had always known the 1st respondent as **"Mukhaye Miriam"** who was also known to him personally.

I accordingly, find and hold that the 1st respondent was validly nominated and was a registered voter who had never changed her name. These issues are therefore resolved in the negative.

ISSUE 3:

Whether the 1st Respondent committed any illegal practices/election offences personally or through her agents with her knowledge, consent or approval?

Counsel for the petitioner submitted that it is trite law that proof of commission of a single illegal practice or election offence by the winning candidate in a parliamentary electoral contest is sufficient to void the election and the weight or significance of the incident is irrelevant. (See: **Kikulukunyu Faisal v. Muwanga Kivumbi Election Petition Appeal No.44 of 2011**).

Counsel for the petitioner added that the 1st Respondent personally or through his agents with his knowledge and consent or approval committed the illegal practice of participating in fundraisings or giving of donations during the campaign period contrary to **Section 68(7) of the Parliamentary Elections Act**,

2005. That this happened in three separate incidents and the 1st respondent also abetted the commission of the electoral offence of involvement of a public officer in a political campaign when she involved her husband, Dr. Jonathan Wangisi Massa, the District Health Officer in Mbale contrary to **Section 83A (1) (a) and (b)** of the Parliamentary Elections Act, as amended.

Counsel for the petitioner contended that the petitioner had filed 11 affidavits on the 28th May 2021 and three affidavits on the 19th August 2021 in support of her petition. However, the ruling dated 19th August 2021 clearly disposed of the said affidavit evidence from the court record supporting the allegations of the illegal practices committed by the 1st Respondent and her agents. Thus, the petitioner is constrained to resolve issue three.

Counsel for the 1st respondent on the other hand submitted that the petitioner failed to prove that the 1st respondent committed any illegal practices whether personally or through her agents with her knowledge, consent or approval during the election period. That it is trite law that once evidence in an affidavit is not rebutted, the facts therein are true and admitted. That the petitioner's allegations of illegal practices collapsed with the rejection of her affidavits in support thereof.

Counsel for the 1st respondent cited the case of **Suubi Kinyamatama Juliet v. Sentongo Robinh Nakasirye and Another, Election Petition Appeal No. 92 of 2016 at page 15**, the Court of Appeal held that; where a petition is not supported by any evidence as required by law, the petition is fatally defective and as such there is no petition in law before court. Thus, the 1st respondent's evidence was unchallenged whether by evidence in rejoinder or through examination.

Counsel for the 2nd respondent on the other hand submitted that it is now well settled that there are three ingredients of bribery as an electoral offence and these are that; a gift was given to a voter; the gift was given by a candidate or his agent; and that it was given with the intention of inducing the person to vote or refrain from voting.

Counsel for the 2nd respondent went on to submit that the offence of bribery involves the giver and recipient. The recipient must be identified as not being fictitious and not existing, the recipient must depose an affidavit confirming receipt of a gift from the giver or through his agent. That the petitioner and his other witnesses make blanket and casual statements referring to voters (without attaching evidence of notability) and yet they do not mention any of them. The

petitioner bases her claims on speculations for instance under paragraphs 22 and 23 she uses the words ‘allegedly’, ‘purportedly’ donated by the 1st respondent. That it is trite law that affidavits must be confined to matters that a deponent is able to prove.

- 5 Counsel for the 2nd respondent quoted the case of **Odo Tayebwa v. Nasser Basajabalaba and Another, Election Appeal No. 13/2001**, where it was stated that it is incumbent upon the petitioner to prove or to produce cogent evidence to prove this allegation and not to rely on the weakness of the respondent’s case.

10 Counsel for the 2nd respondent concluded that whereas the 2nd Respondent denied knowledge of any acts of bribery allegedly committed by the 1st Respondent, the Petitioner did not adduce any evidence or any witnesses to depose Affidavits to prove the same.

15 I have carefully considered the submissions under this issue and indeed it is true that the petitioner’s additional affidavits were expunged from the record by this court because admitting the said affidavits would prejudice the respondents who had already exhausted their right to reply to the petitioner’s additional affidavit evidence. The said affidavits were filed when the filed after the respondents had already filed their answers to the petition.

20 In the case of **Muyanja Simon Lutaaya v. Kenneth Lubogo and Electoral Commission, Election Petition Appeal No. 82 of 2016**, it was observed that; the trial judge was therefore correct to strike out affidavits which had been filed out of time, without leave of court, and which would have been prejudicial to the respondents who would have no opportunity to respond to those affidavits.

25 In the instant case the petitioner filing her affidavits out of time meant that the petitioner chose to make additional evidence as an afterthought even when she had all the time to prepare her case from 17th January 2021 when results were gazetted. Why then did she file all her additional affidavits in support of the petition months later from the date of the filing of the petition well knowing that the respondents would not be in position to reply to the same since the
30 respondents had already made their answers to the petition within the 10 days prescribed by law as opposed to the petitioner who had 30 days to file her petition?

35 Counsel for the petitioner argued that they were unable to gather all the petitioner’s evidence within the allotted 30 days, and that was why they filed the additional affidavits on 28th May 2021 and others on the 19th of August 2021.

While the petition was filed on the 19th March 2021 for elections that were held on 14th January 2021, results declared on the 15th January 2021 and gazetted on the 17th January 2021.

5 Counsel for the petitioner in his submissions also stated that they were unable to resolve the instant issue because the supporting additional affidavits of the petitioner were expunged by this court. This in essence means that the petitioner was unable to prove her claim against the petitioners for lack of evidence. This Court however, categorically after its ruling gave the petitioner the liberty to adduce oral evidence with leave of court if they so wished where the opposite
10 parties could cross examine the witnesses if there was need to. The petitioner did not take advantage of the opportunity for reasons best known to her.

This court has no duty to help the petitioner bring evidence before it. It is the duty of the petitioner to prosecute her case as diligently as possible. Blame cannot now be indirectly put on court as counsel for the Petitioner seems to do in his
15 submissions for expunging the additional affidavits yet counsel for the petitioner chose not exhaust all the available means through which the petitioner could adduce her evidence in support of her petition. With all due respect an advocate resigning in such a manner in regard to their client's case is absurd. A client as is the Petitioner in the instant case entrusted her case with her advocate. It is
20 therefore, an advocate's duty to take care of the interests of his/her client and tell him/her the exact laws and provisions of the particular case and what remedies are available to their client. The advocate should not hurt the interests of his/her client through his/her actions or omissions in any manner.

Section 58 of the Evidence Act provides that facts in a case, except the contents of
25 documents, may be proved by oral evidence. This evidence must be direct in that, if it refers to a fact that could be seen, then the one who saw it, if it refers to a fact that could be heard, then the one who heard it, if it refers to fact that could be perceived and if it refers to an opinion or grounds of that opinion, then the one who holds that opinion must be the one to testify.

30 In the case of **Mugema Peter v. Mudiobole Abedi Nasser, Election Petition Appeal No. 30/2021**, it was stated that;

“However, unless it is by agreement of the concerned parties or by some legislation, that evidence in a cause shall be by affidavits alone, a party may supplement affidavit evidence by viva voce evidence in court. (See: Glossov v. Heston & 1 Local Board, 47 IJ Ch. 536). Also, where court finds affidavit
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evidence to be unsatisfactory. It has jurisdiction to exclude the affidavits and to direct the witnesses to be examined orally notwithstanding any agreement to the contrary. (See: Re: Whiteley, 1891, 1 Ch. 559. See: also Sarkar on Evidence, 14th ED. P. 2188.)

5 *I conclude, on the basis of Section 58 of the Evidence Act and on appreciating the above legal authorities on the point, that evidence given to court on oath viva voce, under the supervision and superintendence of a presiding judge, is proper and valid evidence that the court must consider. It is up to the presiding court to consider the said evidence together with the fact that the*
10 *affidavit evidence has been rejected or has been contradicted, and then decide what value to put on such evidence.”*

The petitioner decided not explore other available options to adduce her evidence even after court’s guidance in line with the above law and authority as cited. This court sadly finds this issue abandoned by the petitioner since the petitioner did
15 not adduce any evidence to support her claim against the respondents. It is accordingly struck out.

Issue 4: What remedies are available to the parties?

Counsel for the 1st respondent submitted that the petitioner failed to prove her case to the required standard therefore the petition should be dismissed for lack
20 of merit with costs.

Counsel for the 2nd respondent also submitted that the Petitioner miserably failed to adduce any aorta of evidence to support any of the allegations contained in her Petition and thus, this court should dismiss this Petition with costs to the respondents with a certificate to two counsel.

25 Counsel for the 3rd respondent in regard to this issue submitted that it is trite law that the burden of proof in election petitions lies upon the petitioner and **Section 61** of the Parliamentary Elections Act as amended clearly states that court may only set aside an election upon any of the grounds set out in the section being proven to the satisfaction of court. That the Petitioner in the instant case did not
30 prove any connivance on the part of the 3rd Respondent in rectification of the name of the 1st Respondent. That the Actions of the 3rd Respondent in Rectification of the names of the 1st Respondent did not amount to any breaches/violations under **Section 61** of the Parliamentary Elections Act. Nor did it change or affect the electoral Register which was used in the concluded
35 Elections in question.

That the duty to maintain a voters' Register was with the 2nd Respondent and not the 3rd respondent.

It is this court's finding that the petitioner had the burden to prove her allegations as against the respondents but did not prove her case to the satisfaction of this court.

This petition is accordingly dismissed for lack of merit with costs to the respondents.

Right of appeal explained.

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OYUKO ANTHONY OJOK

JUDGE

7/9/2021