THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

HOLDEN AT KAMPALA

CORAM: HON.MR.JUSTICE G.M. OKELLO ,JA

HON.MR.JUSTICE G.S ENGWAU, JA

HON.LADY JUSTICE C.K BYAMUGISHA,JA

ELECTION PETITION APPEAL NO.15/2006

BETWEEN

SERUNJOJI JAMES MUKIIBI::APPELLANT

AND

LULE UMAR MAWIYA::RESPONDENT

(Appeal from the judgment and order of the High Court of Uganda sitting at Masaka (Lugayizi. J) dated 23/09/06 in Election Petition No. 9/06)

JUDGMENT OF BYAMUGISHA, JA.

This appeal arose out of the decision of the High Court sitting at Masaka High Court Circuit wherein the appellant's election as Member of Parliament was annulled for lack of the requisite academic qualifications.

On the 23rd February 2006, Parliamentary Elections were hold throughout the Country. The appellant and the respondent were duly nominated by the Electoral Commission to contest as candidates for Kalungu East Constituency Masaka District. On 27th March 2006 the Electoral Commission published in the Uganda Gazette the results of those elections. The appellant was declared the winning candidate with 11,913 votes and the respondent with 11,030 votes.

The respondent was dissatisfied with the outcome and he filed a petition against the appellant, the

Returning Officer Masaka District and the Electoral Commission. His main complaint was that the Electoral Commission had nominated and declared the appellant the winning candidate when he was unqualified to stand as Member of Parliament. He further alleged that the Returning Officer and the Electoral Commission conducted the election in contravention-of the law governing the conduct of elections and this affected the results in a substantial manner. He prayed for the annulment if the elections and the ordering of fresh ones. There was also a prayer for costs.

The returning officer Masaka and the Electoral Commission filed a joint answer in which they denied having conducted the election in contravention of the law and asserted in the alternative that if there was any contravention, it did not affect the results in a substantial manner

The appellant in his answer denied the allegations in the petition. He asserted that he was qualified to stand as Member of Parliament.

On 13 September 2006, the trial judge held a scheduling conference with the parties. The facts that I have stated above were agreed on. They also agreed that the following documents should become exhibits without formally calling witnesses to prove them.

1. The Uganda Gazette dated 27th March 2006 showing the appellant as the winner of Kalungu East Constituency (Exhibit P.1).

2. Nomination papers for the appellant (Exhibit P.2)

3. The voters register for Kalungu East Constituency (Exhibit P.3).

4. Polling guildelines for the year 2006 dated 14th January 2006 (exhibit P.4)

5. Certified copies of the declaration of results forms for the constituency (exhibit P.5)

6. A tally sheet for the constituency packing list dated 6th March 2006 (Exhibit P.6)

7. The presidential Election Packing list dated 15TH February 2006 (Exhibit 7)

8. The Uganda Advanced Certificate of Education that the appellant presented at his nomination (Exhibit P.8).

9. The East African Certificate of Education that the appellant presented at his nomination(Exhibit P.9).

10. Two letters from Uganda National Examination Board dated 23rd January 2006 (exhibit P.10 and P.11)

11. A police report dated 5th July 2006 and its annexures (exhibit P.12).

12. A document from the Courts of Judicature dated 11th September 2006 (Exhibit P.12).

The following issues were framed for court's resolution namely:

1. Whether the 3rd respondent as at the time of the election qualified for nomination and election a member of parliament?

2. Whether during the election there was noncompliance with the provisions and principles of the parliamentary Elections Act by the respondents?

3. If so, whether the noncompliance affected the outcome of the election in a substantial manner.

4. The available remedies.

At the hearing, the 2nd 3rd issues were abandoned and thereafter the trial judge determined the first issue in the negative. He annulled the election of the appellant and ordered fresh elections to be held. He ordered the respondents to bear the costs of the petition and granted a certificate of four counsels hence the instant appeal.

The memorandum of appeal filed on his behalf contained 16 grounds namely:

1. **The learned trial judge erred in law and in fact when he held that it is more likely that the appellant never had the requisite academic qualifications at the time of his nomination disregarding and overlooking the overwhelming evidence on record to the contrary.**
2. **The learned trial judge erred in law and fact when he failed to prove burden of proof that the appellant was not the person owning both the East African Certificate of Education and the Uganda Advanced Certificate of Education in view of the over whelming evidence adduced to the contrary.**
3. **The learned trial judge erred in law and fact when he held that the appellant does not possess "O" Level Certificate.**
4. **The learned trial judge erred in law and fact when he considered only the evidence**

of the respondent regarding the difference in the names appearing on the "O" EACE and "A" Level UACE disregarding and overlooking the cogent and reasonable explanation of the appellant on the same issue.

5. **The learned trial judge erred in law and fact when he held that it is likely that the appellant did not have the academic qualification at the time of his nomination on the basis of the appellant having failed to properly spell some English words of the papers he studied in Literature in English and on the basis of the appellant having failed to tell the other name of the correct nationality of Napoleon.**
6. **The learned trial judges erred in law and fact when he took it upon himself to asses and determine the appellant's academic and intellectual capacity and qualifications.**
7. **The learned trial judge erred in law and fact when he held that the appellant was 12 years old when he sat for his "O" level examinations in 1978 totally overlooking and failing to consider at the appellant's testimony that he was born in October 1962 and not 1965 as erroneously recorded by the Election Commission.**
8. **The learned trial erred in law and fact when he failed to consider the unchallenged evidence of Mr. Remegio Kayanja stating how the appellant was promoted from P.2 to skipping over P.3 in his primary and thereby explaining how he came to sit for his "O" level examination at a tender age of 16 years.**
9. **The learned trial judge erred in law and in fact when he considered and believed the doubtful evidence of Detective sergeant Collin Karugaba only regarding the manipulation of records at Masaka Secondary School disregarding and overlooking entirely the more professionally investigated report by a ,senior CID officer as per exhibit P.12**
10. **The learned trial judge erred in law and fact when he held that Kassaga Safi Kiyimba's evidence stood unchallenged thereby coming to a wiping conclusion**
11. **The learned trial judge erred in law and fact when he decided not to believe the evidence of Immaculate Namitala simply because he had doubts about the appellants having sat for A level examination in 1982.**
12. **The learned trial judge erred in law and fact when he referred to the renovations of the epitaph on the grave of the appellant's father as manipulation by the appellate without considering at all the appellant's explanation in this respect.**

13. **The learned trial judge erred in law and in fact when he stated that the appellant had apparently bribed UNEB, police and Masaka Secondary School officials to falsely manipulate the school records in his favour without evidence.**
14. **The learned trial judge erred in law and in fact when he called the appellant's witness Mr. Gelasio Kallika a liar.**
15. **The learned trial erred in law and in fact when he failed to properly consider and fairly evaluate all the evidence for both the appellant and the respondent before making his considerations.**
16. **The learned trial judge erred in law and in fact when he awarded costs to the respondent with a certificate of four (4) counsels.**

The following prayers were proposed:

1. That the appeal be allowed.
2. The judgment and orders of the lower court be set aside.
3. The appellant be declared the lawfully elected Member of parliament for Kalungu East Constituency.
4. Costs of this appeal and, costs in the court below.

I must state at once that the above memorandum of appeal offended the provisions of ***rule 86(1)*** of the Rule of this court. The said rule requires the memorandum to state concisely without argument the grounds of objection to the decision appealed against.

However, on 10th November 2006 the parties appeared before the Registrar of this Court and agreed that the grounds be reduced it into four issues. These issues were reproduced in the respondent's legal arguments filed on 01/12/06. The issues are the following:

1. **Whether or not the academic qualification (" O" Level and 'A' Level Certificates) exhibited on record as a basis of the nomination and election of the appellant belong to the appellant**
2. **Whether or not the trial judge evaluated the evidence properly led before court.**
3. **Whether or not the award of costs with the Certificate for 4 counsel was erroneous.**

4. **Consequential remedies**.

I shall use the above issues to determine the appeal.

When the appeal came before us Mr. Joseph Balikudembe assisted by Francis Katabalwa represented the appellant while Messer's Hassan Kamba, Justine Semuyaba and Ambrose Tebyasa appeared for the respondent.

Mr. Balikudembe in his submissions combined his original grounds. The main truth of his submissions was that the learned trial judge made a grave mistake in law when he failed to direct himself as to the burden and standard of proof. He pointed out that the judge at page 385 of the record of appeal the last paragraph stated that the respondent proved on a balance of probabilities that the appellant did not have the requisite educational qualifications at the time of his nomination and elections as a member of parliament.

He stated that ***Section 61(1)*** of the ***Parliamentary Elections Act (act 17/05)*** requires the grounds for setting aside the election of a candidate as a Member of Parliament to be proved to the satisfaction of the Court. He further submitted the standard of proof is to the satisfaction of court and therefore higher that in ordinary civil cases. He cited the now often quoted case of ***Kizza Besigye Vs Yoweri Museveni and another -Election petition No. 1/01*** for that legal proposition. In particular he relied on the judgments of Odoki CJ. and Mulenga JSC where the two justices judicially considered the provisions of ***section 59(6)*** of the ***Presidential Elections Act.*** He stated that the wording of the two sections is similar. It was learned counsel's contention that the respondent had to prove the negative.

He pointed out that the respondent averred that there was another Serunjogi and the judge said nothing about the appellant's explanation about the change of names.

Mr.Balikudembe claimed that the trial judge made up his mind at the beginning before analyzing the evidence. He stated that he fell into a trap of looking for evidence of the respondent only this error was fatal. He referred us to the affidavit of the appellant which he depended on complying his answer to the petition paragraph 5(e) (f) in which he explained why he changed his name. Learned counsel further pointed out that the appellant explained how he sat for his 'O' level at Moroto High School and the learned judge did not consider his explanation.

On the appellant's voter registration form counsel pointed out that he did not give his father's other names

of Mukiibi John because there was no provision on the form to state other names of his father. The only names he put there was Ssemogerere Charles. On the "A" level certificate, counsel stated that it had the names of Serunjogi James S.M.J. He explained that (S) stood for Ssemogerere (M) for Mukiibi and (J) for John.

He cited ***Section 110*** of the ***Evidence Act*** which casts the burden of proof as to ownership and contended that the appellant was in possession of two certificates, he explained how he acquired them and the burden was on the respondent to rebut this. He did not do so, according to counsel.

Mr. Balikudembe criticized the trial judge for disregarding the testimony of Immaculate Namitala who stated that she studied with the appellant at Masaka Secondary School, the evidence of Kaliika Gelasio who stated that he studied with the appellant from Bukulula Primary School, went with him to Apostles of Jesus Seminary in Bukinda and later to later to Moroto Seminary and finally Katigondo Major Seminary when the appellant left. He also claimed that their names appear in the official list of results of Uganda National Examination Board as No. 134 and 148 respectively.

Learned counsel complained that the learned judge erred when he tried to assess the academic qualifications of the appellant by basing himself on the appellant's competence. He claimed that this was not useful in the instant case. The judge also erred, according to counsel, by relying on the voters' register which showed that the appellant was born in 1965 when in fact he was born in 1962. He pointed out that in cross-examination the appellant stated that he was 44 years old and the age of 41 was a mistake. He also claimed that the appellant tried to complain to the Electoral Commission about the particulars of date of birth but nothing was done about the mistake by the Commission.

Another explanation given by the appellant which Mr. Balikuddembe claimed was ignored by the trial judge was how the epitaph on his late father's grave was changed.

In reply, Mr. Tebyasa submitted that the appeal hinges on the evaluation of evidence on record. He pointed out that under ***Rule 30*** of the ***Court of Appeal Rules Directions S.I. No. 13-10*** this Court has power to evaluate and appraise the evidence afresh. He however, pointed out that caution must be taken on findings of fact based on the evidence of the witness who appeared before court and was cross-examined.

He cited the following authorities:

Administrator General Vs. Bwanika & others - Supreme Court Civil Appeal No. 7/03;

Peter v. Sunday Post Ltd [1958] E.A. 424;

Nazmudin Gulam Hussein Viram v. Nicholas Roussos - Supreme

Court Civil Appeal No. 01/06: and

Watton Thomas v. Thomas [1947] Ac 484.

The gist of these decisions according to counsel, is that while an appellate court has jurisdiction to review the evidence on record and determine for itself whether the conclusions of the trial judge should stand or not, this power must be exercised with caution. The reason for this is that the appellate court, unlike the trial court had no opportunity of seeing the witnesses testifying and did not test their credibility and demeanor.

On the standard and burden of proof, learned counsel submitted that the trial judge directed his mind properly. On the case of ***Besigye v. Museveni & another*** (supra) counsel submitted that it was quoted out of context as ***Section 59(6) of*** the Presidential Election Act does not mention the standard of proof whereas ***Section 61(3)*** of the ***Parliamentary Election*** Act is clear. It provides that proof of any of the grounds is on the balance of probabilities.

Learned counsel cited the case of ***Electoral Commission v. Komuhangai - Election Petition Appeal No. 19/02*** where the Court of Appeal held that the standard of proof is as in civil matters on the balance of probabilities. It was his contention that the, trial judge considered the evidence and the burden of proof by stating that "most likely" the certificate did not belong to the appellant. On ***Section 100*** of the ***Evidence Act*** counsel contended that it is inapplicable in a matter of this nature with evidence of affidavits. He cited ***rule 15*** of the ***Parliamentary Elections (Petition) Rules*** which provides for affidavit evidence in election petitions.

He pointed out that in case this court finds that ***Section 100*** is applicable, the only question that is left is whether the appellant explained those documents as being his considering the evidence on record.

Turning to the cross-examination of the appellant, learned counsel submitted that he told court that he did Literature and his first paper was 'Praise' and later he said it was 'Pays'. The other paper he said he did was 'Poultry' and then 'potray' and could not explain the parts he did in poetry.

When he was asked the topic he liked most in European History he stated that he liked Napoleon most who was a leader in Germany.

Learned Counsel further submitted that the appellant stated that he sat for two papers in Divinity at 'A' level but the certificate and the letter from the Uganda National Examination Board at page 10 of the record of exhibits shows that the owner of the certificate should have sat for three and not two papers as the appellant has stated in cross-examination. On the testimony Abednego, the Deputy Headmaster of Moroto High School, counsel stated that he produced a list of students who sat for 'O' level in 1978. They were students but the appellant was not among them.

On the testimony of Sgt. Karugaba counsel submitted that he was cross examined on the code sheet-exhibit P 12 and stated that it could not refer to the appellant since the complainant against him came in 2006 and not in 1981.

Learned counsel referred to the appellant's change of names and the renovation of his late father's epitaph as evidenced by the appellate top suit the circumstances of this petition. He also referred to the particulars that the appellant gave to the Electoral Commissions as the only reliable avenue of ascertaining the appellant's age. He invited us to find that the appellate was born on 6th October, 1965. He asserted that the trial judge was right in not accepting that the appellant owned the documents.

On the testimony of Kaliika and Namitala he claimed that it could not be relied upon because Kaliika's affidavit was fundamentally defective. He stated that Kaliika came with his baptism card which he had obtained the previous_day. On the other hand he claimed that the evidence Kiyimba and Wamala deponed that they studied with someone called Serunjogi James SMJ was not controverted. He invited us to allow the appeal.

I think I should first deal with the complaint raised by Mr. Balikuddembe about the burden and standard of proof in election petitions. ***Section 61*** of the ***Parliamentary Election Act (Act 17/05)*** provides for grounds for setting aside the election of a candidate as a Member of Parliament. It provides that the grounds must be proved to the satisfaction of the court. ***Sub-section 3*** thereof states the grounds specified in ***sub-section (1)*** shall be proved on the balance of probabilities. The standard of proof is on a balance of probabilities and the court must be satisfied. The burden lies on the petitioner to prove the allegations in the petition.

In the instant appeal the trial judge appear to have been alive as to who had the burden of proof and the standard of proof required. After evaluating the evidence on record be said:-

"All in all, it is court's considered opinion that the petitioner proved on a balance of probabilities that, the 3rd respondent did not have the requisite educational qualification…"

Therefore, the complaint raised by counsel for the appellant was not justified.

At the centre of the dispute in this appeal are two certificates that the appellant presented at the time of his nomination. It is, therefore, necessary to evaluate all the evidence concerning the two certificates and then determine whether they belong to the appellant. According to the evidence on record, the appellant registered himself as a voter on 21st August, 2001 in the names of Serunjogi James. The particulars of his date of birth given to the Electoral Commission were 06th October, 1965. The voter registration form required the voter to state other names that the voter might have and the appellant did not state any. His father's names were given as Ssemogerere Charles and that on his mother as Nasozi Teddy. On nomination day, which was the 12th January, 2006, he presented two academic certificates (exhibit P 8 and P9). The returning Officer of Masaka who was the first respondent in the lower court, noticed discrepancies in the names on the "A" level certificate the nomination form and the "O" level certificate. He apparently sent away the appellant.

On the 13th January, the appellant returned with an affidavit of the same date. In that affidavit he tried to explain the origin of the letters SMJ that appeared on the "A" level certificate. He stated that the letter "S" is for Ssemogerere, the letter 'M' for Mukfibi and 'J' for John. He stated that he inherited these names from his late father. On the strength of this affidavit the Returning Officer nominated the appellant as one of the candidates. In the same affidavit he stated that in 1978 he registered for East African Certificate of Education at Moroto Seminary of Apostles of Jesus in the names of Serunjogi James. In 1982 he registered for Uganda Advanced Certificate of Education at Masaka Secondary School in the names of Serunjogi James Ssemogerere Mukiibi John. The certificate which was exhibited had the names of Serunjogi James SMJ.

I think it is necessary to dispose of the 'O' level certificate and determine whether it belonged to the appellant. The case for the respondent was based on the testimony of the Deputy Headmaster of Moroto High School. He swore an affidavit and was cross-examined by counsel for the appellant. He produced a list of 'O' level results for his school for the year 1978. The name of Serunjogi James was not among them. However, this witness was shown a photocopy of a computer printout (exhibit P 12). The printout is a Uganda National Examination Board document for Moroto High School. The name of Surunjogi James and his witness Kaliika Gelalsio appear on the printout as Nos. 134 and 148 respectively.

The printout however, bears the date of 17th July, 1981. The results of Moroto High School for the year 1981 which are on pages 27-29 of the record of exhibits do not include the name of Serunjogi James or Kaliika Gelasio. In my humble opinion the printout was of very little probative value. It did not prove that the appellant sat for his "O" level examination at Moroto High School in 1978. The printout was for Uganda National Examination Board and yet the certificate that the appellant had in his possession was issued by the East African Examination Counsel. The printout could therefore, be referring to Uganda National Examination Board results although the year when the examination was done was not revealed. I have also observed that the photocopying was badly done and some information is missing. It would have been useful if the appellant had obtained some testimonials from the Apostles of Jesus Seminary where he claimed he had registered for his 'O' level examination. According to me, this would have been the best source of information, instead of relying on badly photocopied document. The appellant's case was that the seminary had no centre number and therefore, its students used to sit for their '0' level examinations at Moroto High School. That may as well be true. But such a school or seminary as the case may be would still maintain records of their students.

The second piece of evidence which casts doubt on the appellant's ownership of the 'O' level certificate was his date of birth. At the trial, the appellant under cross-examination stated that he was born in 1962 although he did not know both the month and the date when he was born. He also tried to explain that he made when he gave particulars of his birth to the Electoral Commission in 2001. He also claimed to have made a mistake at the time of nomination in 2006 when he stated that he was 41 years old.

The nomination form is made under oath. It requires the candidate to state that the statement in the nomination form as to the candidate's name, age, address, occupation, address for service of process are correct to the best of his knowledge and belief. The appellant admitted in cross-examination that he took the oath and valued the oath he took. The information the appellant gave to the Electoral Commission on both occasions was, in the first place voluntarily given. Secondly, it was being given at the time when the question of his names and academic credentials had not arisen. He had no reason to lie.

The appellant had no birth certificate. The only reliable information as to his particulars was in the official documents that he had presented to the Electoral Commission. These documents put his age at 41 in 2006. The trial judge was in my view, right to use the official declared age of the appellant to find as his did that the appellant was 12 years in 1978 when he claimed to have sat for his 'O' level examination and therefore,

the certificate was most likely not his.

Even if the first certificate was his, the second certificate was not in his names. It was in the names of Serunjogi James SMJ. I have already referred to the official documents where the appellant referred to himself as Serunjogi James. There was also an invitation card for his wedding in 1989 which was attached to the affidavit of Wasanyi Sepi. His name is clearly stated as James Serunjogi and that of his late father as Charles Ssemogerere. These names were also confirmed by Kasoro Vincent and Richard Ssegirinya both village mates of the appellant. The appellant in one of his affidavits in rejoinder deponed that the two did not know all the names of his late father and therefore, they were not telling the truth. Even if they were not telling the truth, there was the epitaph on the grave of the appellant's late father. The original epitaph had the names of Ssemogerere Charles. After the filing of the petition and the affidavits, the grave was renovated and the name of Mukiibi John was added. The photographs of the old and new epitaph were attached to the affidavit of Sgt. Karugaba as annexure 'A' and 'B'.

Although the appellant explained the changes, like the trial judge, I am not persuaded that the change of names on the epitaph was an innocent act. The change of names and the explanation given by the appellant was contradictory. In his affidavit of 13th January, 2006 he claimed that he inherited the names of Ssemogerere Mukiibi John from his late father. In cross-examination at the trial he stated that he changed his names by choice in 1982 when he was going to register for his 'A' level examination at Masaka Secondary School. The contradictions in the appellant's explanation were not minor and could not be glossed over. They were deliberate lies that were intended to suit the circumstances of the petition.

The trial judge was therefore, right to reject the testimony of the appellant and those of his witnesses who claimed that they attended the same schools with him. The rejection was justified by the evidence on record.

I would like to state that for a person who is an adult to effect change of name he/she has to comply With the provisions of ***Section 12*** of the ***Births and Deaths Registration Act (Cap. 309, Laws of Uganda Revised Edition).*** The section provides as follows:-

> ***"(1) Any person, being over the age of twenty one years or a widower, widow, divorced person or a married person who wishes to change his or her name shall cause to be published in the Gazette a notice in the***

prescribed form of his or her intention to do so.

(2)Not less than seven days after the publication of the notice, the person intending to change his or her name may apply in the prescribed form to the registrar of the births and deaths registration district in which his or her birth is registered.

(3) The registrar shall, upon being satisfied that the requirements of this section have been carried out and upon payment of the prescribed fee, amend the register accordingly and shall sign and date the amendment."

There Is no dispute that the appellant did not comply with the above provisions. It goes without saying that he did not change his name legally and his attempt to do so through the affidavit of 13th January 2006 was in my view of no legal consequence.

Considering the evidence as a whole, the respondent proved on a balance of probabilities that the certificates the appellant relied upon for his nomination and subsequent election as Member of Parliament did not belong to him. He therefore, lacked the requisite academic qualifications to be nominated and to be elected as a Member of Parliament.

The second issue complained that the trial judge failed to evaluate the evidence properly thus coming to the wrong conclusion. This ground I think have been generally covered while dealing with the first one. The trial judge considered the evidence of the appellant and his witnesses and those of the respondent. He cannot be faulted for preferring to believe one version against the other. This ground out to fail.

Mr. Kamba defended the award of costs of 4 counsel. He submitted that ***Section 27*** of the ***Civil Procedure Act*** gives court wide discretion to determine costs and who should pay them. He also cited ***rule 27*** of the ***Parliamentary Election (Election Petition) Rules*** which govern the award of costs in election petitions. He claimed that the case was complicated and the judge was justified to give a certificate for 4 advocates as ***Rule 41*** of the regulations permits certificate of more than one advocates. He invited us to dismiss the appeal with a certificate of three counsel. The provisions of ***Section 27 of*** the ***Civil Procedure Act*** govern the award of costs in civil litigation. In election petitions the trial court is enjoined to look at the provisions of ***Rule 27*** (supra) which states as follows;

"All costs of and incidental to the presentation of the petition shall be defrayed by the parties in such manner and in such proportions as the court may determine."

This being an election petition the trial judge had to consider the above provisions in determining how the costs of the proceedings were to be defrayed. I agree with the submissions of Mr. Kamba that Section 27 (supra) gives wide discretion to the court as to costs of the proceedings, since costs follow the event. However, the section has a provision, which states as follows:

"Provided that the costs of any action, cause or matter shall follow the event unless the court or the judge shall for good reason otherwise orders".

Determining as to who should bear the costs is a discretionary matter which, like any discretion, must be exercised judiciously and ought not to be exercised against a successful party, except for a good reason connected with the case. An appellate court will not, in normal circumstances interfere with the exercise of discretion by a trial court unless it is shown clearly that the exercise was unjudicially or wrong principles were followed. Where a trial court gives reasons which do not constitute good cause within the meaning of the section the appellate court will interfere and if no reasons are given, the appellate court will interfere if the order made was wrong.

In the instant appeal, the complaint that has been raised is not the award of costs ***per se*** but the certificate for four advocates. ***Rule 41*** (supra) under which a judge can certify costs for more than one advocate states thus:

(1) The costs of more than one advocate may be allowed on the basis hereafter provided in causes of matters in which the judge at the trial or on delivery of judgment shall have certified under his or her hand that more than one advocate was reasonable and proper, having regard, in the case of a plaintiff, to the amount recovered or paid in settlement or the relief awarded or the nature, importance or difficulty of the case and, in the case of the defendant, having regard to the amount sued for or the relief claimed or the nature, importance or difficulty of the case.

(2) A certificate for two counsel may be granted under this regulation in respect of two members or employees of the same firm."

My understanding of this regulation is that it gives the trial judge discretion to grant a certificate of more than one advocate in the circumstances set out in the regulation. In the case of plaintiff it should depend on the amount of money recovered, the relief awarded or the nature, importance of difficulty of the case. In the case of a defendant regard must be added to the amount the plaintiff had sued for or the relief claimed or the nature or difficulty of the case. It would appear to me that the regulation limits the certificate to two counsel. Any certificate of more than two advocates may be on higher side.

In awarding the costs and the certificate for four, the learned trial judge said:

"The 1st, 2nd and 3rd respondents shall, in equal measure bear the costs of the petition. Court also agrees that the taxed costs would be certified in respect of 4 advocates for the petitioner".

In the matter now before us, I have perused the record of the proceedings. The respondent was represented by four advocates although they came from different law firms. Mr. Kamba made the final submissions. The submission on remedies reproduce it. He said:

"***Section 63(4) of the Parliamentary Elections Act inter alia allows court to cancel elections etc. In Katwiremos (sic) case Election Petition of1996 court said once nomination is illegal, candidates' votes would be thrown away and petitioner be declared winner. Costs follow event. We therefore, pray that court should annul 3rd respondent's election and award the petitioner costs"***

Counsel for the respondents made their submissions and Mr. Bakiza made his final reply. The record that was availed to us does not indicate any prayer for any certificate let alone of 4 advocates. The trial judge did not give any reason for awarding of 4 advocates. While a successful litigant should be fairly reimbursed for the costs he or she has incurred, the courts of law owed it to the public to ensure that costs do not rise above a reasonable level so as to deny the poor access to the courts.

I agree with the submissions of Mr. Balikuddembe that the certificate of 4 advocates is unprecedented. Even if the case complicated as Mr. Kamba submitted, I do not think that a certificate of 4 advocates was justified. I consider this to be one of those cases in which an appellate court can interfere with the exercise of discretion by a trial judge.

In the result appeal would be dismissed. The judgment and orders of the lower court would be upheld except the order of certificate of 4 advocates. The respondent would have the costs of this appeal and those of the court below.

Dated at Kampala this 22nd day of January 2007.

C.K. Byamugisha

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

HOLDEN AT KAMPALA

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AND

LULE UMAR MAWIYA::RESPONDENT

(Appeal from the judgment and order of the High Court of Uganda sitting at Masaka (Lugayizi. J) dated 23rd September 2006 in Election Petition No. 9/06)

JUDGMENT OF ENGWAU, JA:

I had the benefit of reading in draft, the judgment of Byamugisha JA. I entirely agree with her findings and orders proposed by her. I have more to add.

Dated at Kampala this 11st day of January, 2007.

S.G. Engwau

JUSTICE OF APPEAL.

THE REPUBLIC OF UGANDA

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JUDGMENT OF G.M. OKELLO, JA.

I have had the chance to read in draft the judgment of Byamugisha, JA. I entirely agree with her.

As Engwau, JA also agrees the appeal shall stand dismissed on the terms proposed by Byamugisha, JA.

Dated at Kampala this 11th day of January, 2007.

Hon. Justice G.M. Okello

JUSTICE OF APPEAL.